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Presidential Documents

Title 3—

The President

Proclamation 5635 of April 21, 1987

Older Americans Month, 1987

By the President of the United States of America

A Proclamation

Throughout our history, we Americans have always cherished our God-given rights to life, liberty, and the pursuit of happiness, and our freedom of opportunity. We have fought wars for them, and we have created a system of limited constitutional government to perpetuate them. We have also voluntarily joined together to enhance life and guarantee opportunity for our neighbors when the need has arisen.

We should bear these truths in mind as the number of older Americans increases—and we should remember that one day all of us will also become older Americans. Our older citizens have lived lives of achievement and have sacrificed much for our country and for each of us. They possess a wealth of experience, talent, and wisdom and a willingness to share them. Older Americans cherish their freedom and independence and want to remain in their homes and communities as active and contributing citizens. To help senior citizens reach this goal, we can fulfill our responsibilities as family members and friends, and we can also work to create community systems of services for them.

Much has been done already, but much remains to be done. Under the Older Americans Act, local and State agencies on aging were established to plan, develop, and coordinate services to help older people remain in their own homes and communities as long as possible. People in every town, city, neighborhood, and rural community have the challenge and the opportunity to lay the foundation for their own truly responsive community systems for older Americans.

The Congress, by Senate Joint Resolution 64, has requested the President to proclaim May 1987 as "Older Americans Month."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of May 1987 as Older Americans Month. I ask public officials at all levels, business and civic leaders, and all Americans to become concerned about the welfare of our Nation's older people, to consider ways to ensure the independence of older people by using community resources to forge a system of comprehensive and coordinated services for them, and to work to establish such systems in each community.

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

Ronald Reagan

[FR Doc. 87-9424
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, 59, and 70

Increase In Fees and Charges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The revised charges for Federal voluntary egg products inspection; egg, poultry, and rabbit grading; and laboratory services; and the revised rates for Federal mandatory egg products inspection overtime and appeal services which were published in the Federal Register on March 2, 1987, and made final. These charges are increased to cover higher costs associated with these programs due mainly to the increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970 and the increased costs associated with the new Federal Employees Retirement System.

EFFECTIVE DATE: May 1, 1987.

FOR FURTHER INFORMATION CONTACT: D. M. Holbrook, (202) 447–3506.

SUPPLEMENTARY INFORMATION: This rule has been revised under USDA procedures established in Departmental Regulation 1512–1 implementing Executive Order 12291. It has been classified "nonmajor" as it does not meet the criteria contained therein for major regulatory actions.

The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because (i) the fees and charges merely reflect, on a cost-per-unit-graded/inspection basis, a minimal increase in the costs currently borne by those entities utilizing the services; and (ii) competitive effects are offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e., the cost to users increases in proportion to increased volume.

Each fiscal year, the fees for services rendered to operators of official poultry, rabbit, shell egg, and egg products plants by the Agricultural Marketing Service (AMS) are reviewed. A cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services. The fees are determined by the employees' salary and fringe, cost of supervision, travel, and other overhead and administrative costs.

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing Federal voluntary egg products inspection; voluntary egg, poultry, and rabbit grading; and laboratory services. The Egg Products Inspection Act requires that the cost for overtime and appeal inspections be borne by the user of the service.

The last fee increase was effective on February 1, 1985. Since then, costs for workers' compensation have increased by about 25 percent, Federal employees' salaries were increased by 3.0 percent in January 1987, and salaries of federally licensed State employees have increased by about 5.5 percent. In addition, costs have increased due to the new Federal Employees Retirement System (FERS) which became effective in January 1987. Under this system, the Agency is required to pay the full contribution for retirement benefits for employees hired before January 1, 1984, who convert to FERS, and for all employees hired on or after January 1, 1984, who are automatically enrolled in FERS. Previously, a portion of these costs was subsidized by an appropriation to another Federal agency. AMS' contribution for retirement benefits can increase by as much as 15.5 percent. Finally, the charges must be adjusted upward to cover losses incurred between January of this year and the effective date of the increase.

With the exception of salary increases for federally licensed State graders, costs of supervision and other overhead and administrative costs have also increased for the reasons described above. They are covered by an administrative service charge assessed on each case of shell eggs and each pound of poultry handled in plants using resident grading service. In 1984, these rates were established at $.025 per case of shell eggs and $.00025 per pound of poultry. These rates are changed to $.026 per case of shell eggs and $.00026 per pound of poultry. Also, these charges were set at a minimum of $125 and maximum of $1,250 per monthly billing period for each official plant. These amounts are changed to $130 and $1,300, respectively.

Due to the situations described above, the hourly rate for nonresident voluntary grading and inspection service is increased from $21.88 to $23.20. Likewise, the rate for such services performed on Saturdays, Sundays, or holidays is increased from $23.68 each to $24.92. The hourly rate for voluntary appeal gradings or inspections is increased from $19.92 to $20.28. The hourly rate for laboratory analyses for other than individual tests are increased from $25.48 to $29.32, and the fees for individual tests are increased approximately 15 percent. The hourly rate for mandatory overtime inspection service is increased from $17.32 to $20.52. The hourly rate for certain mandatory appeal egg product inspections is increased from $19.92 to $20.28. Administrative charges for the resident voluntary rabbit grading and egg products inspection programs and nonresident voluntary continuous poultry and egg grading programs continue to be based on 25 percent of the grader's or inspector's total salary costs. The minimum charge per billing period for these programs is increased from $120 to $130 per official plant.

With respect to laboratory fees, § 55.550, paragraph (a) is revised to expand the range of charges for the *E. coli* (presumptive) analysis. The previous fee schedule did not provide for all possible combinations of charges which occasionally resulted in incorrect charges for the test. The change provides the flexibility for the proper determination of *E. coli* analysis charges.

Overall, fees and charges will increase about 5 percent.

Based on an analysis of costs to provide these services, a proposed rule to increase the fees for certain grading

and inspection services for eggs, poultry, and rabbits was published in the **Federal Register** (52 FR 6162) on March 2, 1987. Comments on the proposed rule were solicited from interested parties until March 17, 1987. No comments were received. Therefore, the amendments are promulgated as proposed.

Information collection requirements and recordkeeping provisions contained in 7 CFR Parts 55, 56, 59, and 70 have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35, and 7 CFR Part 55 has been assigned OMB No. 0581–0146; and 7 CFR Part 56 has been assigned OMB No. 0581–0128; and 7 CFR Part 59 has been assigned OMB No. 0581–0113; and 7 CFR Part 70 has been assigned OMB No. 0581–0127.

Pursuant to the provisions of 5 U.S.C. 553, good cause is found for making this rule effective less than 30 days after publication, because current revenue does not cover the costs of providing these services as required by Federal law.

For reasons set out in the preamble and under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), and the Egg Products Inspection Act (21 U.S.C. 1031–1056), Title 7, Parts 55, 56, 59, and 70 of the Code of Federal Regulations are amended as set forth below.

List of Subjects

7 CFR Part 55

Egg products, Voluntary inspection service.

7 CFR Part 56

Shell eggs, Voluntary grading service.

7 CFR Part 59

Shell eggs, Egg products, Mandatory inspection service.

7 CFR Part 70

Poultry, Poultry products, Rabbit products, Voluntary grading service.

PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for Part 55 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended, (60 Stat. 1087–1091; 7 U.S.C. 1621–1627.

2. Section 55.510 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 55.510 Fees and charges for services other than on a continuous resident basis.

* * * * *

(b) Fees for product inspection and sampling for laboratory analysis will be based on the time required to perform the services. The hourly charge shall be $23.20 and shall include the time actually required to perform the sampling and inspection, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $24.92 per hour. Information on legal holidays is available from the Supervisor.

(d) The cost of an appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision shall be borne by the appellant at an hourly rate of $20.28 for time spend performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

3. Section 55.550 is revised to read as follows:

§ 55.550 Laboratory analysis fees.

(a) The fees listed for the following individual laboratory analyses cover costs involved in the preparation and analysis of the product, certificate issuance, and personnel and overhead costs other than the expenses listed in § 55.530.

	Fee
Solids	$14.66
Fat	29.32
Bacteriological plate count	14.66
Bacteriological direct count	29.32
Coliforms:[1]	
Step 1	21.99
Step 2	21.99
E. coli (presumptive):[2]	
In addition to coliform analysis—	
Step 1	([3])
Step 2	21.99
Without coliform analysis—	
Step 1	21.99
Step 2	21.99
Yeast and mold count	14.66
Sugar	36.65
Salt	36.65
Color:	
NEPA	2199
B-Carotene	29.32
Whipping test	14.66
Whipping test plus bleeding	21.99
Fat film test	36.65
Oxygen	14.66
Glucose:	
Quantitative	29.32
Qualitative	21.99
Palatability and odor:	
First sample	14.66
Each additional sample	7.33
Staphylococcus	43.98
Salmonella:[4]	
Step 1	29.32
Step 2	14.66
Step 3	29.32

[1] Coliform test may be in two steps as follows: Step 1—presumptive test through lauryl sulfate tryptose broth; Step 2—confirmatory test through brilliant green lactose bile broth.

[2] E. coli test may be in two steps as follows: Step 1—presumptive coliform test through lauryl sulfate tryptose broth; Step 2—presumptive E. coli test through eosin-methylene blue agar.

[3] No charge.

[4] Salmonella test may be in three steps as follows: Step 1—growth through differential agars; Step 2—growth and testing through triple-sugar-iron and lysine-iron agars; Step 3—confirmatory test through biochemicals.

(b) The fee charge for any laboratory analysis not listed in paragraph (a) of this section, or for any other applicable services rendered in the laboratory, shall be based on the time required to perform such analysis or render such service. The hourly rate shall be $29.32.

4. Section 55.560 is amended by revising paragraph (a)(3) to read as follows:

§ 55.560 Charges for continuous inspection and grading service on a resident basis.

* * * * *

(a) * * *

(3) An administrative service charge equal to 25 percent of the grader's or inspector's total salary costs. A minimum charge of $130 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 56—GRADING OF SHELL EGGS AND U.S STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

5. The authority citation for Part 56 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended, (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

6. Section 56.46 is amended by revising paragraphs (b) and (c) to read as follows:

§ 56.46 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $23.20 and shall include the time actually required to perform the grading, waiting time, travel time, and any

clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $24.92 per hour. Information on legal holidays is available from the Supervisor.

7. Section 56.47 is revised to read as follows:

§ 56.47 Fees for appeal grading or review of a grader's decision.

The cost of an appeal grading or review of a grader's decision shall be borne by the appellant at an hourly rate of $20.28 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original detemination, no fee or expenses will be charged.

8. Section 56.52 is amended by revising paragraph (a)(4) to read as follows:

§ 56.52 Continuous grading performed on a resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $.026, except that the minimum charge per billing period shall be $130 and the maximum charge shall be $1,300. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

9. Section 56.54 is amended by revising paragraph (a)(2) to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $130 will be made with each billling period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

10. The authority citation for Part 59 continues to read as follows:

Authority: Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056).

11. Section 59.126 is revised to read as follows:

§ 59.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant shall give reasonable advance notice to the inspector of any overtime service necessary and shall pay the Service for such overtime at an hourly rate of $20.52 to cover the cost thereof.

12. Section 59.370 is amended by revising paragraph (b) to read as follows:

§ 59.370 Cost of appeals.

* * * * *

(b) The costs of an appeal shall be borne by the appellant at an hourly rate of $20.28, including travel time and expenses if the appeal was frivolous, including but not being limited to the following: The appeal inspection discloses that no material error was made in the original inspection, the condition of the product has undergone a material change since the original inspection, the original lot has changed in some manner, or the Act or these regulations have not been complied with.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

13. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended, (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

14. Section 70.71 is amended by revising paragraphs (b) and (c) to read as follows:

§ 70.71 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $23.20 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $24.92 per hour. Information on legal holidays is available from the Supervisor.

15. Section 70.72 is revised to read as follows:

§ 70.72 Fees for appeal grading, laboratory analysis, or examination or review of a grader's decision

The costs of an appeal grading, laboratory analysis, or examination or review of a grader's decision will be borne by the appellant at an hourly rate of $20.28 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, laboratory analysis, or examination or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

16. Section 70.76 is amended by revising paragraph (a)(2) to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $130 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

17. Section 70.77 is amended by revising paragraphs (a)(4) and (5) to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $.00026, except that the minimum charge per billing period shall be $130 and the maximum charge shall be $1,300. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $130 will be made each billing period. The minimum charge also applies where an approved

application is in effect and no product is handled.

* * * * *

Done at Washington, DC on: April 20, 1987.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 87-9287 Filed 4-23-87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 900

Procedure for the Conduct of Referenda in Connection With Marketing Orders for Eggs and Spent Fowl

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Agreement Act of 1937, as amended, authorizes the development of marketing agreements and orders for eggs, spent fowl, and their products. A decision has been issued concerning an egg marketing order which would authorize programs and projects relating to research, consumer education, advertising, promotion, and product development. To become effective, however, the order must be approved by egg producers voting in a referendum. This rule establishes procedures for the conduct of referenda.

EFFECTIVE DATE: April 24, 1987.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, (202) 382-8132.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Department Regulation 1512-1 and has been designated a "non-major" rule under criteria contained therein. Pursuant to requirements set forth in the Regulatory Flexibility Act, 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 because it involves only procedures to conduct referenda. The procedures would involve the voluntary participation of egg producers owning 10,000 or more laying hens, but only to the extent of the act of voting.

The Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601 *et seq.*) authorizes the development of marketing agreements and marketing orders for eggs, spent fowl, and products thereof. A public hearing was held on a proposed marketing order for eggs, spent fowl, and their products in January-March 1986. Based on the record of the hearing, a recommended decision was issued (51 FR 37822) concerning a proposed research and promotion order.

The period for filing comments on the recommended decision ended on December 23, 1986. A final decision on the proposed research and promotion order was issued on April 6, 1987 (52 FR 10984) and included a referendum order. The Act requires that a referendum be held to determine whether affected producers approve or favor such order. Accordingly, procedures to be followed in conducting the initial referendum as well as any subsequent referenda are necessary to meet the requirements of the Act.

Notice of proposed rulemaking on the referenda procedures was published in the **Federal Register** on February 2, 1987 (52 FR 3119). The comment period ended on March 4, 1987. No comments were received. The final rule is the same as the proposed rule. The provisions include sections on definitions, voting, instructions for the referendum agents, the duties of subagents, ballots, the referendum report, and the confidentiality of information.

It is hereby found that good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because (1) procedures need to be in place prior to the scheduled referendum May 25-June 19, 1987, (2) the referendum agents must be able to carry out their assigned responsibilities in a timely fashion, and (3) no useful purpose would be served by delaying the effective date of this final rule.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) the information collection request included in this final rule has been approved by the Office of Management and Budget (OMB) and has been assigned OMB Control No. 0581-0155.

List of Subjects in 7 CFR Part 900

Marketing agreement and order, Eggs.

For the reasons set forth in the preamble, Title 7, Chapter IX, of the Code of Federal Regulations is amended as follows:

PART 900—GENERAL REGULATIONS

Subpart—Procedures for the Conduct of Referenda in Connection with Marketing Orders for Eggs and Spent Fowl Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended, is added to Part 900 to read as follows:

Subpart—Procedure for the Conduct for Referenda in Connection With Marketing Orders for Eggs and Spent Fowl Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended

Sec.

Subpart—Procedure for the Conduct of Referenda in Connection With Marketing Orders for Eggs and Spent Fowl Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended

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

§ 900.700 General.

Referenda to determine whether eligible producers favor the issuance, continuance, or termination of a marketing order on eggs and spent fowl, and products thereof, unless supplemented or modified by the Secretary, shall be conducted in accordance with this subpart.

§ 900.701 Definitions.

(a) "Act" means Public Act No. 10, 73d Congress (May 11, 1933), as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601 *et seq.*).

(b) "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture who has been delegated or who may hereafter be delegated the authority to act for the Secretary.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, or any other officer or employee of the Department of Agriculture who has been delegated or who may hereafter be delegated the authority to act for the Administrator.

(d) "Order" means the marketing order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 8c of the Act (7 U.S.C. 608c).

(g) "Person" means any individual, partnership, corporation, association, or any other business unit.

(h) "Producer" means any person, who is engaged in the production of commercial eggs and who owns 10,000 or more laying hens. For the purpose of this definition, the term producer includes—

(1) An egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or

(2) A person who supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to a contractual agreement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing to the satisfaction of the Secretary that actual ownership of the laying hens is in some other party to the contract or other persons.

§ 900.702 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum, and who was a producer during the representative period shall be entitled to only one vote in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer, or an administrator, executor, or trusteee of a producing estate, or an authorized representative of any other business unit may cast a ballot on behalf of such producer or estate. Any individual so voting in a referendum shall certify that he or she is an officer or employee of the corporate producer, or an administrator, executor, or trustee of the producing estate, or an authorized representative of such other business unit and that he or she has the authority to take such action. Upon request of the referendum agent, such individual shall submit adequate evidence of his or her authority.

(c) Each producer entitled to vote in a referendum shall be entitled to cast only one ballot in the referendum.

§ 900.703 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots must be received by the referendum agent.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers, or by any combination of the foregoing.

(c) Provide ballots and related materials to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining—

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter, and

(2) The total volume of commercial eggs produced by each voter during the representative period.

(d) Give reasonable advance notice of the referendum—

(1) By utilizing without advertising expense, available media of public information (including, but not limited to, press and radio facilities) serving the production area, announcing the dates, places, and method(s) of voting, eligibility requirements, and other pertinent information, and

(2) By such other means as said agent may deem advisable.

(e) Make available to producers instructions on voting, appropriate registration, ballot, and certification forms, and except in the case of a referendum on the termination or continuance of an order, the text of the proposed order and a summary of its terms and conditions: *Provided,* That no person who claims to be qualified to vote shall be refused a ballot.

(f) If the ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each producer whose name and address are known to the referendum agent.

(g) If the ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots listed are all of the ballots cast and received by the agent and appointees during the referendum period;

(2) A tabulation of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report of the referendum including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 900.704 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his or her functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Provide for the distribution of the ballots and the aforesaid tests to producers and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with said subagent and inquire, as deemed appropriate, into the eligibility of such persons to vote in the referendum.

§ 900.705 Ballots.

The referendum agent and his or her appointees shall accept all ballots cast; but should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall sign a statement on said ballot to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 900.706 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 900.707 Confidential information.

The ballots cast and the contents thereof whether or not relating to the identity of any person who voted or the manner in which any person voted and

all information furnished to, compiled by, or in the possession of the referendum agent shall be regarded as confidential.

Signed in Washington, DC, on April 16, 1987.

J. Patrick Boyle,

Administrator; Financial Management Division.

[FR Doc. 87-9334 Filed 4-23-87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Regulation 558]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 558 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 330,000 cartons during the period April 26–May 2, 1987. 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 558 (§ 910.858) is effective for the period April 26–May 2, 1987.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 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 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 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 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 of 1937, as amended (7 U.S.C. 601-674). 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 1986-87. the committee met publicly on April 21, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by an 11 to 1 vote (with one abstention) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is very slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), 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 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 910.858 is added to read as follows:

§ 910.858 Lemon Regulation 558.

The quantity of lemons grown in California and Arizona which may be handled during the period April 26, 1987, through May 2, 1987, is established at 330,000 cartons.

Dated: April 22, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87-9458 Filed 4-23-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-31-AD; Amdt. 39-5612]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires ultrasonic inspection of trailing edge flap tracks numbers 1, 2, 7, and 8 for cracking adjacent to the first four fastener holes. Since issuance of that AD, the FAA has determined that cracking may develop that would not be detected by ultrasonic inspection techniques. Therefore, this AD requires a concurrent visual inspection. Cracks, if allowed to progress undetected, could lead to failure of the flap track and separation of the flap, which could result in partial loss of controllability of the airplane.

EFFECTIVE DATE: May 11, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206)431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On February 17, 1987, the FAA issued Amendment 39-5567 (52 FR 5531; February 25, 1987) to AD 84-19-02, to add an ultrasonic inspection requirement for detecting certain cracks in the first four fastener holes of numbers 1, 2, 7, and 8 trailing edge flap

tracks. Since issuance of that Amendment, the FAA has determined that cracking may develop in the web area that would not be detected by ultrasonic inspection techniques. The ultrasonic inspection will only detect cracking that is present in the lower flanges of the flap track; cracking in the web of the flap track may go undetected. Therefore, this Amendment adds a requirement for a concurrent visual inspection of certain flap track lower flanges and vertical webs. Cracks, if allowed to progress undetected, could lead to failure of the flap track and separation of the flap, which could result in partial loss of controllability of the airplane.

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

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By amending AD 84-19-02, Amendment 39-4917 (49 FR 36819; September 20, 1984), as amended by Amendments 39-5314 (51 FR 18308; May 19, 1986), 39-5466 (51 FR 40969; November 12, 1986), and 39-5567 (52 FR 5531; February 25, 1987), by revising paragraph A.3. to read as follows:

3. Within 50 landings after the effective date of Amendment 39-5612, unless accomplished within the last 250 landings, and at intervals thereafter not to exceed 300 landings, visually inspect Number 1, 2, 3, 4, 5, 6, 7, and 8 flap tracks lower flanges and vertical webs at the front end for cracks adjacent to bolts number 1 through 4 in accordance with the procedures described in Boeing Alert Service Bulletin 747-57A2229, Revision 3, dated December 18, 1986, or later FAA-approved revisions.

This amends Amendment 39-4917, as amended by Amendments 39-5314, 39-5466, and 39-5567; AD 84-19-02.

This amendment becomes effective May 11, 1987.

Issued in Seattle, Washington, on April 17, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-9249 Filed 4-23-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-143-AD; Amdt. 39-5613]

Airworthiness Directives: Airbus Industries Models A300 and A310; Boeing Models 707, 720, 727, 737, 747, 757, and 767; British Aerospace Models BAe 146 and BAC 1-11; Lockheed Model L-1011; and McDonnell Douglas Models DC-8, DC-9 (includes MD-80 series), and DC-10

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD), applicable to certain transport category airplanes, that requires the servicing of aircraft tires with nitrogen, in lieu of air, as the need to fill or service the tires occurs. This action is prompted by three confirmed, and other suspected, cases in which the oxygen in air-filled tires combined with volatile gases, given off by a severely overheated tire, and exploded upon reaching autoignition temperature. A tire explosion in the wheel well during flight is suspected in the catastrophic loss of one airplane and severe damage to two others.

EFFECTIVE DATE: June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-1947; or Mr. Robert M. Stacho, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the servicing of aircraft tires with nitrogen, in lieu of air, as the need to fill or service tires occurs, was published in the **Federal Register** on August 28, 1986 (51 FR 30670).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the 27 comments received.

The majority of the commenters agreed with the general intent of the proposed AD, which requires aircraft tires to be filled with nitrogen; many stated that they have been using it for several years. The comments discussed below relate to specific statements made by the commenters. Many of the comments are similar and have been grouped together so they may be discussed without unnecessary repetition.

Numerous commenters objected to the proposed installation of a placard requiring the use of nitrogen. They stated that a placard would not enhance safety, since tires are mounted on their wheels and inflated in tire shops, which are located away from the airplane. In addition, several operators were concerned that a missing or unreadable placard would render an airplane technically unairworthy. Most of these commenters stated that their existing maintenance procedures are adequate to assure that proper inflation with nitrogen is performed, and that a placard is unnecessary.

Based on the comments received, and on further discussions within the FAA, it has been concluded that a revision to the FAA-approved maintenance program which requires inflation and servicing tires with nitrogen will provide an acceptable alternate method of ensuring compliance with the AD.

The proposed rule has been revised to allow either the installation of placards or the revision of the FAA-approved maintenance program to require the use of nitrogen when servicing tires. The FAA has determined that the intent of the proposed rule is unchanged by this action.

Three commenters stated that an AD was not necessary, and that the proposed change to the use of nitrogen

could be implemented by an FAA General Notice (GENOT) to Air Carrier Principal Maintenance Inspectors, by changing the maintenance manual or operator's procedures, or by other informal methods. The FAA disagrees. Since the use of air in aircraft tires has been shown to be a hazard, the FAA has determined that an AD is justified, and is the only way to make the use of nitrogen mandatory.

One commenter stated that it uses nitrogen for inflation of main gear tires, and air for inflation of unbraked nose gear tires. The commenter stated that this practice is acceptable, since there is no source of heat (i.e., from brakes) on the nose gear. The FAA concurs, and the proposed rule has been revised to require the use of nitrogen for only those tires installed on braked wheels.

Several comments were received relating to the concentration of nitrogen and oxygen that should be allowed in the tire, as well as the presence of other atmospheric gases. Two commenters stated that 10% oxygen in the tire, i.e., 90% nitrogen, would be sufficiently low to prevent autoignition. Two other commenters, both manufacturers of air separation systems which provide a source of low-pressure nitrogen from ambient air, stated that their processes leave a significant percentage of argon in the nitrogen supply. They stated that since argon is also inert, this would be acceptable. In the NPRM, the FAA stated that the intent of the proposed AD was to preclude the possibility of autoignition of volatile gases from an overheated tire and the oxygen in the tire. Data were presented which showed that this autoignition can be prevented if the oxygen content of the tire is maintained below 5%. The remaining 95% of the inflation gas is not the issue, as long as it can be shown that it is inert, will not contribute to autoignition or degradation of the tire or wheel, and will not pose a hazard to any person. The term dry nitrogen, as is commonly used by the aviation industry, may include other inert atmospheric gases, and as such has been used in the final rule. To avoid any confusion, the wording of the final rule has been modified to place the emphasis on the concentration of oxygen in the tire, rather than on the remaining gases.

One commenter stated that if nitrogen bottles are to be used, the AD should require that they be clearly marked as to their contents, to preclude inadvertent filling of a tire with oxygen. The FAA disagrees. Bottles containing pressurized gases have been used for many years, and they are already clearly marked and, in many cases, color-coded for identification. A requirement in this AD for any additional markings is not necessary.

One commenter stated that Federal Aviation Regulations (FAR) 25 and 121 should be amended to require the use of nitrogen in aircraft tires, rather than issue an AD. The FAA does not concur; such action is beyond the scope of this rulemaking action.

Three commenters, objecting to the AD as proposed, stated that they use air for tire build-up, where the tire is mounted onto the wheel. Also, tires are often shipped from the tire shop to the vicinity of the airplane for storage with a minimum of pressure, usually 20–30 psi of air, in order to prevent the tire from becoming unseated from the wheel rim. These commenters were concerned that releasing the air pressure to ambient prior to filling the tire with nitrogen could allow the tire to become unseated. The FAA recognizes that the use of air for these operations could save money, due to high usage of air during the tire build-up. However, the use of air in a tire shop for some operations (tire build-up), and then the use of nitrogen for other operations (tire inflation), would introduce unnecessary confusion, and could allow tires to be inadvertently filled with air. The use of nitrogen exclusively would eliminate this possibility. On the other hand, if an operator wished to use air for tire build-up and initial inflation, this could be done if it could be shown that established maintenance procedures are adequate to preclude an error, and that the concentration of oxygen in the tire when fully inflated will not exceed 5% by volume. Given the variety of tire sizes and operating pressures in use, it would be impractical to provide information in this AD on acceptable procedures to be followed if air is used in the initial build-up and servicing of tires. For a given tire volume, initial air pressure, final inflation pressure, and inflation gas composition, it would be a relatively simple calculation to arrive at the final oxygen concentration. In addition, any top-offs or refills of a low tire with air, i.e., at a remote base where nitrogen might not be available, could also be done, while keeping the oxygen concentration below 5%. As was stated in the NPRM, a manufacturer now provides information in the maintenance manuals of several of its models describing air top-off procedures to maintain an oxygen concentration below 10%; it is envisioned that similar information could be provided for any tire size, pressure, pressure drop, initial air inflation, etc., to ensure that the proper oxygen concentration is maintained. The FAA recognizes that these commenters are not suggesting a change to the proposed rule, and that maintenance procedures presently in place provide the necessary instructions and procedures for compliance with the requirements of this AD.

Several commenters, who normally use nitrogen for tire inflation, stated that they do use air at a remote base, and purge the tire of air when they return to a place where that can be done. The FAA has taken this into account and has revised the AD accordingly to permit this procedure to be followed under certain conditions.

One commenter stated that the economic impact statement in the preamble to the proposal was inadequate, since it did not take into account the cost of providing nitrogen equipment in tire shops, and the cost of switching from air to nitrogen for tire-wheel build-up and shipping. As stated above, the use of nitrogen for tire build-up and shipping is not a requirement of the final rule. If an operator wishes to continue using air for this purpose, he may do so, provided it can be shown that the concentration of oxygen in the tire when fully inflated does not exceed 5% by volume. With respect to the estimated costs of conversion to nitrogen in the tire shops, the cost estimate information provided in this rule is only an approximation of the *average* costs necessary for the entire U.S. fleet affected by this AD, or for affected operators as a whole, based on cost information the FAA has received from suppliers, manufacturers, and operators.

Two commenters requested that the AD compliance time be increased from six months to nine months or one year, to allow adequate time to install nitrogen equipment. These commenters, however, did not give specific information regarding their expected problems in complying with the proposed six-month compliance period. The FAA has determined that, given the lack of specific information from these operators, and the lack of any objections received from other operators in this regard, the proposed time should be adequate

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

It is estimated that 3200 airplanes of U.S. registry would be affected by this AD. There would be no change in the number of manhours expended in routine tire servicing, since only the

inflation gas will be different. It is estimated that the cost of bottled nitrogen in excess of locally obtainable compressed air would be approximately $4 for the initial tire inflation and for any subsequent tire refills over the life of any given tire. Assuming an average of 200 landings per tire, and considering the current U.S. fleet utilization and mix of aircraft types, it is estimated that the total cost of compliance with this AD for U.S. operators will be $650,000 per year. This figure assumes that no U.S. operators are currently using nitrogen in their tires, when, in fact, many operators are using nitrogen and, thus, will be unaffected by this AD. Assuming that 60% of U.S. operators are currently using nitrogen, a realistic estimate of the annual cost will be $260,000.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie, Boeing, British Aerospace, Lockheed, And McDonnell Douglas: Applies to Airbus Industries Models A300 and A310; Boeing Models 707, 720, 727, 737, 747, 757, and 767; British Aerospace Models BAe 146 and BAC 1-11; Lockheed Model L-1011; and McDonnell Douglas Models DC-8, DC-9 (includes MD-80 series), and DC-10; certificated in any category.

To eliminate the possibility of a chemical reaction between atmospheric oxygen and volatile gases from the tire inner liner producing a tire explosion, accomplish the following, unless already accomplished:

A. Within 180 days after the effective date of this AD, to ensure that all aircraft tires mounted on braked wheels do not contain more than 5% oxygen by volume, accomplish paragraph 1. or 2., below. Either of these procedures is acceptable, or they may be used together:

1. Install a placard, either in each wheel well or on or near each landing gear strut incorporating braked wheels, and in a location so as to be easily seen and readable by a person performing routine tire servicing. This placard shall state "INFLATE TIRES WITH NITROGEN ONLY." The words "SERVICE" or "FILL" may be substituted for the word "INFLATE".

2. Incorporate into the FAA-approved maintenance program procedures that include the following items:

a. On braked wheels, install only tires that have been inflated with dry nitrogen or other gases shown to be inert such that the gas mixture does not exceed 5% oxygen by volume.

b. Tires on braked wheels may be serviced with air at remote locations where dry nitrogen is not available, provided that:

i. The oxygen content does not exceed 5% by volume; or

ii. Within the next 15 hours time-in-service, the tire must be purged of air and inflated with dry nitrogen so that the oxygen does not exceed 5% by volume.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region (Airbus Industrie, Boeing, and British Aerospace models); or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (Lockheed and McDonnell Douglas models).

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

This Amendment becomes effective June 1, 1987.

Issued in Seattle, Washington, on April 17, 1987.

Frederick M. Isaac,

Acting Director Northwest Mountain Region.

[FR Doc. 87-9250 Filed 4-23-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-CE-53-AD; Amendment 39-5614]

Airworthiness Directives; Partenavia Costruzione Aeronautiche, S.p.A., Models P 68, P 68B, P 68C, and P 68C-TC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Partenavia Costruzione Aeronautiche, S.p.A., Models P 68, P 68B, P 68C, and P 68C-TC airplanes, which requires inspection of composite wing leading edge ribs for cracking or debonding of the leading edge skin, and the repair of any damage found. Several cases of cracks and debonding of wing leading edge ribs and leading edge skin on Model P 68 (Series) airplanes have been reported to Partenavia. These actions will prevent deformation of the airfoil and possible loss of control or structural failure of the aircraft.

DATE: Effective date: June 1, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Partenavia Service Bulletin (S/B) No. 67, Revision 1, dated November 5, 1986, and Partenavia Service Instruction (SI) No. 21, dated August 30, 1985, applicable to this AD may be obtained from Partenavia Costruzione Aeronautiche, S.p.A., via Cava, Naples, Italy. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, FAA, Brussels Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30, extension 2710/2711; or Mr. John P. Dow, Sr., FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring visual and tactile inspection of composite wing leading edge ribs for cracking or debonding of the leading edge skin, and repair of any damage found, on certain Partenavia Costruzione Aeronautiche S.p.A. Models P 68, P 68B, P 68C, and P 68C-TC airplanes, was published in the Federal Register on November 7, 1986 (51 FR 40442). The proposal resulted from a

report to Partenavia of cracks found in the wing leading edge ribs and debonding of the leading edge skin in a Partenavia Model P 68 airplane. Consequently, Partenavia issued S/B No. 67, dated June 21, 1985, which describes a one-time visual and tactile (by touch) inspection procedure to detect cracks and debonding. Partenavia SI No. 21, dated August 30, 1985, describes repair of damaged parts.

The Registro Aeronautico Italiano (RAI), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy, issued RAI AD No. 85–135/P.68–34, dated November 25, 1985, and classified Partenavia S/B No. 67, dated June 21, 1985, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of the RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Partenavia S/B No. 67, dated June 21, 1985, Partenavia SI No. 21, dated August 30, 1985, and RAI AD No. 85–135/P.68–34, dated November 25, 1985, and the mandatory classification of this Partenavia S/B No. 67, dated June 21, 1985, Partenavia SI No. 21, dated August 30, 1985, and RAI Ad. No. 85–135/P. 68–34, dated November 25, 1985, by the RAI, and concluded that the condition addressed by S/B No. 67, dated June 21, 1985, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. One comment was received on the docket by the National Business Aircraft Association, Inc. (NBAA), concerning the NPRM and concurring in the proposed AD. In addition to the NBAA comment, Revision 1 to Partenavia S/B No. 67, dated November 5, 1986 (RAI approved January 14, 1987), was received. The revision referenced an additional six reports of cracked and disconnected ribs to the original report. In addition, the inspection scheme was revised to include a repetitive inspection interval of 100 hours time-in-service. Accordingly, the final rule will reflect these changes. The FAA has determined that this regulation involves 15 airplanes at an approximate annual cost of $140 for each airplane, or a total annual cost of $6,300.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a signficant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Partenavia Costruzione Aeronautiche, S.p.A.: Applies to Models P 68, P 68B, P 68C (Serial Numbers (S/N 1 through 250), and P 68C–TC (S/N's 300–1TC through 300–22TC) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent possible loss of control and structural failure, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, and each 100 hours TIS thereafter, visually and tactilely (by touch) inspect the composite leading edge wing ribs for cracking, and the composite wing leading edge for debonding from the ribs of both wings using the procedure and locally fabricated tool described in the "INSTRUCTIONS" section of Partenavia Service Bulletin (S/B) No. 67, Revision 1, dated November 5, 1986. (The tool is used to exert force on the ribs to check for lack of stiffness by tactile inspection.) If a crack or debonding is found, prior to further flight, remove the wing leading edge and repair the cracks or debonds as described by the repair "INSTRUCTIONS" in Partenavia Service Information (SI) No. 21, dated August 30, 1985.

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

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Brussels Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30, extension 2710/2711.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Partenavia Costruzione Aeronautiche, S.p.A., via Cava, Naples, Italy; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on June 1, 1987.

Issued in Kansas City, Missouri, on April 17, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–9246 Filed 4–23–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 25244; Amdt. No. 1344]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or,
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

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

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–8277.

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

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

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

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

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

List of Subjects in CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on April 17, 1987.

John S. Kern,

Director of Flight Standards

Adoption of the Amendment

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

PART 97—[AMENDED]

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

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

...Effective June 4, 1987

Clarksville, AR—Clarksville Muni, NDB–A, Amdt. 3
Baxley, GA—Baxley Muni, VOR/DME–A, Amdt. 2
Eastman, GA—Eastman-Dodge County, VOR/DME–A, Amdt. 5
Eastman, GA—Eastman-Dodge County, RNAV RWY 2, Amdt. 2
LaGrange, GA—Callaway, RNAV RWY 31, Amdt. 2
Jerome, ID—Jerome County, VOR/DME–A, Amdt. 1
Waterville, ME—Waterville Robert LaFleur, LOC RWY 5, Amdt. 3, CANCELLED
Grand Haven, MI—Grand Haven Meml Airpark, VOR–A Amdt. 14
Grand Haven, MI—Grand Haven Meml Airpark, RNAV RWY 27, Amdt. 4
Atlantic City, NJ—Atlantic City International, VOR RWY 31, Amdt. 14
Mount Pocono, PA—Pocono Mountains Muni, VOR RWY 13, Amdt. 4
North Kingstown, RI—Quonset State, RADAR–1 Amdt. 4
Rock Hill, SC—Bryant Field, NDB–C, Amdt. 3
Lago Vista, TX—Lago Vista Bar-K Airpark, VOR/DME–A, Amdt. 1
Lampasas, TX–Lampasas, VOR–A Amdt. 2

Paris, TX—Cox Fld, VOR/DME RWY 35, Amdt. 8
Provo, UT—Provo Muni, VOR-A Admt. 6
Provo, UT—Provo Muni, VOR/DME RWY 13, Amdt. 3
Provo, UT—Provo Muni, ILS RWY 13, Amdt. 2
Cowley/Lovell/Byron, WY—North Big Horn County, NDB RWY 9, Orig.

...Effective May 7, 1987

Chicago, IL— Chicago Midway, NDB RWY 31L, Amdt. 11
Chicago, IL— Chicago Midway, ILS RWY 31L, Amdt. 2
Wichita, KS—Wichita Mid-Continent, MLS RWY 19L, Orig.
Roseburg, OR—Roseburg Muni, VOR-A, Amdt. 4
Abingdon, VA—Virginia Highlands, NDB RWY 24, Orig.

...Effective April 10, 1987

Baton Rouge, LA—Baton Rouge Metropolitan, Ryan Field, LOC BC RWY 4, Amdt. 1
Baton Rouge, LA—Baton Rouge Metropolitan, Ryan Field, ILS RWY 22, Amdt. 5

...Effective April 6, 1987

Red Bluff, CA—Red Bluff Muni, VOR/DME RWY 15, Amdt. 2
Red Bluff, CA—Red Bluff Muni, VOR RWY 33, Amdt. 3

[FR Doc. 87-9248 Filed 4-23-87; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM86-12-000]

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

April 16, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; 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 May through July 1987. This rate is set at 11.30 percent.

EFFECTIVE DATE: May 1, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Rattey, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8293.

SUPPLEMENTARY INFORMATION: On December 24, 1986, the Commission issued a final rule which amended 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 May 1 through July 31, 1987 is 11.30 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.[2] The average yield is used in the following formula with fixed adjustment factors (determined in the annual proceeding) to determine the cost rate:

$k_t = 1.02\ Y_t + 4.63$

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 fourth calendar quarter of 1986 and the first calendar quarter of 1987 are 6.54 and 6.54 percent, respectively. The average is 6.54 percent. Using the latter yield produces an average cost of common equity of 11.30 percent. The attached appendix provides the supporting data for the latest quarter used in this update.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Rate of return.

In consideration of the foregoing, the Commission revises Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below, effective May 1, 1987.

Lois D. Cashell,
Acting Secretary.

PART 37—[AMENDED]

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

§ 37.9 Quarterly indexing procedure.

* * * * *

(d) * * *

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	12.25
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

Appendix

Note.—This Appendix will not be shown in the 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. Quarterly 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—INITIAL SAMPLE OF UTILITIES

Utility	Ticker symbol
Allegheny Power System	AYP
American Electric Power	AEP
Atlantic City Electric	ATE
AZP Group Inc	AZP
Baltimore Gas & Electric	BGE
Black Hills Corp	BKH
Boston Edison Co	BSE
Carolina Power & Light	CPL
Centerior Energy Corp	CX
Central & South West Corp	CSR
Central Hudson Gas & Elec	CNH
Central Illinois Public Service	CIP
Central Louisiana Electric	CNL
Central Maine Power Co	CTP
Central Vermont Pub Serv	CV

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, 52 FR 11 (January 2, 1987) (Docket No. RM86-12-000) (Final Rule) (Order No. 461).

[2] Since the last update, Wisconsin Electric Power has become Wisconsin Energy Corporation.

EXHIBIT 1—INITIAL SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol
Cilcorp Inc	CER
Cincinnati Gas & Electric	CIN
Commonwealth Edison	CWE
Commonwealth Energy System	CES
Consolidated Edison of NY	ED
Consumers Power Co	CMS
Delmarva Power & Light	DEW
Detroit Edison Co	DTE
Dominion Resources Inc—VA	D
DPL Inc	DPL
Duke Power Co	DUK
Duquesne Light Co	DQU
Eastern Utilities Assoc	EUA
Empire District Electric Co	EDE
Fitchburg Gas & Elec Light	FGE
Florida Progress Corp	FPC
FPL Group Inc	FPL
General Public Utilities	GPU
Green Mountain Power Corp	GMP
Gulf States Utilities Co	GSU
Hawaiian Electric Inds	HE
Houston Industries Inc	HOU
I E Industries, Inc	IEL
Idaho Power Co	IDA
Illinois Power Co	IPC
Interstate Power Co	IPW
Iowa Resources Inc	IOR
Iowa-Illinois Gas & Elec	IWG
Ipalco Enterprises Inc	IPL

EXHIBIT 1—INITIAL SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol
Kansas City Power & Light	KLT
Kansas Gas & Electric	KGE
Kansas Power & Light	KAN
Kentucky Utilities Co	KU
Long Island Lighting	LIL
Louisville Gas & Electric	LOU
Maine Public Service	MAP
Middle South Utilities	MSU
Midwest Energy Co	MWE
Minnesota Power & Light	MPL
Montana Power Co	MTP
NECO Enterprises Inc	NPT
Nevada Power Co	NVP
New England Electric System	NES
New York State Elec & Gas	NGE
Niagara Mohawk Power	NMK
Northeast Utilities	NU
Northern Indiana Public Serv	NI
Northern States Power—MN	NSP
Ohio Edison Co	OEC
Oklahoma Gas & Electric	OGE
Orange & Rockland Utilities	ORU
Pacific Gas & Electric	PCG
Pacificorp	PPW
Pennsylvania Power & Light	PPL
Philadelphia Electric Co	PE
Portland General Co	PGN
Potomac Electric Power	POM
Public Service Co of Colo	PSR

EXHIBIT 1—INITIAL SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol
Public Service Co of Ind	PIN
Public Service Co of NH	PNH
Public Service Co of N Mex	PNM
Public Service Enterprises	PEG
Puget Sound Power & Light	PSD
Rochester Gas & Electric	RGS
San Diego Gas & Electric	SDO
Savannah Elec & Power	SAV
Scana Corp	SCG
Sierra Pacific Resources	SRP
Southern Calif Edison Co	SCE
Southern Co	SO
Southern Indiana Gas & Elec	SIG
St Joseph Light & Power	SAJ
TECO Energy Inc	TE
Texas Utilities Co	TXU
TNP Enterprises Inc	TNP
Tucson Electric Power Co	TEP
Union Electric Co	UEP
United Illuminating Co	UIL
Unitil Corp	UTL
Utah Power & Light	UTP
Utilicorp United Inc	UCU
Washington Water Power	WWP
Wisconsin Energy Corp	WEC
Wisconsin Power & Light	WPL
Wisonsin Public Service	WPS

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=1]

Ticker symbol	Utility	Reason for exclusion
CMS	Consumers Power Co.	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 & Elec 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 Reduced in 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.
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.
PNH	Public Service Co. of NH	Dividend Rate Was Zero for the Quarter Ending 03/31/87.

N=11.

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

[Year=87 Quarter=1]

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	Dividends: annual rate	Annualized dividend yield
AEP	31.625	27.625	31.500	29.000	29.625	27.500	2.260	7.666
ATE	41.375	37.250	39.500	37.875	38.750	36.125	2.620	6.809
AYP	49.000	44.250	48.250	45.500	46.375	42.500	2.920	6.351
AZP	31.375	28.375	31.750	30.000	32.750	30.250	2.720	8.846
BGE	37.875	34.000	36.125	31.500	33.000	30.375	1.800	5.323
BKH	24.875	21.875	24.250	21.625	23.375	21.000	1.200	5.255
BSE	27.875	24.000	28.000	25.625	26.500	24.750	1.780	6.813
CER	43.375	38.625	41.625	36.000	37.750	33.750	2.340	6.075

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

[Year=87 Quarter=1]

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	Dividends: annual rate	Annualized dividend yield
CES	29.500	38.250	41.250	37.625	41.875	37.375	2.720	6.832
CIN	29.500	26.750	29.750	27.875	29.375	27.000	2.160	7.612
CIP	30.000	27.875	29.250	25.250	25.875	24.375	1.680	6.198
CNH	31.000	29.625	31.875	29.750	30.750	24.750	2.960	9.992
CNL	37.000	34.375	35.625	34.125	34.875	32.875	2.080	5.975
CPL	42.125	38.750	42.875	39.000	41.375	38.500	2.760	6.825
CSR	40.500	34.125	39,125	34.750	35.625	33.250	2.280	6.293
CTP	20.000	18.375	20.375	18.625	20.500	18.625	1.400	7.210
CV	31.000	27.000	30.375	27.000	29.125	26.500	1.900	6.667
CWE	38.000	34.000	37.875	35.625	37.875	35.750	3.000	8.214
CX	24.875	22.625	24.750	23.125	23.500	21.625	2.560	10.932
D	49.875	44.375	49.375	44.625	47.125	43.500	2.960	6.368
DEW	34.250	32.125	35.125	31.625	33.000	31.500	2.140	6.497
DPL	29.250	25.500	28.625	27.250	28.875	27.000	2.000	7.207
DTE	18.875	16.500	19.000	17.875	18.875	17.000	1.680	9.323
DUK	51.750	45.250	51.125	46.875	48.000	45.250	2.680	5.578
ED	52.000	47.125	50.000	44.625	46.375	42.750	2.960	6.278
EDE	33.875	31.750	34.000	32.125	32.375	30.625	2.000	6.162
EUA	40.500	36.750	37.875	34.500	37.125	34.375	2.180	5.915
FPC	43.875	39.875	43.625	40.250	40.625	37.625	2.400	5.857
FPL	34.875	31.875	34.750	32.875	33.125	31.250	2.040	6.158
GMP	29.250	27.500	29.250	27.250	27.375	25.125	1.800	6.516
HE	34.250	31.500	33.875	32.250	33.000	30.250	1.800	5.535
HOU	39.375	34.625	39.375	36.250	38.000	35.125	2.800	7.542
IDA	30.250	26.125	28.500	25.750	28.125	26.500	1.800	6.536
IEL	26.500	23.000	27.625	26.375	27.500	26.375	1.980	7.549
IOR	25.750	24.375	24.875	24.000	24.625	23.375	1.640	6.694
IPC	31.125	29.000	31.500	29.000	30.250	27.375	2.640	8.866
IPL	27.875	24.000	28.750	25.750	26.750	24.125	1.560	5.952
IPW	29.875	26.375	30.000	27.625	28.750	27.000	1.960	6.933
IWG	47.000	43.875	44.875	43.000	45.000	42.750	3.040	6.844
KAN	61.500	54.375	60.500	55.000	55.750	52.500	3.300	5.830
KGE	24.875	22.875	25.375	23.000	24.125	21.625	1.360	5.752
KU	44.500	41.250	43.250	37.875	39.750	37.250	2.520	6.200
LOU	40.750	37.375	40.625	38.125	39.500	37.125	2.600	6.681
MAP	29.875	28.250	30.875	29.875	30.625	28.000	1.400	4.732
MPL	35.250	29.750	32.875	29.000	30.500	26.250	1.660	5.424
MTP	40.875	37.750	41.750	37.750	40.500	38.250	2.680	6.788
MWE	24.875	22.250	24.500	22.125	24.000	21.375	1.480	6.383
NES	32.000	28.125	32.875	30.125	30.625	28.250	2.000	6.593
NGE	33.250	31.125	32.000	29.250	29.875	27.750	2.640	8.644
NMK	18.250	16.250	19.125	16.750	17.875	15.875	2.080	11.986
NPT	24.125	20.500	26.125	24.000	25.750	23.625	1.500	6.245
NSP	39.750	34.625	38.375	32.625	35.500	32.750	1.900	5.336
NU	28.000	24.500	27.500	24.875	26.500	25.000	1.760	6.753
NVP	22.000	20.250	21.750	20.250	21.375	20.250	1.440	6.864
OEC	22.000	19.625	22.250	21.000	22.000	20.000	1.960	9.269
OGE	36.625	34.250	36.500	34.750	35.750	34.000	2.180	6.173
ORU	36.250	34.000	35.625	32.875	33.250	31.500	2.180	6.428
PCG	27.875	24.250	27.250	25.500	27.000	23.875	1.920	7.396
PE	26.000	22.500	25.625	22.875	23.750	20.750	2.200	9.329
PEG	45.875	40.250	43.375	40.250	42.250	38.750	2.960	7.083
PGN	31.500	28.875	30.750	28.125	28.875	25.000	1.960	6.793
PNM	38.000	33.125	37.500	35.250	39.250	36.500	2.920	7.977
POM	54.750	49.000	54.500	48.750	50.750	47.625	2.600	5.108
PPL	41.000	36.625	41.375	39.375	41.375	38.750	2.680	6.742
PPW	39.000	36.000	37.875	34.875	37.125	35.250	2.400	6.542
PSD	22.500	20.750	22.000	20.500	21.375	20.000	1.760	8.307
PSR	19.625	17.875	21.750	19.375	21.625	20.125	2.000	9.969
RGS	24.875	21.875	25.875	24.500	25.250	19.875	2.200	9.279
SAJ	38.625	37.125	37.750	36.750	37.875	34.500	1.880	5.067
SAV	22.000	19.625	20.375	18.750	19.500	17.000	1.000	5.117
SCE	37.000	34.000	37.000	33.875	35.750	31.750	2.280	6.534
SCG	40.000	36.750	39.875	37.000	37.500	34.375	2.320	6.173
SDO	37.500	34.000	37.875	35.375	37.125	34.250	2.500	6.940
SIG	41.250	38.875	41.000	37.250	39.750	37.000	2.120	5.410
SO	29.000	25.375	28.125	26.500	28.000	25.375	2.140	7.908

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

[Year=87 Quarter=1]

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	Dividends: annual rate	Annualized dividend yield
SRP	27.125	24.625	26.000	24.750	26.500	24.500	1.720	6.723
TE	48.875	46.125	47.000	43.125	45.750	43.125	2.520	5.518
TEP	63.750	58.125	64.250	62.000	63.125	56.500	3.600	5.874
TNP	23.750	22.125	23.500	22.500	23.250	22.250	1.390	6.071
TXU	36.625	31.500	36.375	34.000	35.625	33.000	2.800	8.111
UCU	34.875	32.000	34.750	32.875	33.750	30.250	1.480	4.474
UEP	31.375	28.750	31.625	28.500	30.500	28.000	1.920	6.445
UIL	33.250	30.000	34.000	30.250	32.750	30.125	2.320	7.312
UTL	32.875	28.125	33.500	30.750	34.000	32.000	1.880	5.898
UTP	30.250	27.250	30.000	27.375	28.500	25.500	2.320	8.243
WEC	57.875	52.625	55.750	49.750	52.500	50.000	2.680	5.049
WPL	54.750	50.375	54.000	51.250	52.375	48.750	3.040	5.856
WPS	53.750	49.500	53.750	51.750	52.250	49.000	3.000	5.806
WWP	28.875	25.375	30.125	28.750	30.250	28.875	2.480	8.639

N=89.

[FR Doc. 87-9058 Filed 4-23-87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin and Virginiamycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by SmithKline Animal Health Products to delete the withdrawal time requirements for currently approved combinations of monensin sodium and virginiamycin premixes used in making feed for chickens for prevention of coccidiosis and increased rate of weight gain.

EFFECTIVE DATE: April 24, 1987.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380, filed supplemental NADA 122-481 providing for the reduction in withdrawal time from 5 days to 0 days for currently approved combinations of monensin sodium and virginiamycin in chicken feed. The feeds are used as an aid in the prevention of coccidiosis and for increased rate of weight gain. The supplemental NADA is approved and the regulations (21 CFR 558.355(f)(1)(xiii)(*b*) and (xxi)(*b*)) are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.355 is amended by revising paragraphs (f)(1)(xiii)(*b*) and (xxi)(*b*) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(1) * * *

(xiii) * * *

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; as monensin sodium provided by No. 000986 in § 510.600 of this chapter; virginiamycin provided by No. 000007 in § 510.600 of this chapter.

* * * * *

(xxi) * * *

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; as monensin sodium provided by No. 000986 in § 510.600 of this chapter; virginiamycin provided by No. 000007 in § 510.600 of this chapter.

* * * * *

Dated: April 20, 1987.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-9259 Filed 4-23-87; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD Directive 5400.7 and DoD 5400.7-R]

Freedom of Information Act; Uniform Fee Schedules and Administrative Guidelines

AGENCY: Department of Defense.

ACTION: Interim rule.

SUMMARY: This interim rule is published pursuant to the Freedom of Information Reform Act of 1986, sections 1801–1804 (Pub. L. 99–570); and section 954 of the National Defense Authorization Act for Fiscal Year 1987 (Pub. L. 99–661). The Freedom of Information Reform Act of 1986 provides for changes in the exemption status of law enforcement records; establishes new fee and fee waiver criteria; and requires the Office of Management and Budget to provide a uniform schedule of fees for all agencies. The Office of Management and Budget final publication of its Uniform Fee Schedule and Guidelines implementing certain provisions of the Freedom of Information Reform Act of 1986 was published in the Federal Register on March 27, 1986, and the fee criteria contained at Subpart F of this interim rule conforms to that guidance.

This notice also announces Subpart F as a final rule (Pub. L. 99–661). Subpart F was published for comment in the Federal Register on January 9, 1987 (which is now designated as Subpart F of this part), and was effective February 14, 1987. No comments were received; however, the fee rates were revised to reflect both direct and indirect costs as required by Pub. L. 99–661.

DATES: Effective May 26, 1987, except for Subpart F which is effective April 27, 1987, consistent with the Office of Management and Budget's Uniform Fee Schedule and Guidelines.

Comments will be accepted May 26, 1987, of this interim rule.

ADDRESS: Send comments to: Colonel Charlie Y. Talbott, Office of the Assistant Secretary of Defense (Public Affairs), Washington, DC 20301–1400.

FOR FURTHER INFORMATION CONTACT: Colonel Charlie Y. Talbott, telephone (202) 697–1180.

SUPPLEMENTARY INFORMATION: 32 CFR Part 286 was published in the Federal Register on April 29, 1980.

List of Subjects in 32 CFR Part 286

Freedom of Information.

Accordingly, 32 CFR Part 286 is revised to read as follows:

PART 286—DoD FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—FOIA Reading Rooms

Subpart C—Exemptions

Subpart D—For Official Use Only

Subpart E—Release and Processing Procedures

Subpart F—Fee Schedule

Subpart G—Reports

Subpart H—Education and Training

Authority: Pub. L. 99–570, Sections 1801–04; Pub. L. 99–661, Section 2328; 5 U.S.C. 552.

Subpart A—General Provisions

§ 286.1 Purpose and applicability.

(a) *Purpose.* The purpose of this part is to provide policies and procedures for the DoD implementation of the Freedom of Information Act DoD Directive 5400.7 [1] and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program. This part amplifies enclosures 2 through 7 of DoD Directive 5400.7.

(b) *Applicability.* (1) This part applies to the Office of the Secretary of Defense (OSD) (which includes for the purpose of this Regulation the Organization of the Joint Chiefs of Staff, Unified Commands and OSD administrative support agencies), the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components"), and takes precedence over all Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at Appendix F.

(2) The National Security Agency records are subject to the provisions of this part, only to the extent the records are not exempt under Pub. L. 86–36.

§ 286.3 DoD public information.

(a) *Public information.* The public has a right to information concerning the activities of its government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA. In the event a requested record is exempt under the FOIA, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by the release of the record. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

(b) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this part. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation or under the Privacy Act, when the request is from the subject of the records requested (see § 286.7(d)).

§ 286.5 Definitions.

(a) *Definitions.* As used in this part, the following terms and meanings shall be applicable.

[1] Copies may be obtained if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 301, 5801 Tabor Avenue, Philadelphia PA 19120.

(b) *FOIA request.* A written request for DoD records, made by a member of the public, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, this part, or DoD Component supplementing regulations or instructions.

(c) *Agency record.* (1) The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, Policies, functions, decisions, or procedures of the DoD Component.

(2) The following are not included within the definition of the word "record":

(i) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(ii) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(iii) Commercially exploitable resources, including but not limited to:

(A) Maps, charts, map compilation manuscripts, map research materials and data if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

(B) Computer software and related software documentation if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software).

(iv) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(v) Anything that is not a tangible or documentary record, such as, an individual's memory or oral communication.

(vi) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(vii) Information stored within a computer for which there is no existing computer program or printout.

(3) A record must exist and be controlled by the Department of Defense at the time of the request to be considered subject to this part. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(d) *DoD Component.* An element of the Department of Defense, as defined in § 286.1(b), authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or appellate authority, and general counsel.

(e) *Initial denial authority.* An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

(f) *Appellate authority.* The head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record.

(g) *Administrative appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

§ 286.7 Policy.

(a) *Compliance with the Freedom of Information Act.* DoD personnel are expected to comply with the provisions of the FOIA and this part in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the public.* The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of procedural obstacles.* DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this part and any supplemental regulations published by the DoD Components.

(d) *Prompt action on requests.* When a member of the public complies with the procedures established in this part for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. In circumstances where a Component has a significant number of requests, e.g., 10 or more, the requests will be processed in order of receipt. This does not, however, preclude a Component from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. Requests by individuals for access to records about themselves are processed under the provisions of the respective Act cited in the request. Requests that cite *both Acts or neither Act* are processed under both *Acts,* using the fee provisions of the Federal Privacy Act and the time limits of the FOIA. If access is controlled by another federal statute, follow the provisions of the controlling statute and § 286.13(a)(3) of this part. For further details, see DoD 5400.11–R[2]. Even though a request that invokes the FOIA is administratively processed under Privacy Act procedures, no record shall be withheld that would be released under FOIA procedures.

(e) *Use of exemptions.* Records that may be withheld under the exemptions outlined in Subpart C of this part shall be made available to the public when it is determined that no governmental interest will be jeopardized by their release. Determination of jeopardy to governmental interest is within the sole discretion of the Component, consistent with statutory requirements, security classification requirements, or other requirements of law.

(f) *Public domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Nonexempt records maintained in a DoD Component's Public Reading Room, or which can be made available in the Public Reading Room within a short time frame (15 minutes or less) are considered to be in the public domain. Exempt records released pursuant to this part or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to

[2] Copies may be obtained, at cost, if needed from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

disclose records to individuals in their official capacity, the provisions of this Regulation apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this part. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, would be referred to the originating Agency for direct response to the requester. There is no obligation to create nor compile a record to satisfy an FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessment for direct search, review (in the case of commercial requesters), and duplication associated with the request shall be in accordance with § 286.33(b).

(h) *Description of requested record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined in § 286.7(h)(2) of this part. Components are not obligated to act on the request until the requester responds to the specificity letter.

When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(5) The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

(i) *Referrals.* (1) A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. In cases where the Component receiving the request has reason to believe that the existence or nonexistence of the record may in itself be classified, that Component will consult the DoD Component having cognizance over the record in question before referring the request. If the DoD Component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DoD Component originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) Whenever a record or a portion of a record is, after prior consultation, referred to another DoD Component or to a government agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(3) A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(4) A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have an equally valid interest in withholding the record as the DoD Component that created the record. In such situations, provide the record and a release recommendation on the record with the referral action. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

(5) Within DoD, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

(6) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this part. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

(7) Agencies outside the Department of Defense that are subject to the FOIA:

(i) A Component may refer an FOIA request for any record that originated in an agency outside the Department of Defense or that is based on information

obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the Component must respond to the request.

(ii) A DoD Component shall not honor any FOIA request for investigative, intelligence, or any other type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

(iii) Notwithstanding anything to the contrary in § 286.7(i) Component shall forward a request for National Security Council (NSC) documents or White House files to NSC for a direct response to the requester. DoD documents in which the NSC has a concurrent reviewing interest shall be forwarded to DFOISR, OASD (Public Affairs) which shall effect this coordination with the NSC, and return the documents to the originating agency after the NSC review and determination.

(8) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(9) On occasion, Department of Defense (DoD) receives FOIA requests for Government Accounting Office (GAO) documents containing DoD information, either directly from requesters, or as referrals from the GAO. The GAO is outside the Executive Branch, and as such, all FOIA requests for GAO documents containing DoD information will be processed under the provisions of Security Review or Mandatory Declassification Review (MDR) Directives (DoD 5200.1–R [1] and DoD Directive 5230.9 [2]) Requests received in DoD for unclassified GAO reports containing DoD information will be transferred to the GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877. Requests received in DoD for classified GAO documents (or documents unidentifiable as to classification) will be referred to the GAO, Office of Security and Safety, Washington, DC 20548. After internal review, the GAO will refer the request and documents to DoD, Office of the Inspector General, which in turn will refer the action to the Assistant Secretary of Defense (Public Affairs), Directorate for Freedom of Information and Security Review for processing under Security Review or MDR provisions. (See DoD Directive 7650.2 [2]).

(j) *Authentication.* Records provided under this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $3.00 for each authentication.

(k) *Unified and specified commands.* (1) The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 [2] it authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 and this part. The Unified Commands shall forward directly to the Office of the Assistant Secretary of Defense (Public Affairs), OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in Appendix A.

(2) The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

(l) *Records management.* FOIA records shall be maintained and disposed of in accordance with DoD Component Disposition instructions and schedules.

Subpart B—FOIA Reading Rooms

§ 286.9 Requirements.

(a) *Reading room.* Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of Subpart F of this part.

(b) *Material availability.* The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register.**

(3) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

§ 286.11 Indexes.

(a) *"(a)(2)" Materials.* (1) Each DoD Component shall maintain in each facility prescribed in § 286.9(a) an index of materials described in § 286.9(b) that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this part.

[1] See footnote 2 to § 286.7(d).

[2] See footnote 1 to § 286.1(a).

(2) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in Subpart F of this part.

(3) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

(b) *Other materials.* (1) Any available index of DoD Component material published in the **Federal Register**, such as material required to be published by section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

(2) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: Descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

§ 286.12 General provisions.

(a) *General.* Records that meet the exemption criteria in § 286.13 may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to an FOIA request.

(b) *Jeopardy of government interest.* An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no jeopardy to government interest would be served by release. It is appropriate for DoD Components to use their discretionary authority on a case-by-case basis in the release of given records. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this part, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record.

§ 286.13 Exemptions.

(a) *FOIA exemptions.* The following types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law.

(1) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1–R. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R, section 2–204f apply.

(2) *Number 2.* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public. Examples include:

(i) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(iii) Lists of DoD personnel names and duty addresses (civilian and military) created primarily for internal, trivial, housekeeping purposes for which there is no legitimate public interest or benefit. This exemption is appropriate when it would impose an administrative burden to process the request, and the requester is not seeking the information for the benefit of the general public (see also § 286.13(a)(6)(ii)).

(3) *Number 3.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(i) National Security Agency Information Exemption, Pub. L. 86–36, Section 6.

(ii) Patent Secrecy, 35 U.S.C. 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(iii) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(iv) Communication Intelligence, 18 U.S.C. 798.

(v) Defense Authorization Act for Fiscal Year 1984, 10 U.S.C. 140C.

(vi) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(4) *Number 4.* Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

(i) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(iii) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(iv) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing

wage rate of employees within the Department of Defense.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(5) *Number 5.* Except as provided in paragraph (a)(5) (B) through (E) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) or within or among DoD Components.

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(E) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the government's negotiating position or other commercial interests.

(F) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(G) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(ii) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this part.

(iii) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(6) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(i) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(A) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(B) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(ii) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. One example of such is lists of names and duty addresses of DoD personnel (civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories. Release of such information could aid in the targeting of DoD employees and their families by terrorists (see also § 286.13(a)(2)(iii)). This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(iii) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11 [1].

(iv) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

(7) *Number 7.* Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

(i) This exemption applies, however, only to the extent that release of a record or portion of a record would result in the following:

(A) Could reasonably be expected to interfere with enforcement proceedings.

(B) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(D) Could reasonably be expected to disclose the identity of a confidential

[1] See footnote 1 to § 286.1(a).

source, including a source within the DoD, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(E) Disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(F) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(G) Could reasonably be expected to endanger the life or physical safety of any individual.

(ii) Examples include:

(A) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(B) The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(iii) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(iv) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11.

(8) *Number 8.* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

§ 286.15 General provisions.

(a) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. *No other material shall be considered or marked "For Official Use Only"* (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

(b) *Prior FOUO application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(c) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA.

(d) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(e) *Distribution statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24[1] shall bear that statement and shall not be marked FOUO.

§ 286.17 Markings.

(a) *Location of markings.* (1) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions * * * apply.

§ 286.19 Dissemination and transmission.

(a) *Release and transmission procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4[1]. Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1[1]. Records released to the Congress or GAO should be reviewed to determine

[1] See footnote 1 to § 286.1(a).

[1] See footnote 1 to § 286.1(a).

whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(b) *Transporting FOUO information.* Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

(c) *Electrically transmitted messages.* Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP–121 (US Supp 1) for FOUO information.

§ 286.21 Safeguarding FOUO information.

(a) *During duty hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to nongovernmental personnel.

(b) *During nonduty hours.* At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Pub. L. 86–36 shall meet the safeguards outlined in any system notice for that group of records.

§ 286.23 Termination, disposal and unauthorized disclosures.

(a) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(b) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. CH 33 as implemented by DoD Component instructions concerning records disposal.

(c) *Unauthorized disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures

§ 286.25 General provisions.

(a) *Public information.* (1) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the FOIA may be denied only when:

(i) The record is subject to one or more of the exemptions in Subpart C of this part, and the government's interest will be jeopardized by its release.

(ii) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(iii) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

(2) Individuals seeking DoD information should address their FOI requests to one of the addresses listed in Appendix B.

(b) *Requests from private parties.* The provisions of the FOIA are reserved for persons with private interests as opposed to governments seeking information. Requests from private persons will be made in writing, and will clearly show all other addressees within the federal government to whom the request was also sent. This will reduce processing time requirements, as well as insure better inter and intra-agency coordination. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in § 286.7(f).

(c) *Requests from government officials.* Requests from officials of federal, state, or local governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

(d) *Privileged release to officials.* (1) Subject to the provisions of DoD Regulation 5200.1–R applicable to classified information, DoD Directive 5400.11 applicable to personal privacy, or other applicable law, records exempt from release under Subpart C of this part may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, state or federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To Congress, in accordance with DoD Directive 5400.4.

(ii) To the federal courts, whenever ordered by officers of the court as

necessary for the proper administration of justice.

(iii) To other federal agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

(iv) To state and local officials, as determined by the head of a DoD Component or designee.

(2) DoD Components shall inform officials receiving records under the provisions of § 286.25(d)(1) that those records are exempt from public release under the FOIA and are privileged. DoD Components shall also advise officials of any special handling instructions.

§ 286.27 Initial determinations.

(a) *Initial denial authority.* (1) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

(2) The initial determination of whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this Regulation is applicable and should be invoked.

(3) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

(b) *Reasons for not releasing a record.* There are five reasons for not complying with a request for a record:

(1) The information requested is not a record within the meaning of the FOIA and this part.

(2) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(3) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this part or DoD Component supplementing regulations.

(4) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. (A "no record" determination is not considered a denial; therefore an appeal is not appropriate).

(5) The record is denied in accordance with procedures set forth in the FOIA and this part.

(c) *Denial tests.* To deny a requested record that is in the possession and control of a DoD Component, it must be determined that the denial meets the following tests:

(1) The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in Subpart C of this part.

(2) The use of its discretionary authority is deemed unwarranted.

(d) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when the meaning of these portions is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(e) *Response to requester.* (1) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

(4) The response to the requester should contain information concerning the fee status of the request. Generally, the information shall reflect one or more of the following conditions:

(i) All fees due have been received.

(ii) Fees have been waived because they fall below the automatic fee waiver threshold.

(iii) A request for waiver has been denied.

(iv) Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

(v) Fees due in a specified amount have not been received.

(5) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this part. Merely referring to a classification or to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(f) *Extension of time.* (1) In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(i) The requested record is located in whole or in part at places other than the office processing the request.

(ii) The request requires the collection and evaluation of a substantial number of records.

(iii) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this Regulation or should be released as a matter of discretion.

(2) The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component, or in accordance with regulations of the DoD Component, or in accordance with regulations of the DoD

Component that establish guidance governing the circumstances in which such extensions may be granted.

(3) In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester, with notification that he may treat the delay as an initial denial with a right to appeal, or that the requester may agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made.

(4) As an alternative to the taking of formal extensions of time as described in paragraph (f) (1), (2) and (3) of this section the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

(g) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

(h) *Records of non-U.S. Government source.* (1) When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information (also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552 Exemption (b)(4)) (Subpart C, § 286.13(a)(4)) will be notified promptly of that request and afforded reasonable time to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under Exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under Exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known.

(2) The coordination provisions of this paragraph also appy to any non-U.S. government record in the possession and control of DoD from multi-national organizations, such as NATO and NORAD, or foreign governments. Coordination with foreign governments under the provisions of this paragraph will be made through Department of State.

(i) *File of initial denials.* Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(j) *Special mail services.* DoD Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(k) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described in the following shall be used for depositing all FOIA receipts, except receipts for industrially-funded and non-appropriated funded activities. Industrially-funded and nonappropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(1) *Receipt account 2252, sale of publications and reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series 2250 description found in Federal Account Symbols and Titles.

(2) *Receipt account 2419.3, fees and other charges for services, Freedom of Information Act.* This account is used to deposit search fees and fees for duplicating records to satisfy requests that could not be filled with existing publications or forms.

§ 289.29 Appeals.

(a) *General.* If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

(b) *Time of receipt.* An FOI appeal has been received by a DoD Component when it reaches the office of the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Time limits.* (1) The requester must file an appeal so that it reaches the appellate authority no later than 45 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation for denial of his appeal. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt.

(d) *Delay in responding to an appeal.* (1) If additional time is needed due to the unusual circumstances described in § 286.27(f) the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request.

(2) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 286.27(f)

they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(e) *Response to the requester.* (1) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, at a minimum, shall include the following:

(i) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of this Regulation.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(v) The response shall advise the requester of the right to judicial review.

(b) *Consultation.* (1) Final refusal, involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components, ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be brought to the attention of the Freedom of Information Committee of the Department of Justice through the Office of Information Law and Policy.

§ 286.31 Judicial Actions.

(a) *General.* (1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind DoD to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and set forth in this part.

(b) *Jurisdiction.* The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

(c) *Burden of proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the court.* (1) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-United States government source information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *Litigation status sheet.* Freedom of Information managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the Office of Legal Counsel, Department of Defense General Counsel, with an information copy to the Director for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs). A revised Litigation Status Sheet shall be provided at each stage of the litigation.

Subpart F—Fee Schedule

§ 286.33 General provisions.

(a) *Authorities.* The Freedom of Information Act (5 U.S.C. 552), as amended; the paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et. seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et. seq.); the Defense Authorization Act for FY 87, Section 954 (Pub. L. 99-661), as amended.

(b) *Application.* (1) The fees described in this subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with

providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 [1] which does not supersede the collection of fees under the FOIA. Nothing in this subchapter shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that enables a government agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(2) The term "direct costs" means those expenditures a component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed at § 286.35. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(3) The term "search" includes all time spent looking for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the document to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is *not* search time, but review time. See § 286.33(b)(5) for the definition of review, and § 286.35(b)(2) for information pertaining to computer searches.

(4) The term "duplication" refers to the process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to insure that the copy provided is in a form that is reasonably useable by requesters. If it is not possible to provide copies which are clearly useable, the requester will be notified that their copy is the best available and that the agency's master copy will be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a component estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) The term "review" refers to the process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does *not* include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the *initial* review. Components may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(c) *Fee restrictions.* (1) No fees may be charged by any DoD component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Component for billing the requester and processing the fee collected, no charges would result.

(2) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Treasury Department's special account. The cost to the Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

(3) For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8½ x 11" or "11 x 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout; however, might meet the terms of the restriction.

(4) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (two hours of equivalent search at the clercial level), amounts of computer costs in excess of that amount are chargeable as computer search time.

(d) *Fee waivers.* (1) Documents will be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in § 286.33(e) when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the DoD, and is not primarily in the commercial interest of the requester.

(2) When direct costs for an FOIA request total $15.00 or less, fees shall be waived automatically.

(3) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(i) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public

[1] See footnote 1 to § 286.1(a).

understanding of the operations or activities of the government."

(A) *The subject of the request.* Whether the subject of the requested records concerns "the operations or activities of the government";

(B) *The informative value of the information to be disclosed.* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to "public understanding"; and,

(D) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(ii) Disclosure of the information "is not primarily in the commercial interest of the requester."

(A) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,

(B) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is significantly large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(4) Further guidance on the above factors may be obtained from the Department of Justice's *New Fee Waiver Policy Guidance,*[3] *April 2, 1987.*

(5) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00–$30.00).

(e) *Fee assessment.* (1) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(2) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

(i) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the component will:

(A) Notify the requester that he should provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 14 working days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

(ii) Requesters must submit a fee declaration appropriate for the below categories.

(A) *Commercial.* Requesters must indicate a willingness to pay all search, review and duplication costs.

(B) *Educational or noncommercial scientific institution or news media.* Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(C) *All others.* Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iii) If the above conditions are not met, then the request need not be processed and the requester shall be so informed.

(iv) In the situations described by § 286.33(e)(2) (i) and (ii), Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Component estimates exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(v) No DoD Component may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

(vi) Where a Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Component should notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(vii) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in section 3717 of Title 31, U.S.C.A., and confirmed with respective Finance and Accounting Offices.

(viii) When Components act under paragraphs (e)(2) (i)–(vii) of this section, the administrative time limits of the FOIA (i.e., 10 working days from receipt of initial requests, and 20 working days from receipt of appeals, plus permissable extensions of these time limits) will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(ix) Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request, or if records located are determined to be exempt from disclosure. In practice, if the Component estimates that search charges are likely to exceed $25.00 it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Commercial requesters.* Fees shall be limited to reasonable standard charges for document search, review

[3] Copies may be obtained, if needed, from the Office of Information and Policy, 10th and Constitution Avenue NW., Washington, DC 20530.

and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought (see § 286.7(h)).

(i) The term "commercial use' request" refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine the *use* to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification before assigning the request to a specific category.

(ii) When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) *are not* entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, *because* use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(4) *Educational institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought (see § 286.7(h)). The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(5) *Non-commercial scientific institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought (see § 286.7(h)). The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in subparagraph c., above, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) Components shall provide documents to requesters in paragraphs (e) (4) and (5) of this section for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(7) *Representatives of the news media.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see § 286.7(h)).

(i) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even through not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record of a requester in making this determination.

(ii) To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (e)(7)(i) of this section, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(8) *All other requesters.* Components shall charge requesters who do not fit into any of the above categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought (see § 286.7(h)). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. Components are reminded that this category of requester, as well as the aforemention categories of requesters may be eligible for a waiver or reduction of fees if such is in the public interest as defined under § 286.33(d)(1). (See also § 286.33(e)(3)(ii).)

(f) *Aggregating requests.* Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period; however, such a presumption becomes

harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

(g) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365).* The Debt Collection Act of 1982 (Pub. L. 97–365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate will be as prescribed in section 3717 of Title 31 U.S.C.A. Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act of 1982.

(h) *Computation of fees.* The fee schedule in this chapter shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

§ 286.35 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the Component has determined that the fee will be in excess of $250 (see § 286.33(e)).

(b) *Search time*—(1) *Manual search.*

Type and grade	*Hourly rate (dollars)*
Clerical, E9/GS8 and below	12
Professional, 01–06/GS9–GS15	25
Executive, 07/GS16/ES1 and above	45

(2) *Computer search.* Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The salary scale (equating to paragraph (b)(1) of this section) for the computer operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search.

(c) Duplication.

Type	*Cost per page (cents)*
Preprinted material	02.
Office copy	15.
Microfiche	25.
Computer copies (tapes or printouts).	Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape).

(d) *Review time* (in the case of commercial requesters).

Type and grade	*Hourly rate (dollars)*
Clerical, E9/GS8 and below	12
Professional, 01–06/GS9–GS15	25
Executive, 07/GS16/ES1 and above	45

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Components may, therefore, recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail, etc.

§ 286.37 Collection of fees and fee rates for technical data.

(a) *Fees for technical data.* (1) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the Freedom of Information Act, shall be released after the person requesting such information pays *all reasonable* costs attributed to search and duplication of the records to be released. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. *All reasonable* costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full cost shall include all *direct* and *indirect* costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under § 286.35 for other types of information released under the FOIA.

(2) *Waiver.* Components shall waive the payment of costs required in paragraph a. above, which are greater than the costs that would be required for release of this same information under § 286.35 if:

(i) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(ii) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(iii) The Component determines in accordance with § 286.33(d)(1) that such

a waiver is in the interest of the United States.

(3) *Fee rates.* (i) *Search time.*

(A) Manual Search.

Type and grade	*Hourly rate (dollars)*
Clerical, E9/GS8 and below	13.25
(Minimum charge)	8.30

Professional (To be established at actual hourly rate prior to search. A minimum charge will be established at ½ hourly rates)

(B) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in paragraph (a)(3)(A) of this section for the computer operator/programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(ii) *Duplication.*

Type	*Cost*
Aerial Photograph Maps, Specifications, Permits, Charts, Blueprints, and other technical documents	[1] $2.50 [2] .85
Engineering data (microfilm):	
Aperture cards:	
Silver duplicate negative, per card	.75
When key punched and verified, per card	.85
Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
35mm roll film, per frame	.50
16mm roll film, per frame	.45
Paper prints (engineering drawings), each	1.50
Paper reprints of microfilm indices, each	.10

[1] First print.

[2] Each additional print of same document.

(4) *Other technical data records.* Charges for any additional services not specifically provided previously, consistent with DoD Instruction 7230.7 will be made by Components at the following rates:

(i) Minimum charge for office copy (up to six images)	$3.50
(ii) Each additional image	.10
(iii) Each typewritten page	3.50
(iv) Certification and validation with seal, each	5.20
(v) Hand-drawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports

§ 286.39 Report control.

General. The reporting requirement outlined in this subpart is assigned Report Control Symbol DD–PA (A) 1365.

§ 286.41 Annual report.

(a) *Reporting time.* Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11.[1] The standard data elements are contained in DoD 5000.12–M.

(b) *Annual report content.* The following instructions and attached format will be used in preparing the annual report.

(1) *Item 1*— (i) *Completed public requests.* Enter the total number of FOIA requests received and responded to during the reporting period.

(ii) *Completed reportable requests.* Enter the number of actions taken on a completed public request. To arrive at this figure, count the number of blocks checked in item a. of the FOIA Report Worksheet (attached) for each request processed.

Note.—This figure will be equal to or greater than paragraph (b)(1)(i) of this section.

(iii) *Number of requests denied.* Enter the number of FOIA requests which were denied in whole or in part based on one or more of the nine FOIA exemptions.

(iv) *Other reason responses.* Enter the number of FOIA requests in which you were unable to provide the requested information based on an "Other Reason" response. (See Item (b)(2)(iii) of this section for an explanation of "Other Reason" responses).

(v) *Total.* Enter the sum of paragraphs (b)(1) (iii) and (iv) of this section.

(2) *Item 2*— (i) *Exemptions invoked on initial determinations.* Identify the exemption(s) claimed for each request that was denied in whole or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal or greater than that of paragraph (b)(1)(iii) of this section.

(ii) *"(b)(3)" Statutes invoked on initial determinations.* Identify the statute(s) cited when you claimed a "(b)(3)" exemption. Cite the specific sections when invoking the Atomic Energy Act of 1954, or the National Security Act of 1947.

(iii) *Initial request other reason responses.* Identify the "other reason" response cited when responding to an FOIA request and enter the number of times each was claimed.

(A) *Transferred requests.* Enter the number of times a request was transferred to another DoD Component or federal agency for action.

(B) *Lack of records.* Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligation to create a record.

(C) *Failure of requester to reasonably describe record.* Enter the number of times an FOIA request could not be acted on since the requester failed to reasonably describe the record(s) being sought.

(D) *Other failures by requester to comply with published rules and/or directives.* Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(E) *Request/appeal withdrawn by requester.* Enter the number of times a requester withdrew a request/appeal.

Total: Enter the sum of columns (b)(2)(iii) (A) through (E). The total should agree with the figure entered in paragraph (b)(1)(iv) of this section.

(3) *Item 3— Initial Denial Authorities (IDA's by participation)*— (i) *Total IDA's authorized.* Enter the total number of IDA's at your activity.

(ii) *Individuals involved in adverse determinations.* Enter the name, grade, activity and title of each individual who signed a partial/total denial or "other reason" response and cite the number of instances of participation.

(4) *Item 4— Number of appeals and results— Number of appeals.* Enter the disposition of appeals under the appropriate category and then the total.

(5) *Item 5*— (i) *Exemptions invoked on appeal determinations.* Identify the exemption(s) claimed for each appeal that is denied in whole or part. Since more than one exemption may be claimed when responding to a single appeal, this number will be equal to or greater than the total listed in paragraph (b)(4) of this section.

(ii) *Statutes invoked on appeal determinations.* Identify the statute(s) cited when you claimed a "(b)(3)" exemption.

(iii) *Other reasons cited on appeal determinations.* Identify the "other reason" response when responding to an

[1] See footnote 1 § 286.1(a).

appeal and enter the number of times each was claimed and the total.

(6) *Item 6—Participation of appellate authorities (those responsible for denials in whole or in part).* Enter the name, grade, activity, and title of each individual who signed a partial/total denial or "other reason" response and cite the number of instances of participation.

(7) *Item 7—Court opinions and action taken.* Briefly describe the results of each suit the Judge Advocate General and/or the General Counsel participated in during the calender year. Provide a copy of each final court opinion or order.

(8) *Item 8—FOIA implementation rules or regulations.* List all changes or revisions of rules or regulations affecting the implementation of the FOIA Program, followed by the **Federal Register** reference (volume number, date, and page) that announces the change or revision to the public. Append a copy of each.

(9) *Item 9—FOIA instructional and educational efforts.* Report what training/seminars your activity has given or attended during this reporting period.

(10) *Item 10—* (i) *Cost of routine request.* Some reporting activities will find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised so that costs are comprehensive to include a 25% overhead, yet are not duplicated elsewhere in the report.

(ii) *Personnel Costs.* (Civilian and Military)— (A) *Direct costs of personnel assigned FOI duties based upon estimated payroll man-years by grade.* Personnel costs are reported in two ways. This section uses a man-year/wage type of costing by grade. To achieve this computation, identify those individuals who are primarily involved in the planning, program management and/or administrative handling of FOIA requests. Use DoD Accounting Guidance Handbook (DoD 7200.9–H) for military personnel and Office of Personnel Management salary table for civilian personnel to identify salaries.

Sample Computation:

Grade	Number of pers	Salary	Percent of time	Costs
0 to 5	1	$50,000	10	$5,000
0 to 1	1	21,000	30	6,000
GS to 12	1	35,000	50	17,500
GS to 5	1	18,000	50	9,000

To determine the manyear computation: Add the total percentages of time and divide the percentage by 100.

Sample Computation: Manyears=140% divided by 100=1.4 manyears.

(B) *Direct costs for other personnel involved in processing request not included above upon accumulation of total hourly data.* This section accounts for all other personnel (not reported above) who are involved in processing FOIA requests. Enter the total hourly cost for each area. Only search, review, and reproduction costs may be recouped from the requester. Review costs may only be recouped from commercial requesters. In the case of collections resulting from release of technical data, all reasonable costs for search and reproduction may be recouped (See § 286.37).

(1) Search time cost. This includes only those direct costs associated with time spent looking for material that is responsive to a request, including line-by-line identification of material within a document to determine if it is responsive to the request. Searches may be done manually or by computer using existing programming.

(2) Classification review costs. This includes all direct costs incurred during the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(3) Coordination and approval/denial decision costs. This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(4) Correspondence and form preparation costs. This includes all costs involved in typing responses, filling out forms and/or logbooks, supplies, etc., to respond to an FOIA request.

(5) Other activity costs. This includes all other processing costs not covered above, such as processing time by the mail room.

Total Manhour Costs: Enter the sum of § 286.41(b)(10)(ii)(B) (*1*) through (*5*).

(C) *Application of overhead.* The overhead rate is 25% and includes the cost of supervision, space and administrative support. Add paragraphs (b)(10)(ii) (A) and (B), then multiply the sum by 25%.

(iii) *Other case related costs.* Using the fee schedule, enter the total amounts incurred in each area to process FOIA requests.

(iv) *Other operating costs.* Report all other costs which are easily identifiable, such as: Per diem, operation of courier vehicles, training courses, printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

(v) *Summary.* The summary data provides a total cost figure for administering the FOIA Program and a recap of the fees collected.

(11) *Item 11—*(i) *Formal time extensions.* Enter the total number of instances in which it was necessary to seek a formal 10 working day time extension, because of:

(A) *Location.* The need to search for and collect the requested records from another activity that was separate from the office processing the request.

(B) *Volume.* The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records indicated in a single request.

(C) *Consultation.* The need for consultation with another agency having substantial interest in the material requested.

(D) *Court involvement.* Where court actions were taken on the basis of exhaustion of administrative procedures because the department/activity was unable to comply with the request within the applicable time limits, and in which a court allowed additional time upon a showing of exceptional circumstances, provide a copy of each court opinion and court order containing such an extension of time.

(ii) *Total:* Enter the sum of items 1 through 4.

(c) Annual report format.

ITEM 1

(A) Completed Public Requests	(B) Completed Reportable Requests	(C) Number of Requests Denied (Partial and Total)	(D) Number of "Other Reason" Responses Made	(E) Total (C+D)

ITEM 2

A. Exemptions Claimed in Denial Letters—

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes Claimed in Denial Letters—

List of "(b)(3)" Statutes Claimed	Number of Times Cited

C. "Other Reasons" Cited in Response to FOIA Requests	1	2	3	4	5	Total

ITEM 3.—DENIALS AND "OTHER REASON" RESPONSES

A. Total Number of IDA's Authorized to Sign Denial Letters	

B. List of All individuals who Signed a Denial Letter or "Other Reason" Responses.—

Name	Rank	Title	Number of Instances of Participation	
			Exemption	Other

ITEM 4

A. Number of Appeals Received and Action Taken—

(1) Granted in Full	(2) Granted in Part	(3) Denied in Full	(4) Total

ITEM 5

A. Exemptions Invoked on Appeal Determinations—

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes Invoked on Appeal Determinations—

List of "(b)(3)" Statutes Invoked	Number of Times Cited

C. "Other Reasons" Cited on Appeal Determination	1	2	3	4	5	Total

ITEM 6

A. List of All Individuals Who Signed an Appeal Determination or "Other Reason" response—

Name	Rank	Title	Number of Instances of Participation	
			Exemption	Other

ITEM 7

A. Court Opinions and Actions Taken, for Example—

J.Q. Public v. Department of the Army, Civil No. 87-2600 (S.D. Cal.) On January 1, 1987, plaintiff filed suit seeking a CID investigation which was being reviewed by the United States Attorney for possible prosecution. Plaintiff is a former Army General attorney. Final order, May 1987, ordered release of majority of CID report of investigation

ITEM 8

A. FOIA Implementation Rules or Regulations (Published During the Reporting Period)—

Document Identification	Federal Register Reference

ITEM 9

A. FOIA Instructional and Educational Efforts—

ITEM 10

	Cost
A. Cost of Routine Requests Processed: (Number of reportable requests X cost factor per request).	$——
B. Personnel Costs (Civilian and Military):	
1. Direct costs of personnel assigned FOI duties based upon estimated payroll man-years by grade, Total Man-years.	$——
2. Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:	
a. Search Time Costs	$——
b. Classification Review and Excising Action Costs.	$——
c. Coordinated/Approval/Denial Decision Costs.	$——

ITEM 10—Continued

	Cost
d. Correspondence and Form Preparation Costs.	$——
e. Other Activity Costs	$——
Total Man-hour Costs	$——
3. Application of Overhead (subtotal 1+2)×25% overhead.	$——
Total of Personnel Costs	$——
C. Other Case Related Costs:	
1. Computer	$——
2. Office Copy Reproduction	$——
3. Microfiche Reproduction	$——
4. Cost of Printed Records	$——
Total of Other Costs	$——

ITEM 10—Continued

	Cost
D. Other Operating Costs:	
1. Reporting Costs:	
a. Operational	$——
b. User	$——
c. Overhead: (a+b)×25%	$——
2. Other Costs as Directed or Which can be Reasonably Ascertained.	$——
Total Other Operating Costs (Subtotal 1+2).	$——
E. Summary:	
1. Total Costs of Sections 10A through 10C	$——
2. Amount Collected from Requesters during this Reporting Period:	
a. Search	$——
b. Copy	$——
c. Total Collected	$——

ITEM 11

A. Formal Time Limit Extension Taken—

(1) Location	(2) Volume	(3) Consultation	(4) Court involvement

B. Total

(d) *Annual Report Worksheet*

a. Action(s) Taken on Completed Public Request:
——— Granted in Full
——— Granted in Part
Other:
——— Transferred to: ———
——— Lack of Records
——— Requester failed to comply
——— with established rules/directives
——— Requester withdrew
———request/appeal
b. Completed Reportable Requests: ———
(Count the number of actions checked in a. and enter total)
c. Statutory FOIA Exemptions Invoked: ———
(Enter total number blocks checked below)
——— (b)(1)
——— (b)(2)
——— (b)(3)
——— (b)(4)
——— (b)(5)
——— (b)(6)
——— (b)(7)
——— (b)(8)
——— (b)(9)
d. List of Statutes Invoked: ———
e. Name, Command and Title of Initial Denial Authority: ———
f. Remarks: ———

Subpart H—Education and Training

§ 286.43 Responsibility and purpose.

(a) *Responsibility.* The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this part. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, and should provide a thorough understanding of the procedures outlined in this part.

(b) *Purpose.* The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

(c) *Scope and principles.* Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this part. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this part.

(2) Instruct personnel, who act in FOI matters, concerning the provisions of this part, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(4) Advise personnel of the penalties for noncompliance with the FOIA.

(d) *Implementation.* To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this part should be coordinated with the Director, Freedom of Information and Security Review, OASD (Public Affairs).

(e) *Uniformity of legal interpretation.* In accordance with DoD Directive 5400.7 the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

Appendix A—Unified Commands—Processing Procedures for FOI Appeals

1. General

a. In accordance with DoD Directive 5400.7 and this part, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program. This policy represents an exception to the policies in DoD Directive 5100.3.

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 and to forward directly to the Office of the Assistant Secretary of Defense (Public Affairs) all correspondence associated with the appeal of an initial denial for information under the provisions of the Freedom of Information Act (FOIA).

2. Processing Procedures

A request for a record under the FOIA may be denied only upon determination that:

a. The record is subject to one or more of the exemptions set forth in Subpart C of this part.

b. The record cannot be found because it has not been described with sufficient particularity to enable a responsible authority to locate it with a reasonable amount of effort.

c. The requester has unreasonably failed to comply with the procedural requirements imposed by this part.

3. Responsibilities of Commands

Unified Commanders in Chief shall:

a. Designate the officials authorized to deny initial FOI requests for records.

b. Designate an office as the point-of-contact for FOI matters.

c. Refer FOI cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

d. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of the Department of Defense, if required, is authorized.

e. Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

f. Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

g. Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

h. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the ASD(PA), the Pentagon, Washington, DC 20301.

i. Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

4. Fees for FOI Requests

The fees charged for requested records shall be in accordance with Subpart D of this part.

5. Communications

Excellent communication capabilities currently exist between the Office of the ASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

6. Reporting Requirements

a. The Unified Commands shall submit to the ASD(PA) an annual report. The instructions for the report are outlined in Subpart G of this part.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD–PA 1365.

Appendix B—Addressing FOIA Requests

1. General

a. The Department of Defense includes the Office of the Secretary of Defense and the Organization of the Joint Chiefs of Staff, the Military Departments, the Unified and Specified Commands, and such other agencies as the Secretary of Defense establishes to meet specific requirements.

b. The Department of Defense does not have a central repository for DoD records. FOI requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOI requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD Component Addresses for FOI Requests

a. *Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff (OSD/OJCS).* Send all requests for records from the below listed offices to: Directorate for Freedom of Information and Security Review, Assistant Secretary of Defense (Public Affairs), Room 2C757, The Pentagon, Washington, DC 20301–1400.

Executive Secretariat Under Secretary of Defense (Policy)
Deputy Under Secretary of Defense (Policy)
Deputy Under Secretary of Defense (Policy & Resources)
Deputy Under Secretary of Defense (Trade Security Policy) Under Secretary of Defense (Acquisition)
Assistant Secretary of Defense (Acquisition & Logistics)
Assistant Secretary of Defense (Command, Control, Communication and Intelligence)
Assistant Secretary of Defense (Research and Technology)
Assistant Secretary of Defense (Atomic Energy)
Director of Defense Research and Engineering
Director of Small and Disadvantaged Business Utilization
Assistant Secretary of Defense (Comptroller) Assistant Secretary of Defense (Force Management & Personnel) Assistant Secretary of Defense (Health Affairs)
Assistant Secretary of Defense (International Security Policy)
Deputy Assistant Secretary of Defense (European & NATO Policy)
Deputy Assistant Secretary of Defense (Negotiations Policy)
Deputy Assistant Secretary of Defense (Nuclear Forces & Arms Control Policy)
Assistant Secretary of Defense (International Security Affairs)
Deputy Assistant Secretary of Defense (African Affairs)
Deputy Assistant Secretary of Defense (East Asian & Pacific Affairs)
Deputy Assistant Secretary of Defense (Inter-American Affairs)
Deputy Assistant Secretary of Defense (Near East & South Asian Affairs)
Deputy Assistant Secretary of Defense (Policy Analysis) Defense Security Assistance Agency Assistant Secretary of Defense (Legislative Affairs)

Assistant Secretary of Defense (Public Affairs) Assistant Secretary of Defense (Reserve Affairs) Assistant to the Secretary of Defense (Intelligence Oversight) General Counsel Inspector General Net Assessment Program Analysis & Evaluation Defense Advanced Research Projects Agency Strategic Defense Initiative Organization Operational Test and Evaluation Defense Systems Management College National Defense University Armed Forces Staff College Department of Defense Dependents Schools Uniformed Services University of the Health Sciences

b. *Department of the Army.* Army records may be requested from those Army officials who are listed in 32 CFR Part, 518, Appendix B. Send requests to Chief, Information Access Branch, AS–OPS–MRA, Hoffman I, Room 1146, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records.

c. *Department of the Navy.* Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is an FOI request. Send requests to Director, OPNAV Support Services Division, OP–09B30, Pentagon, Room 5E521, Washington, DC 20350–2000, for records of the Headquarters, Department of the Navy, and to Freedom of Information and Privacy Act Office, Code MPI–60, HQMC, Room 4046, Washington, DC 20308–0001, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

d. *Department of the Air Force.* Air Force records may be requested from the Commander (ATTENTION: DADF) of any Air Force installation, major command, or separate operating agency, or from the Headquarters, United States Air Force. Requester should send FOI requests to Freedom of Information Manager, HQ USAF/DADF, Pentagon, Room 4A1088C, Washington, DC 20330–5025, for Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records.

e. *Defense Contract Audit Agency (DCAA).* DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, ATTN: CMR, Cameron Station, Alexandria, VA 22304–6178, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

f. *Defense Communications Agency (DCA).* DCA records may be requested from any DCA field activity or from its headquarters. Requesters should send FOI requests to Defense Communications Agency, Code H104, Washington, DC 20305–2000.

g. *Defense Intelligence Agency (DIA).* FOI requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: RTS–1 (FOIA), Washington, DC 20340–3299.

h. *Defense Investigative Service (DIS).* All FOI requests for DIS records should be sent to the Defense Investigative Service, ATTN: V0020, 1900 Half St., SW, Washington, DC 20324–1700.

i. *Defense Logistics Agency (DLA).* DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency, ATTN: DLA–XA, Cameron Station, Alexandria, VA 22304–6100.

j. *Defense Mapping Agency (DMA).* FOI requests for DMA records may be sent to the Defense Mapping Agency, Naval Observatory Building 56, 34 Massachusetts Avenue, NW., Washington, DC 20305–3000.

k. *Defense Nuclear Agency (DNA).* FOI requests for DNA records may be sent to the Defense Nuclear Agency, Public Affairs Office, Rm 111, Washington, DC 20305–1000.

l. *National Security Agency (NSA).* FOI requests for NSA records may be sent to the National Security Agency/Central Security Service, ATTN: Q–43, Fort George G. Meade, MD 20755–6000.

3. Other Addresses

Although the below organizations are OSD/OJCS Components, for the purposes of the FOIA, requests may be sent direct to the addresses indicated.

a. *Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS).* Director, Attention: Freedom of Information Officer, OCHAMPUS, Aurora, CO 80045–6900.

b. *Chairman, Armed Services Board of Contract Appeals (ASBCA).* Chairman, Armed Services Board of Contract Appeals, Hoffman II, 200 Stovall Street, Alexandria, VA 22332.

c. *U.S. Central Command.* U.S. Central Command/CCAG, MacDill Air Force Base, FL 33608.

d. *U.S. European Command.* Records Administrator, Headquarters, U.S. European Command/ECJ1–A, APO New York 09128

e. *U.S. Southern Command.* Attorney-Advisor (International), Headquarters U.S. Southern Command/SCSJA, APO Miami 34003–0007.

f. *U.S. Pacific Command.* Administrative & Security Programs Division (J147A), Joint Secretariat, CINCPAC Box 28, Camp H. M. Smith, HI 96861–5025.

g. *U.S. Readiness Command.* Freedom of Information Officer, ATTN: RCJ1–AG–SF, U.S. Readiness Command, MacDill Air Force Base, FL 33608.

h. *U.S. Atlantic Command.* Commander-in-Chief, Atlantic Command, Code J008, Norfolk, VA 23511.

i. *U.S. Space Command.* Chief, Records Management Division, Directorate of Administration, United States Space Command, Peterson Air Force Base, CO 80914–5001.

4. National Guard Bureau

FOI requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, (NGB–PO), Pentagon, Room 2E383, Washington, DC 20301–2500.

5. Miscellaneous

If there is uncertainty as to which DoD component may have the DoD record sought, the requester may address a Freedom of Information request to the Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, DC 20301–1400.

Appendix C—Litigation Status Sheet

1. Case Number [1]
2. Requester
3. Document Title or Description
4. Litigation
   a. Date Complaint Filed
   b. Court
   c. Case File Number [1]
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
   a. Court's Finding
   b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
   a. Date Complaint Filed
   b. Court
   c. Case File Number [1]
   d. Court's Finding
   e. Disciplinary Action (as appropriate)

Appendix D—Other Reason Categories

1. Transferred Requests

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one DoD Component to another.

2. Lack of Records

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. Failure of Requester to Reasonably Describe Record

This category is specifically based on section 552(a)(3)(a) of the FOIA

4. Other Failures by Requesters to Comply with Published Rules or Directives

This category is based on section 552(a)(3)(b) of the FOIA and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. Request withdrawn by requester

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

BILLING CODE 3810–01–M

[1] Number used by Component for reference purposes.

APPENDIX E

RECORD OF FREEDOM OF INFORMATION *(FOI)* PROCESSING COST

Please read instructions on reverse before completing form.

1. REQUEST NUMBER	2. TYPE OF REQUEST (X one)		3. DATE COMPLETED (YYMMDD)
	a. INITIAL	b. APPEAL	

	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
4. CLERICAL HOURS *(E-9/GS-8 and below)*			
a. SEARCH		X $12.00 =	*
b. REVIEW/EXCISING			**
c. CORRESPONDENCE AND FORMS PREPARATION			
d. OTHER ACTIVITY			
5. PROFESSIONAL HOURS *(O-1 - O-6/GS-9 - GS-15)*	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. SEARCH		X $25.00 =	*
b. REVIEW/EXCISING			**
c. COORDINATION/APPROVAL/DENIAL			
d. OTHER ACTIVITY			
6. EXECUTIVE HOURS *(O-7/GS-16 and above)*	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. REVIEW/EXCISING		X $45.00 =	**
b. COORDINATION/APPROVAL/DENIAL			
7. COMPUTER SEARCH	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. MACHINE HOURS		X =	*
8. OFFICE COPY REPRODUCTION	NUMBER (1)	RATE (2)	COST (3)
a. PAGES REPRODUCED		X .15 =	
9. MICROFICHE REPRODUCTION	NUMBER (1)	RATE (2)	COST (3)
a. MICROFICHE REPRODUCED		X .25 =	*
10. PRINTED RECORDS	TOTAL PAGES (1)	RATE (2)	COST (3)
a. FORMS		X .02 =	*
b. PUBLICATIONS			*
c. REPORTS			*

11. *For FOI Office Use Only*

a. SEARCH FEES PAID		e. TOTAL COLLECTABLE COSTS	
b. COPY FEES PAID		f. TOTAL PROCESSING COSTS	
c. TOTAL PAID		g. TOTAL CHARGED	
d. DATE PAID (YYMMDD)		h. FEES WAIVED/REDUCED (X one)	Yes / No

* Chargeable to all requesters
** Chargeable only to commercial requesters

DD FORM 2086 (draft)

BILLING CODE 3810-01-C

Instructions for Completing DD Form 2086

This Form Is Used To Record Costs Associated With the Processing of a Freedom of Information Request

1. REQUEST NUMBER—First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87–001.

2. TYPE OF REQUEST—Mark the appropriate block to indicate initial request or appeal of a denial.

3. DATE COMPLETED—Enter year, month and day, i.e., 870621.

4. CLERICAL HOURS—For each applicable activity category enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search—Time spent in locating from the files the requested information.

Review/Excising—Time spent the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation—Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity—Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester. Further discussion of chargeable fees is found in DoD Directive 5400.7, Enclosure 6.

5. PROFESSIONAL HOURS—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity—See explanation above.

Coordination/Approval/Denial—Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

—Multiple the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester.

6. EXECUTIVE HOURS—For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising—See explanation above.

Coordination/Approval/Denial—See explanation above.

—Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category.

7. COMPUTER SEARCH—Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the analyst/operator executing the search will be recorded as part of the computer search cost.

—Multiply the total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

8. OFFICE COPY REPRODUCTION—Enter the number of pages reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

9. MICROFICHE REPRODUCTION—Enter the number of microfiche copies reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

10. PRINTED RECORDS—Enter total pages in each category. The categories are:

Forms *(include any type of printed forms)*

Publications *(include any type of bound document, such as directives, regulations, studies, etc.)*

Reports *(Include any type of memorandum, staff action paper, etc.)*

—Multiply the total number of pages in each category by the rate per page and enter cost figures. The entire cost of each category is chargeable to the requester.

11. FOR FOI OFFICE USE ONLY—

Search Fees Paid—Enter total search fees paid by the requester.

Copy Fees Paid—Enter the total of copy fees paid by the requester.

Total Paid—Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid—Enter year, month and day, i.e., 871024, the fee payment was received.

Total Collectable Costs—Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester.

Total Processing Costs—Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged—Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fee Waived/Reduced—Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or an "X" in the "No" block.

Appendix F—DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/
Organization of the Joint Chiefs of Staff/
Unified Commands and Other Agencies
Assigned to OSD for Administrative Support
Department of the Army
Department of the Navy
Department of the Air Force
Defense Communications Agency
Defense Contract Audit Agency
Defense Intelligence Agency
Defense Investigative Service
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
National Security Agency

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 17, 1987.

[FR Doc. 87–9083 Filed 4–23–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS DENVER

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS DENVER (LPD–9) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval amphibious transport dock ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS DENVER (LPD–9) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the

aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
•	•	•	•	•	•	•	•		
USS DENVER	LPD-9							x	48

Date: April 9, 1987.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 87-9291 Filed 4-23-87; 8:45 am]

BILLING CODE 3810-AE-M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1662

Rules Regarding Availability of Information; Freedom of Information Reform Act

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: The Selective Service System amends its Rules Regarding Availability of Information to implement the Freedom of Information Reform Act (FOI Reform Act), Pub. L. 99-570, in accord with OMB Guidelines (52 FR 10017) by revising the schedule of fees applicable to requests for records pursuant to the Freedom of Information Act (FOIA).

EFFECTIVE DATE: April 25, 1987.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435, Phone (202) 724-1167.

SUPPLEMENTARY INFORMATION: The FOI Reform Act requires each agency to "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under the Freedom of Information Act . . . ." This amended rule conforms to the guidelines promulgated by the Office of Management of Budget (OMB) on March 27, 1987 (52 FR 10017).

The proposed rule was published in the **Federal Register** on April 13, 1987 (52 FR 11830) with a request for comments. One comment was received. Favorable consideration of the suggestion made would be inconsistent with the OMB Guidelines which this agency is required to follow. The final rule is identical to the proposed rule.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.), I have determined that the amendment will not have a significant economic impact on a substantial number of small entities. The amendment is a change to agency procedures and practice and does not have a particular effect on small entities.

List of Subjects in 32 CFR Part 1662

Freedom of Information Act.

Dated: April 20, 1987.

Wilfred L. Ebel,

Acting Director.

The amended rule is set forth below:

PART 1662—FREEDOM OF INFORMATION ACT (FOIA) PROCEDURES

1. The authority citation for Part 1662 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1662.6 is revised to read:

§ 1662.6 Fee schedule; waiver of fees.

(a) Definitions—For the purposes of this section:

(1) "Direct costs" mean those expenditures which the Selective Service System (SSS) actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of the rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. "Search" should be distinguished from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (a)(4) of this section). Searches may be done manually or by computer using existing programming.

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) "Review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term " 'commercial use' request" refers to a request from or on behalf of one who seeks information for the use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request properly belongs in this category the agency must determine the use to which a requester will put the documents requested. Moreover where there is reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency may seek additional clarification before assigning the request to a specific category.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the agency may also look to the past publication record of a requester in making this determination.

(b) *Fees to be charged—categories of requesters.* There are four categories of FOIA requesters: Commercial use requesters; education and non-commercial scientific institutions; representatives of the news media; and other requesters. The FOI Reform Act prescribes specific levels of fees for each of these categories:

(1) *Commercial use requesters.* A request for documents for commercial use will be assessed charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the record sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The cost of searching for and reviewing records will be recovered even if there is ultimately no disclosure of records (see paragraph (c)(5) of this section).

(2) *Educational and non-commercial scientific institution requesters.* Documents to requesters in this category will be provided for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) *Requesters who are representatives of the news media.* Documents will be provided to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (a)(8) of this section, and his or her request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(4) *All other requesters.* The agency will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in the agency's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(c) *Assessment and collection of fees—* (1) *Aggregated requests.* If the Records Manager reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Records Manager may aggregate any such requests accordingly.

(2) *Payment procedures.*—(i) *Fee payment.* The Records Manager may assume that a person requesting records pursuant to this Part will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (c)(4) of this section. Unless applicable fees are paid, the agency may use the authorities of the Debt Collection Act (Pub. L. 97-365), including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage payment.

(ii) *Advance payment.* (A) The Records Manager may require advance payment of any fee estimated to exceed $250. The Records Manager may also require full payment in advance where a requester has previously failed to pay fees in a timely fashion.

(B) If the Records Manager estimates that the fees will likely exceed $25, he will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Late charges.* The Records Manager may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A.

(4) *Waiver or reduction of fees.*—(i) *Standards for determining waiver or reduction.* The Records Manager shall grant a waiver or reduction of fees chargeable under this section where it is determined that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Selective Service System and is not primarily in the commercial interest of

the requester. The Records Manager shall also waive fees that are less than the average cost of collecting fees. In determining whether disclosure is in the public interest, the following factors may be considered:

(A) The relation of the records to the operations or activities of the System;

(B) The information value of the information to be disclosed;

(C) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(D) The significance of that contribution to the public understanding of the subject;

(E) The nature of the requester's personal interest, if any, in the disclosure requested; and

(F) Whether the disclosure would be primarily in the requester's commercial interest.

(ii) Contents of request for waiver. The Records Manager will normally deny a request for a waiver of fees that does not include:

(A) A clear statement of the requester's interest in the requested documents;

(B) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(C) A statement of how the public will benefit from such use and from the release of the requested documents; and

(D) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(iii) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if not responsive documents are located or if the request is denied, particularly if the requester insists upon a search after being informed that it is likely to be nonproductive or that any records found are likely to be exempt from disclosure. The Records Manager shall apply the standards set out in paragraph (c)(4) of this section in determining whether to waive or reduce fees.

Appendix A to § 1662.6—Freedom of Information Fee Schedule

Duplication:

Photocopy, per standard page.....$.10
Paper Copies of microfiche, per frame.....$.10

Search and review:

Salary of the employee (the basic rate of pay of the employee plus 16 percent of that rate to cover benefits), performing the work of manual search and review.

Computer search and production:

For each request the Records Manager will separately determine the actual direct costs of providing the service, including computer search time, tape or printout production, and operator salary.

Special services:

The Records Manager may agree to provide and set fees to recover the costs of special services not covered by the Freedom of Information Act, such as certifying records or information, packaging and mailing records, and sending records by special methods such as express mail. The Records Manager may provide self-service photocopy machines and microfiche printers as a convenience to requesters and set separate perpage fees reflecting the cost of operation and maintenance of those machines.

Fee waivers:

For qualifying educational and noncommercial scientific institution requesters and representatives of the news media the Records Manager will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other noncommercial use requests no fees will be assessed for review time, for the first 100 pages of reproduction, or for the first two hours of search time.

The Records Manager will waive in full fees that total less than $1.00 or that are less than the average cost of collecting fees.

The Records Manager will also waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the System and is not primarily in the commercial interest of the requester.

[FR Doc. 87-9228 Filed 4-23-87; 8:45 am]
BILLING CODE 8015-01-M

POSTAL SERVICE

39 CFR Part 265

Release of Information—Implementation of Freedom of Information Reform Act

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its Freedom of Information Act regulations to incorporate the recent changes made by the Freedom of Information Reform Act of 1986, Pub. L. 99-570, relating to the fees that may be charged in connection with FOIA requests for records. These amendments follow guidelines recently issued by the Office of Management and Budget and the Department of Justice.

DATES: Effective April 25, 1987. Comments received no later than May 18, 1987, will be considered and incorporated by further amendment if warranted.

ADDRESS: Written comments should be addressed to USPS Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-5010. Copies of all written comments will be available for public inspection and photocopying between 9:00 a.m. and 4:00 p.m. in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Program Manager, Records Office (202) 268-2931.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act requires each agency to promulgate, by April 25, 1987, new FOIA fee regulations to implement the changes made by the Reform Act. The fee provisions must conform to guidelines promulgated by the Office of Management and Budget (OMB). After a 30-day period for public comment, OMB published its final Uniform Freedom of Information Act Fee Schedule and Guidelines on March 27, 1987 (52 FR 10012). The final guidelines incorporated changes deemed appropriate as a result of public comments received. In addition, in keeping with its statutory responsibility to encourage compliance with the FOIA, the Department of Justice issued a memorandum on April 2, 1987, containing advisory policy guidance with respect to the "public interest" standard for fee waivers.

The Postal Service published a proposed rule containing new fee and fee waiver provisions on April 16, 1987 (52 FR 12434). The proposed rule followed in all substantial respects the guidelines issued by OMB and the Department of Justice. The Postal Service's existing fee regulations that are unaffected by the recent legislation were retained without substantive change, and were included in that notice. The public was invited to submit comments respecting the fee provisions by April 20, 1987. No comments were received by that date. Therefore, in order to meet the statutory deadline for promulgation of revised fee regulations, the Postal Service hereby adopts its proposed rule regarding FOIA fees without change.

The proposed rule also contained amendments to 39 CFR 265.6 to incorporate the statutory changes regarding access to law enforcement records. The period for public comment on these amendments will run until May 18, 1987. It is expected that a final rule incorporating these amendments will be

published shortly after the end of the comment period.

The Postal Service believes that the abbreviated public comment period for the fee regulations now being adopted is reasonable in view of the month-long period during which OMB's guidance was subject to public comment. Further, in accordance with 5 U.S.C. 553(b)(3)(B), the Postal Service considers it both impractical and unnecessary to impose an additional public notice period in view of the April 25 statutory deadline and the considerable public comment received during OMB's notice period. Comments received by May 18, 1987, will be considered, however, and if changes are warranted as a result, they will be incorporated in these regulations by further amendment to be announced in the notice of the final rule respecting access to law enforcement records that is planned for publication shortly after May 18, 1987.

List of Subjects in 39 CFR Part 265

Release of Information, Postal Service.

For the reasons stated herein, the Postal Service amends Part 265 of 39 CFR as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for Part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552.

§ 265.6 [Amended]

2. Paragraph (d)(1) of § 265.6 is amended by removing "(d)(3) and (e)(8) of § 265.8" in the second sentence and inserting in lieu thereof "(e)(3) and (g)(5) of § 265.8"; and by removing "(e)(8) of § 265.8" in the final sentence and inserting in lieu thereof "(g)(5) of § 265.8".

3. Paragraph (d)(2) of § 265.6 is amended by removing "(e)(8) of § 265.8" in the last sentence and inserting in lieu thereof "(g)(5) of § 265.8."

4. Paragraph (d)(3) of § 265.6 is amended by removing "(d)(2) of § 265.8" at the end of the first sentence and inserting in lieu thereof "(b) of § 265.8."

5. Paragraph (a)(1) of § 265.7 is amended by removing "(e)(2) § 265.8" in the next to last sentence, and inserting in lieu thereof "(f)(2) of § 265.8"; and by removing "$10" in the last sentence and inserting in lieu thereof "$25".

6. Paragraphs (a)(4) and (c)(2) of § 265.7 are revised to read as follows:

§ 265.7 Procedure for inspection and copying of records.

(a) * * *

(4) *Request for waiver of fees.* The requester may ask that fees or the advance payment of fees be waived in whole or in part. A fee waiver request shall indicate how the information will be used; to whom it will be provided; whether the requester intends to use the information for resale at a fee above actual cost; any personal or commercial benefit that the requester expects as a result of disclosure; in what manner the general public will benefit from disclosure; and information as to the intended user's identity, qualifications, expertise in the subject area, and ability and intention to disseminate the information to the public. (See § 265.8(g)(3).)

* * * * *

(c) * * *

(2) Any fees authorized or required to be paid in advance by § 265.8(f)(3) shall be paid by the requester before the record is made available or a copy is furnished unless payment is waived or deferred pursuant to § 265.8(g).

7. Section 265.8 is revised to read as follows:

* * * * *

§ 265.8 Schedule of fees.

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit the furnishing of records to members of the public while recovering the full allowable direct costs incurred by the Postal Service. The Postal Service will use the most efficient and least costly methods available to it when complying with requests for records.

(b) *Standard rates*—(1) *Record retrieval.* Searches may be done manually or by computer using existing programming.

(i) *Manual search.* The fee for each quarter hour spent by clerical personnel in searching for records is $4.40. When a search cannot be performed by clerical personnel and must be performed by professional or managerial personnel, the fee for each quarter hour in searching for records is $5.35.

(ii) *Computer search.* The fee for retrieving data by computer is the actual direct cost of the retrieval, including computer search time, runs and operator salary, as calculated in accordance with the Information Services Price List in effect at the time that the retrieval services are performed. The list is subject to periodic revision. A copy of the list is included within the public index. (See Appendix A for the list in effect on January 1, 1987.)

(2) *Duplication.* (i) Except where otherwise specifically provided in postal regulations, the fee for duplicating any record or publication is $.15 per page.

(ii) The Postal Service may at its discretion make coin-operated copy machines available at any location or otherwise give the requester the opportunity to make copies of Postal Service records at his own expense. Unless authorized by the Records Officer, however, no off-site copying shall be permitted of records which, if lost, could not be replaced without inconvenience to the Postal Service.

(iii) The Postal Service will normally furnish only one copy of any record. If duplicate copies are furnished at the request of the requester, the per-page fee shall be charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to paragraph (c) or (g) of this section. At his discretion, when it is reasonably necessary because of a lack of adequate copying facilities or other circumstances, the custodian may make the requested record available to the requester for inspection under reasonable conditions and need not furnish a copy thereof.

(3) *Review.* The fee for each quarter hour spent by clerical personnel in reviewing records located in response to a commercial use request is $4.40. When review cannot be performed by clerical personnel and must be performed by professional or managerial personnel, the fee for each quarter hour is $5.35. Only requesters who are seeking documents for commercial use may be charged for review. "Review" is defined in paragraph (h)(4) of this section; "commercial use" is defined in paragraph (h)(5) of this section.

(4) *Micrographics.* Paragraphs (b) (1), (2) and (3) of this section also apply to information stored within micrographic systems.

(c) *Four categories of fees to be charged.* For the purpose of assessing fees under this section, a requester shall be classified into one of four categories: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. Requesters in each category must reasonably describe the records sought. Fees shall be charged requesters in each category in accordance with the following.

(1) *Commercial use requesters.* Fees shall be charged to recover the full direct costs of search, review and duplication in accordance with the rates prescribed in paragraphs (b) (1) through (3) of this section, subject only to the general waiver set out in paragraph (g)(1) of this section. The term "commercial use request" is defined in paragraph (h)(5).

(2) *Educational and noncommercial scientific institutions.* Fees shall be charged only for duplication in

accordance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly or scientific research. These institutions are defined in paragraphs (h)(6) and (h)(7) of this section, respectively.

(3) *Representatives of the news media.* Fees shall be charged only for duplication in accordance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must meet the criteria in paragraph (h)(8) of this section, and the request must not be made for a commercial use.

(4) *All other requesters.* Fees shall be charged for search and duplication in accordance with paragraphs (b) (1) and (2) of this section, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. (See also paragraphs (g)(1) and (g)(2) of this section.)

(d) *Aggregating requests.* When the custodian reasonably believes that a requester is attempting to break a request down into a series of requests in order to evade the assessment of fees, the custodian may aggregate the requests and charge accordingly. The custodian shall not aggregate multiple requests when the requests pertain to unrelated subject matter. Requests made by more than one requester may be aggregated only when the custodian has a concrete basis on which to conclude that the requesters are acting in concert specifically to avoid payment of fees.

(e) *Other costs.*—(1) *Publications.* Publications and other printed materials may, to the extent that they are available in sufficient quantity, be made available at the established price, if any, or at cost to the Postal Service. Fees established for printed materials pursuant to laws, other than the Freedom of Information Act, that specifically provide for the setting of fees for particular types of records are not subject to waiver or reduction under this section.

(2) *Other charges.* When a response to a request requires services or materials other than the common one listed in paragraph (b) of this section, the direct cost of such services or materials to the Postal Service may be charged, but only if the requester has been notified of the nature and estimated amount of such cost before it is incurred.

(3) *Change of address orders.* Although change of address information is not required by the Freedom of Information Act to be made available to the public, the fee for obtaining this information in accordance with paragraph (d)(1) of § 265.6 is included in this section as a matter of convenience. The fee for searching for a change of address order is $1.00. This fee is charged regardless of whether a permanent change of address is found on file. (See paragraph (g)(5) of this section.)

(f) *Advance notice and payment of fees.*—(1) *Liability and payment.* The requester is responsible, subject to limitations on liability provided by this section, for the payment of all fees for services resulting from his request, even if responsive records are not located or are determined to be exempt from disclosure. Checks in payment of fees should be made payable to "U.S. Postal Service."

(2) *Advance notice.* To protect members of the public from unwittingly incurring liability for unexpectedly large fees, the custodian shall notify the requester if the estimated cost is expected to exceed $25. When search fees are expected to exceed $25, but it cannot be determined in advance whether any records will be located or made available, the custodian shall notify the requester of the estimated amount and of the responsibility to pay search fees even through records are not located or are determined to be exempt from disclosure. The notification shall be transmitted as soon as possible after physical receipt of the request, giving the best estimate then available. It shall include a brief explanatory statement of the nature and extent of the services upon which the estimate is based and shall offer the requester an opportunity to confer with the custodian or his representative in an attempt to reformulate the request so as to meet his needs at lower cost. The time period for responding to the request shall not run during the interval between the date such notification is transmitted and the date of receipt of the requester's agreement to bear the cost. No notification is required if the request specifically states that whatever cost is involved is acceptable or is acceptable up to a specified amount that covers estimated costs or if payment of all fees in excess of $25 has been waived.

(3) *Advance payment.* Advance payment of fees shall not be required, except: (1) When it is estimated that the fees chargeable under this section are likely to exceed $250. If the requester has a history of prompt payment of FOIA fees, the custodian shall notify the requester of the likely cost and obtain satisfactory assurance of full payment before commencing work on the request. If the requester has no history of payment, the custodian may require an advance payment of an amount up to the full estimated charge before commencing work on the request.

(ii) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), the requester shall be required to pay the full amount owed, and to make an advance payment of the full amount of the estimated fee before processing will begin on a new or pending request.

(iii) When advance payment is required under paragraphs (f)(3)(i) or (ii) of this section, the time periods for responding to the initial request or to an appeal shall not run during the interval between the date that notice of the requirement is transmitted and the date that the required payment or assurance of payment is received.

(g) *Restrictions on assessing fees.*—(1) *General waiver.* Fees shall not be charged to any requester if they would amount, in the aggregate, for a request or a series of related requests, to $10 or less. When the fees for the first 100 pages or the first two hours of search time are excludable under paragraph (c) of this section, additional costs will not be assessed unless they exceed $10. This general waiver does not apply to the fee for providing change of address information.

(2) *Certain fees not charged.*—(i) *All requests except those for commercial use.* Fees shall not be charged for the first 100 pages of duplication and the first two hours of search time except when the request is for a commercial use as defined in paragraph (h)(5) of this section. When search is done by computer, the fees to be excluded for the first two hours of search time shall be determined on the basis of the standard rates set out in the Information Services Price List then in effect. (See Appendix A.) Assessment of search fees will begin at the point when the cost of the search (including the cost of equipment use and operator's time) reaches the equivalent dollar amount of the operator's basic

rate for two hours plus a factor to cover benefits.

(ii) *Requests of educational and noncommercial scientific institutions, and representatives of the news media.* Fees shall not be charged for time spent searching for records in response to requests submitted by educational and noncommercial scientific institutions or representatives of the news media.

(3) *Public interest waiver.* The custodian shall waive a fee, in whole or in part, and any requirement for advance payment of such a fee, when he determines that furnishing the records is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the federal government, and is not primarily in the commercial interest of the requester. This waiver may be granted notwithstanding the applicability of other fee reductions prescribed by this section for requesters in certain categories. In determining whether disclosure is in the public interest for the purposes of this waiver, the following factors may be considered:

(i) The relation of the records to the operations or activities of the Postal Services;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's personal interest, if any, in the disclosure requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(4) *Waiver by officer.* Any officer of the Postal Service, as defined in § 221.8, his designee, or the USPS Records Officer may waive in whole or in part any fee required by this part or the requirement for advance payment of any fee.

(5) *Waiver of fee for changes of address.* The fee prescribed by paragraph (e)(3) of this section is waived when change of address information is provided:

(i) To a Federal, state or local government agency upon prior written certification that the information is required for the performance of its duties.

(ii) To persons requesting the information for the purpose of serving legal process in accordance with paragraph (d)(6)(ii) of § 265.6.

(iii) In compliance with a subpoena or other court order.

(iv) To a law enforcement agency, for oral requests made through the Inspection Service in accordance with paragraph (d)(6)(iv) of § 265.6.

(v) To postage meter manufacturers when they are attempting to locate a missing meter.

This waiver does not apply to fees for services performed in accordance with section 122.5 of the Domestic Mail Manual.

(h) *Definitions.* As used in this section, the term:

(1) "Direct costs" include expenditures actually incurred in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming. A line-by-line search will be conducted only when necessary to determine whether the document contains responsive information and will not be employed in those instances in which duplication of the entire document would be the less expensive and quicker method of complying with a request. "Search" does not include review of material to determine whether the material is exempt from disclosure (see paragraph (h)(4) of this section).

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) "Review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (h)(5) of this section) to determine whether any portion of any document located is exempt from mandatory disclosure. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions. Charges may be assessed only for the initial review, i.e., the first time the applicability of a specific exemption is analyzed. Costs for a subsequent review are properly assessable only when a record or portion of a record withheld solely on the basis of an exemption later determined not to apply must be reviewed again to determine the applicability of other exemptions not previously considered.

(5) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request properly belongs in this category, the Postal Service will look to the use to which the requester will put the documents requested. If the use is not clear from the request itself, or if there is reasonable cause to doubt the requester's stated use, the custodian shall seek additional clarification from the requester before assigning the request to this category.

(6) "Educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) "Noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is defined in paragraph (h)(5) of this section, and which is operated solely for the purpose of conducting scientific research the resutls of which are not intended to promote any particular product or industry.

(8) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Requests by news organizations for information that will be used for the furtherance of the organization's commercial interests, rather than for the dissemination of news to the public, shall be considered commercial use requests. Examples of news media entities include television or radio stations broadcasting to the

public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. A "freelance" journalist will be regarded as a representative of the news media if he can demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. This may be demonstrated either by a publication contract with the news organization or by the past publication record of the requester.

8. Appendix A to Part 265 is revised to read as follows:

Appendix A—Information Services Price List in Effect January 1, 1987

Whenever an individual requests information which must be retrieved by computer, standard charges will be incurred based upon resources required to furnish this information. Estimates are provided to the requester in advance and are based on the following standard price list.

Description of services	Price	Unit
A. System utilization services:		
Central Processor Unit (CPU).		Hour.
3085Q NISDC	$5,643.84	
3084QX St. Louis	5,978.73	
3084QX Wilkes-Barre	5,978.73	
3090-200 St. Louis	6,208.84	
4381-2 NISDC & Wilkes-Barre.	554.73	
5870 Minneapolis	4,725.46	
5880 San Mateo	4,951.46	
5880 New York	5,670.55	
5890 Minneapolis	8,978.38	
Disk Usage (Selector) Channel.	203.53	Hour.
Multiplexor (Byte) Channel	153.41	Hour.
Tape Usage (Block MPX) Channel.	6.44	Hour.
Volume Mounts	1.47	Mount.
Minimum Job Charge	1.00	Job.
3800 Printing	2.57	1000 lines.
B. System occupancy charges:		
Tape Occupancy	50.63	Hour.
Teleprocessing Occupancy	10.46	Hour.
C. System spooling charges:		
Cards Read, Local	.59	1000 Cards.
Cards Read, Remote	.06	1000 Cards.
Lines Printed, Local	2.57	1000 Lines.
Lines Printed, Remote	.26	1000 Lines.
Cards Punched, Local	5.73	1000 Cards.
Cards Punched, Remote	.58	1000 Cards.
D. Peripheral charges:		
Keypunching	5.60	100 Cards.
Key-to-Tape	32.18	Hour.
Microfilm Processing, Off-line.	51.69	Frame.
Microfiche Processing	.01	Frame.
Microfiche Duplicating	.05	Sheet.
Programmer Support	31.45	Hour.
Programmer Support, Overtime.	47.18	Hour.
Systems Analysis Support	36.90	Hour.
Systems Analysis Support, Overtime.	55.35	Hour.
Inspection Service Processing.	2,960.00	Per A/P.
Customer Support Technician.	16.00	Hour.
Computer Support Specialist	16.90	Hour
Telecommunications Hardware Technician.	18.80	Hour.
Computer Systems Specialist.	19.50	Hour.
Telecommunications Hardware Specialist.	23.50	Hour.
Nucleus Processing	9.14	1000 Trans.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 87-9316 Filed 4-23-87; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL-3188-6]

Approval and Promulgation of Implementation Plan; State of Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency is approving a revision to the Louisiana State Implementation Plan (SIP) that provides for State issuance and enforcement of permits to prevent the significant deterioration of air quality in certain areas of the State. The regulatory requirement of the SIP is contained in Louisiana Air Quality Regulations—Part V, for the Prevention of Significant Deterioration (PSD) program. The proposed approval was published in the **Federal Register** of April 17, 1986 (51 FR 13027), and no comment was received.

Louisiana Air Quality Regulations—Part V does not apply to sources on the Indian governed lands. In a letter of June 3, 1986, the State has interpreted the provisions of section 90.8 of State regulation Part V as having the same meaning as the Federal stack height and dispersion technique regulations promulgated by EPA in the **Federal Register** of July 8, 1985, and that the State agreed to apply, implement, and enforce these requirements in the PSD permitting process. In addition, the State has submitted a SIP revision for the stack height and dispersion technique regulations in accordance with the **Federal Register** notice of July 8, 1985. EPA is reviewing this SIP and will publish its action in a separate notice.

Today's action notice is published to advise the public that EPA is approving the State's final submittal as amended subject to the conditions and terms herein specified in this notice. The rationale for this action is contained in this notice, the proposed approval notice, *Technical Support Document* and its supplement.

EFFECTIVE DATE: This action is effective on May 26, 1987.

ADDRESSES: Copies of the State's submittal and EPA's *Technical Support Document* and its supplement along with other information are available for inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

Environmental Protection Agency, Region 6, Air, Pesticides and Toxics Division, Air Programs Branch, SIP New Source Section, 1201 Elm Street, Dallas, Texas 75270

Louisiana Air Quality Division, Louisiana Department of Environmental Quality, 325 North Fourth Street, P.O. Box 44096, Baton Rouge, Louisiana 70804.

A copy of the State's submittal is also available for inspection during normal business hours at the following location: Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; SIP New Source Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767-6672.

SUPPLEMENTARY INFORMATION: On June 30, 1981, the State of Louisiana requested delegation of the technical and administrative review portion of the Federal PSD program. The PSD partial authority was granted on August 28, 1981 (effective September 1, 1981), subject to certain conditions, and a notice was published in the **Federal Register** of January 6, 1982 (47 FR 670). Subsequently, the additional authority was granted to the State for compliance inspection and review of the compliance test reports for the PSD sources on February 8, 1982, and a notice was published in the **Federal Register** of March 15, 1982 (47 FR 11107). On October 23, 1983, the Governor of Louisiana submitted to EPA a plan for the Protection of Visibility in the State's one mandatory Class I Federal area, Breton Island Wilderness area. The EPA proposed approval of the plan with the understanding that Louisiana would adopt a visibility monitoring strategy, new source review language, and a long term strategy consistent with the

requirements of 40 CFR 51.305, 51.307, and 51.306, respectively (49 FR 20519).

On August 14, 1985, the Governor of Louisiana submitted a copy of the Louisiana PSD Air Quality Regulations—Part V, adopted by the Secretary of the Department of Environmental Quality on May 23, 1985, as a SIP revision along with the State's other commitments for implementing and enforcing the PSD program in the State. The Louisiana Department of Environmental Quality (LDEQ) developed and adopted the State PSD regulations which are equivalent to the Federal PSD and visibility new source review regulations [40 CFR 52.21, 40 CFR 51.166 (formerly 40 CFR 51.24), and 40 CFR 51.307(a)]. The visibility new source review SIP was evaluated by EPA and the final approval is published in the Federal Register of June 10, 1986 (51 FR 20967).

The State's PSD SIP will not apply to sources locating on land under the jurisdiction of Indian governing bodies because the LDEQ did not claim jurisdiction over such lands. The proposed Federal Register notice of April 17, 1986 (51 FR 13027), stated that Louisiana will continue to conduct the technical and administrative reviews of the permit applications including the compliance inspections and stack test report reviews for these area in accordance with the delegations of authority referenced earlier. However, this statement is contrary to the PSD regulation, 40 CFR 52.21(u)(3), which precludes the Regional Administrator from delegating his authority to the State for review and implementation of the PSD program of Indian-governed lands. Consequently, the provisions of 40 CFR 52.21 will continue to apply in those areas, and EPA will retain its authority to review the PSD applications, and issue and enforce the PSD permits on Indian-governed lands. Therefore, any inquiry concerning the existing PSD permits on Indian lands and the sources planning to locate on Indian lands should be directed to the EPA Region 6 Office at the address given in this notice.

In the Federal Register of July 8, 1985 (50 FR 27892), EPA published final regulations to implement section 123 of the Clean Air Act which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. These regulations limit the amount of stack height or dispersion credit a source can claim while setting its emission limitation. The dispersion techniques include the use of stack heights greater than 65 meters and the use of other techniques to increase the dispersion of emissions rather than reduce emissions of a source. The specific provisions covering stack height and dispersion techniques in the State's PSD regulations, section 90.8, use broad language, and the State agreed in a letter dated September 30, 1985, to propose a revision to its SIP by April 8, 1986, which would include the provisions of the stack height and dispersion technique regulations found in 40 CFR Part 51, as modified in the July 8, 1985, Federal Register. In the interim, the State's present broad language may be interpreted to include all the specifics of EPA's regulations. EPA conditionally proposed to approve the State's PSD regulations provided that the State would agree to interpret its stack height and dispersion technique regulations in a manner that would be consistent and equivalent to the Federal regulations. This meant that EPA would not incorporate these State PSD regulations into the SIP until Louisiana would submit a letter indicating that the State would interpret the provisions of Section 90.8 as having the same meaning as the Federal stack height and dispersion technique regulations promulgated by EPA in the Federal Register of July 8, 1985, and that the State would apply, implement, and enforce these requirements in the PSD permitting process.

The State of Louisiana has fulfilled both of the requirements outlined above for stack height and dispersion technique regulations. The Governor submitted to EPA on July 8, 1986, a SIP revision for stack height and dispersion technique regulations. Action on that SIP revision will be in a separate notice. In addition, on June 3, 1986, the LDEQ submitted a letter of commitment which states that the LDEQ interprets the provisions of section 90.8 as having the same meaning as the Federal stack height and dispersion technique regulations promulgated by EPA in the Federal Register of July 8, 1985, and that the State will apply, implement, and enforce these requirements in the PSD permitting process.

As noted in the preamble to the proposed rule, the Louisiana PSD regulations do not use the term "Federally enforceable" with respect to permit conditions limiting emissions of air pollutants. However, the State's substitute clause is acceptable, because it includes only permits issued under EPA regulations or under State regulations approved by EPA, as required by 40 CFR 51.166(b)(17) [formerly 40 CFR 51.24(b)(17)]. Thus, any permit issued by Louisiana is "Federally enforceable".

The notice of proposed rulemaking indicated that the State PSD regulations require the applicants to use *applicable and approved* air quality models. The words *applicable and approved* refer to the applicable and approved EPA air quality models as referenced in 40 CFR 51.24(l) [now 40 CFR 51.166(l)] of the Federal PSD regulations. The State has agreed to comply with the requirements of 40 CFR 51.24(l) [now 40 CFR 51.166(l)] as spelled out in the Secretary of LDEQ's letter of September 30, 1985. This commitment requires the State to use the EPA modeling guidelines, policies, and preferred air quality models as specified in *Guideline on Air Quality Models,* including its *subsequent revisions,* in reviewing and evaluating the PSD permit applications. Also, it requires the State to secure EPA's approval on procedural deviations and for use of nonguideline models. On September 9, 1986, the EPA published a Federal Register notice that substituted the *Guideline on Air Quality Models,* Revised (1986), in the PSD requirements at 40 CFR 51.166(l) [formerly 40 CFR 51.24(l)] in place of the 1978 *Guideline on Air Quality Models.* Therefore, the LDEQ will require EPA approval for the use of any model that is not contained in the Revised 1986 *Guideline on Air Quality Models.*

In summary, today the EPA is approving a PSD SIP revision which (1) allows the LDEQ, in areas outside Indian-governed lands, to continue to administer, review, and evaluate the PSD applications, (2) gives the LDEQ the authority, in areas outside Indian-governed lands, to issue PSD permits for sources submitting applications after the effective date of this approval, and (3) provides the LDEQ the authority, in areas outside Indian governed lands, to enforce both State-issued and EPA-issued PSD permits.

Upon the effective date of this rulemaking, sources seeking PSD permits in Louisiana, in areas outside Indian-governed lands, should directly apply to the LDEQ, Baton Rouge, Louisiana 70804. Sources located or seeking PSD permits, on Indian governed lands, should apply to the EPA Region 6 Office at the address given in this notice.

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

Under section 306(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by (60 days from the publication date). This action may not be challenged later in proceedings to enforce its requirements [See 307(b)(2)].

Incorporation by reference of the SIP for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Lists of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

Dated: April 13, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

Subpart T—Louisiana

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.970 is amended by adding paragraph (c)(44) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(44) On August 14, 1985, the Governor of Louisiana submitted a Prevention of Significant Deterioration (PSD) Plan including Air Quality Regulations—Part V, (sections 90.1–90.19) as adopted by the Secretary of the Department of Environmental Quality on May 23, 1985. Air Quality Regulations—Part V provides authority for the State to implement the PSD program in certain areas of the State. Letters of commitment for air quality modeling (dated September 30, 1985) and Federal stack height and dispersion technique regulation (dated June 3, 1986) were submitted by the Secretary of Louisiana Department of Environmental Quality.

(i) Incorporation by reference.

(A) Louisiana Air Quality Regulations—Part V, Prevention of Significant Deterioration of Air Quality, except that no provision of this part applies to Indian Reservations meaning any Federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress, as adopted on May 23, 1985.

(B) A letter from the Secretary of Louisiana Department of Environmental Quality dated September 30, 1985, which commits the Department to use only the EPA approved air quality models in accordance with the provisions of 40 CFR 51.24(1) [now 40 CFR 51.166(1)] and to submit a stack height and dispersion techniques SIP revision by April 8, 1986.

(C) A letter from the Secretary of Louisiana Department of Environmental Quality dated June 3, 1986, which certifies that the Department interprets the provisions of section 90.8 of Louisiana PSD regulations as having the same meaning as the Federal stack height and dispersion technique regulation, 40 CFR 51.1(hh)-(kk) [now 40 CFR 51.100(hh)-(kk)], promulgated by EPA in the Federal Register of July 8, 1985, and that the State will apply, implement, and enforce these requirements in the PSD permitting process.

(D) A narrative explanation and additional requirements entitled "Prevention of Significant Deterioration Revisions to the Louisiana State Implementation Plan".

3. Section 52.986 is revised to read as follows:

§ 52.986 Significant deterioration of air quality.

(a) The plan submitted by the Louisiana Department of Environmental Quality (Specifically Louisiana Air Quality Regulations—Part V, sections 90.1–90.19, and supplemental documents as incorporated by reference) are approved as meeting the requirements of Part C, Clean Air Act for preventing significant deterioration of air quality.

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for Indian lands since the plan [specifically Louisiana Air Quality Regulations, section 90.1(1)] excludes all Federally recognized Indian lands from the provisions of this regulation. Therefore, the provision of § 52.21(b) through (w) are hereby incorporated by reference made a part of the applicable implementation plan and are applicable to sources located on land under the control of Indian governing bodies.

[FR Doc. 87–8672 Filed 4–23–87; 8:45 am]

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40 CFR Part 271

[SW–5–FRL–3191–8]

Indiana: Schedule of Compliance for Modification of Indiana's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region V.

ACTION: Notice of Indiana's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Indiana to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: George H. Woods, Indiana Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Waste Management Division, Solid Waste Branch, 5HS–JCK–13, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 886–6134.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA, if the Agency finds that the State's program: (1) Is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other States' programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6226(b)). EPA's regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR § 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines. Section 3006(f) of HSWA requires that no State program may be authorized by the Administrator under this Section, unless: (1) Such program provides for the public availability of information obtained by the State regarding facilities and sites for treatment, storage and disposal of hazardous waste; and (2) such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administator was carrying out the provisions of this subtitle in such State. The schedule for adoption of 3006(f) was July 1, 1986, for States which only need to make regulatory changes. For States needing statutory changes, the deadline is July 1, 1987.

B. Indiana

Indiana initially received final authorization of its hazardous waste program on January 31, 1986. [51 FR 3953, January 31, 1986]. On May 2, 1986, Indiana submitted a program revision identifying a change in the State agency which implements the federally

approved hazardous waste management program. On October 31, 1986, EPA approved Indiana's program revision in accordance with 40 CFR 271.21(b). Final authorization of Indiana's program revision became effective on December 31, 1986. [51 FR 39752, October 31, 1986].

An extension of time in order to modify Indiana's hazardous waste program is warranted by the following two circumstances. First, official U.S. EPA guidance on section 3006(f) was not finalized until August 22, 1986.

In the absence of that finalized guidance and a comprehensive regulatory checklist for section 3006(f), the State and U.S. EPA exchanged eight letters and numerous telephone conversations on this subject. This dialogue started within a week after the Indiana Department of Environmental Management (IDEM) came into existence and culminated with agreement upon this schedule of compliance. Second, the establishment of an entirely new entity, the IDEM, which took over the responsibilities for the authorized hazardous waste program as of April 1, 1986, delayed the process of developing a schedule for implementing the RCRA Cluster I rules. Consequently, on July 24, 1986, the State requested a 6-month extension to adopt the rules. U.S. EPA granted Indiana's request on August 15, 1986.

Today EPA is publishing a compliance schedule for the State of Indiana to obtain the necessary authority for the following Federal program requirements: Section 3006(f)—Availability of Information.

The State has agreed to obtain the needed program revision according to the following schedule:

Submit draft rule to U.S. EPA for review—June 1987
Submit draft rule to Regulatory Board(s)—July 1987
Public Hearing on proposed rule—October 1987
Submit final rule to Regulatory Board(s) for adoption—December 1987
Rule effective and application submitted—March 1988

The above schedule is contingent upon a determination by Indiana's Attorney General (A.G.) that no statutory change is needed to obtain authorization for section 3006(f) of HSWA. The IDEM has asked the Indiana A.G. to make a determination as to whether regulatory and/or statutory changes are required in this respect. A response from the Indiana A.G. is expect by April 1987. If it is determined that statutory changes are needed as a result of the A.G.'s review, then U.S. EPA and IDEM will renegotiate the schedule, with U.S. EPA publishing it in the **Federal Register.**

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: April 9, 1987.

Robert Springer,

Acting Regional Administrator, Region V, U.S. EPA.

[FR Doc. 87-9295 Filed 4-23-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF LABOR

Veterans Employment and Training, Office of Assistant Secretary

41 CFR Ch. 61

Annual Report From Federal Contractors; Correction

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training (OASVET), Labor.

ACTION: Final rule; correction.

SUMMARY: This notice corrects an error in the definition of "Veteran of the Vietnam era" contained in the final rule published in the **Federal Register** on March 4, 1987 (52 FR 6674–6683).

EFFECTIVE DATE: April 24, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Carlon Johnson, Veterans' Employment and Training Service (OASVET), U.S. Department of Labor, S–1316, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 523–9110.

SUPPLEMENTARY INFORMATION: On March 4, 1987, the Department of Labor published a final rule which requires Federal contractors to report annually on, among other things, the numbers of special disabled and Vietnam era veterans in their workforce by job category and hiring location. In the definition of "Veteran of the Vietnam era" which appears at 50 FR 6678 and 6681, the phrase "for a period of more than 180 days" was inadvertently misplaced. It is corrected by this notice, as set forth below.

Dated: April 21, 1987.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

§ 61-250.1 [Corrected]

On page 6678, third column and on page 6681, second column, the definition of "Veteran of the Vietnam era" is revised to read:

"Veteran of the Vietnam era" means a veteran, any part of whose active military, naval or air service was during the period August 5, 1964, through May 7, 1975, who— (i) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty because of a service connected disability. No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1991.

[FR Doc. 87-9350 Filed 4-23-87; 8:45 am]

BILLING CODE 4510-79-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 5 and 6

Implementation of Freedom of Information Reform Act; Changes to Freedom of Information Act and Privacy Act Fee Schedules

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is amending its Freedom of Information Act (FOIA) regulations to incorporate the recent changes to the FOIA regarding requests for agency enforcement records and regarding establishment of fees to be charged for search, review and duplication of records in response to FOIA requests. These rules implement the guidelines established by the Office of Management and Budget (OMB) and requirements of the Freedom of Information Reform Act of 1986, Pub. L. 99–570. In addition, FEMA is amending its Privacy Act regulations regarding fees to ensure consistency with appropriate changes to the FOIA fee regulations.

DATE: Effective May 26, 1987.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 646–3840.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Reform Act) requires the Office of Management and Budget (OMB) to promulgate guidelines containing a uniform schedule of FOIA fees that are applicable to all agencies. On January 16, 1987, OMB published a notice of proposed guidance on the establishment of fees under the Freedom of Information Act (FOIA) in the **Federal Register**, 52 FR 1992. On March 27, 1987, OMB published a final publication of fee schedule and guidelines implementing certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L.

99–370). The final guidance incorporated changes deemed appropriate as a result of public comments received. On April 1, 1987, FEMA published a notice of proposed rulemaking to issue proposed implementing regulations in conformance with OMB's final guidance to fulfill the mandate of the Reform Act requiring that each agency's regulations must be issued in final form no later than April 25, 1987. FEMA received three comments pursuant to that notice. A sectional analysis of the comments is provided as follows:

Section-by-Section Analysis

Section 5.42(a)(1)—Definition of Commercial Use

The commenters objected to the definition of commercial use. One commenter suggested that this section should explicitly state that "authors, scholars and journalists writing books will not be considered commercial users." The commenter's reasoning was that as long as the primary benefit is to the public, FEMA should not concern itself that authors may derive some benefits from their publishing activity and also if someone engaging in First Amendment activities chooses to write a book instead of a newspaper article or a series of magazine articles, that person should not be considered a commercial user. One commenter also suggested that any definition of commercial use request should make it clear that "non-profit organizations, public interest groups, labor unions, libraries, and the news media are not commercial users." Another commenter suggested that a request can be deemed commercial only where the information is sought "*solely* for a private, profit-making purpose."

One commenter further argued that FEMA does not have authority to not process a FOIA request or not meet the FOIA time limits for processing because a requester does not explain his purpose or we deem that purpose "insufficient." The commenter feared that permitting our employees to deem a request "insufficient" without any definition or standards of "insufficient" may lead to arbitrary and possibly discriminatory handling of requests.

The "commercial use" request issue was addressed under OMB's final publication of fee schedule and guidelines implementing certain provisions of the Reform Act. The Reform Act required OMB to promulgate guidelines containing a uniform schedule of FOIA fees that is applicable to all agencies. We agree with OMB that although the legislative history is in conflict on the precise meaning of a "commercial use" request, it seems clear that the Congress intended to distinguish between requesters whose use of the information was for a use that further business interests, as opposed to a use that in some way benefited the public. The amendment shifts some of the burden of paying for the FOIA to the former group and lessens it for the latter.

As opposed to the other fee categories created by the amendment, inclusion in this one is determined not by the identity of the requester, but the use to which he or she will put the information obtained. Because "use" is the exclusive determining criterion, it is possible to envision a commercial enterprise making a request that is not for a commercial use. It is also possible that a non-profit organization could make a request that is for a commercial use. Moreover, because use, not identity, controls, FEMA believes that it would be inappropriate and contrary to the intent of the Reform Act to specify particular requesters as fitting or not fitting within this category. We have also deleted the words, "nor waiver or reduction of fees based on an assertion that disclosure would be in the public interest." Although we do not believe that it is appropriate to specify particular organizations/requesters in this section, we have revised the section relating to "representatives of the news media" to specifically state that "A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use."

We have revised the portion of this section relating to the "insufficient" standard to clarify that where a requester does not explain his/her use (rather than purpose), or where his/her explanation (rather than purpose) is insufficient to permit a determination of the nature of the use, FEMA shall require the requester to provide information regarding the use to be made of the information and if the request does not include an agreement to pay all appropriate fees, FEMA will process such request only up to the $30.00 threshold which is the estimated cost to FEMA to collect fees which we are prohibited from charging by law. This section is revised to omit the requirement that the requester must submit information on the use to be made of the information prior to FEMA accepting the request for processing or beginning the time limits for response. In addition, we are deleting the words, "and which identifies the specific category of the requester" from the sentence under Section 5.42(a) which reads, "The time limits for processing requests shall only begin upon receipt of a proper request which reasonably identifies records being sought and which identifies the specific category of the requester."

Section 5.42(a)(2)—Definition of Representatives of the News Media

The commenters expressed concern that FEMA, following OMB's guidelines, proposes to define representatives of the news media as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public.

The Congress could easily have drafted the section to read "representatives of the media" rather than "news media," but it did not; therefore, FEMA agrees with OMB's guidelines that it is reasonable to give some weight to the term "news" when constructing a definition. *The American Heritage Dictionary* (Second College Edition, 1982) defines the word "news" as "* * * Recent events and happenings, esp. those that are unusual or notable * * *. Information about recent events of general interest, esp. as reported by newspapers, periodicals, radio or television * * *. A presentation or broadcast of such information: newscast * * *. Newsworthy material." Thus, "news media" is further limited to purveyors of information that is current or would be of current interest.

The phrase "publish or broadcast news" is included so that it implies something more than merely "make information available." The news media perform an active rather than passive role in dissemination. Thus, they can be distinguished, for example, from an entity such as a library which stores information and makes it available on demand.

The provision for freelance eligibility, especially the term "solid basis for expecting publication" also drew comments. One commenter expressed concern that freelance journalists frequently have no "solid basis" for expecting publication since that is a determination for the editor and publisher to make ultimately and may be considered excluded from this category. Another commenter suggested that "a freelance journalist should be considered a 'representative of the news media' even with respect to requests that may be precursors to a particular article or that may never lead to a publishable story." FEMA's intent was to incorporate legitimate freelance representatives of the news media into

the categorical definition without opening the door to anyone merely calling himself or herself a freelance journalist. It was not FEMA's intention to reflect in any regard that we would only accept a publication contract as evidence of a solid basis for expecting publication. In fact, FEMA included that "A publication contract *would be the clearest proof* (emphasis added), but FEMA *may also look to the past publication record* (emphasis added) of a requester in making this determination." For clarification purposes, we are revising the sentence to read as follows: "For example, a publication contract would be the clearest proof, but FEMA may also look to the past publication record, press accreditation, guild membership, business registration, Federal Communications Commission licensing, or similar credentials of a requester in making this determination."

This section has also been revised to reflect that "A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use."

Section 5.42(a)(3)—Definition of Educational Institution

One commenter recommended the definition of educational institute would be one that includes but is not limited to all entities recognized by the Internal Revenue Service as "organized and operated exclusively for * * * educational purposes" pursuant to 26 U.S.C. Sec. 501(c)(3). That statute merely provides that "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for * * * educational purposes * * *," qualify for exemption from taxation. This same issue was addressed in OMB's final publication and FEMA agrees with OMB that it is not appropriate to tie eligibility for inclusion in the "educational institution" fee category to an IRS interpretation of the institution's eligibility for tax exempt status. The IRS regulations interpreting this somewhat vague statutory provision are themselves too general to be useful in determining an institution's eligibility under the FOIA fee schedule.

Rather than using the IRS definition, FEMA is adopting OMB's definition of "educational institution" which was adapted from the Department of Education definition found in 20 U.S.C. 1681(c). This definition reads " 'educational institution' refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research."

As a practical matter, it is unlikely that a preschool or elementary or secondary school would be able to qualify for treatment as an "educational" institution since few preschools, for example, could be said to conduct programs of scholarly research. But, FEMA will evaluate requests on an individual basis when requesters can demonstrate that the request is from an institution that is within the category, that the institution has a program of scholarly research, and that the documents sought are in furtherance of the institution's program of scholarly research and not for a commercial use.

FEMA will review the request to ensure that it is apparent from the nature of the request that it serves a scholarly research goal of the institution, rather than an individual goal. The institutional versus individual test will apply to student requests as well. A student who makes a request in furtherance of the completion of a course of instruction is carrying out an individual research goal and the request would not qualify, although the student in this case would certainly have the opportunity to apply for a reduction or waiver of fees.

One commenter suggested that FEMA should read the phrase "scholarly or scientific research" conjunctively in association with the term "educational institution" so that a request from an educational institution in furtherance of either scholarly or scientific research would qualify. This same issue was addressed by OMB's final publication and FEMA likewise rejected this suggestion. The statute and the legislative history recite the formula "educational or scientific institution/scholarly or scientific research," and it seems clear that the phrase was meant to be read disjunctively so that scholarly applies to educational institution and scientific applies to non-commercial institution.

Section 5.43(b)—Waiver or Reduction of Fees

One commenter suggested that for a requester to qualify for a fee waiver, he/she should not have to show more than that the requested information will contribute significantly to the operations or activities of the government, his/her expertise (ability to do research and writing), and his/her ability to disseminate information. The commenter challenged that the amount of information which a journalist would have to provide to FEMA would be in violation of his/her right to privacy. FEMA finds these comments to be unfounded and believes that the information is adequate to make a determination to get an extra benefit.

One commenter suggested that agencies should establish presumptions that certain categories of requesters—public interest organizations, scholars, and journalists—are entitled to fee waivers. The commenter submitted detailed arguments as to why agencies should reject the Department of Justice's guidance on fee waivers. Since FEMA issued its proposed rule on April 1, 1987, and the Department of Justice (DOJ) guidance was not even dated until April 2, 1987, and was not received by the agencies until after that date, it is clear that FEMA's proposed changes were made without the benefit of DOJ's guidance. Even so, FEMA believes that the information described in this section is consistent with both DOJ's guidance and is necessary to adequately satisfy FEMA's need to ensure that disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester when making determinations regarding fee waiver requests. FEMA has determined that no changes are necessary to this section.

Section 5.44(c)—Prepayment of Fees over $250

Section 6.83(c)—Prepayment of Fees over $250

One commenter suggested that Congress has never given FEMA or OMB the authority to make exceptions to the time limit requirements under these sections. The Amendments clearly permit agencies to charge and collect advance payments in two specific circumstances: (1) When fees will exceed $250; or (2) when a requester has previously failed to pay fees in a timely fashion. FEMA presumes that Congress probably did not intend agencies to have to use the prepayment provision too frequently but that in the two specified instances authorizing its use, FEMA believes that by including the phrase "to charge and collect advance payments" Congress did intend that agencies would not begin processing requests until such time as they had collected advance payments. Therefore, the time limits would not begin until the request was accepted by the agency for processing. FEMA issued this section in

conformance with the OMB's final publication on fee guidelines and believes that the only changes necessary are the deleting of the words "over $250" in these sections since prepayment applies to two specific circumstances and may be unclear with only one criteria identified in the title. FEMA has revised these sections accordingly

Section 5.46(b)—Computer Searches for Records

One commenter argued that there is no basis in the Reform Act or its legislative history for construing the automatic waiver of fees for the first two hours of search time to mean something less than that for computer searches. FEMA rejects this suggestion; Congress made it clear that each agency develop regulations based on OMB's guidelines for uniform schedule of fees. FEMA's regulations are in conformance with OMB's guidelines on this section and therefore considered not only apppropriate but also consistent with the requirements of the Reform Act.

Section 6.85(b)—"Administrative Change to Citation"

FEMA has made an editorial change in § 6.85(b) to change a citation from "U.S.C.A." to "U.S.C."

FEMA has determined that this document is not a major rule under E.O. 12291 since it has no significant economic effect upon the economy, nor does it affect prices of economic competition. This document has no significant impact on the environment and preparation of an environmental impact statement is not necessary.

This final rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

The publication of this notice is made in accordance with the requirements of 5 U.S.C. 553 of the Administrative Procedure Act.

List of Subjects in 44 CFR Parts 5 and 6

Freedom of Information Act, Production or disclosure of information, Privacy Act.

Accordingly, for reasons set out in the preamble, 44 CFR Chapter I, Subchapter A, is amended as follows:

PART 5—[AMENDED]

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

Authority: 5 U.S.C. 552 as amended by Sections 1801–1304 of the Omnibus Anti-Drug Abuse Act of 1986 which contains the Freedom of Information Reform Act of 1986 (Pub. L. 99–570); Reorganization Plan No. 3 of 1978; and E.O. 12127.

2. Section 5.42 is revised to read as follows:

§ 5.42 Fees to be charged—categories of requesters.

(a) There are four categories of FOIA requesters: Commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The time limits for processing requests shall only begin upon receipt of a proper request which reasonably identifies records being sought. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories:

(1) When records are being requested for commercial use, the fee policy of FEMA is to levy full allowable direct cost of searching for, reviewing for release, and duplicating the records sought. Commercial users are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The full allowable direct cost of searching for and reviewing records will be charged even if there is ultimately no disclosure of records. Commercial use is defined as a use that furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, FEMA will look to the use to which a requester will put the documents requested. Where a requester does not explain his/her use, or where his/her explanation is insufficient to permit a determination of the nature of the use, FEMA shall require the requester to provide information regarding the use to be made of the information and if the request does not include an agreement to pay all appropriate fees, FEMA will process such request only up to the $30.00 threshold which is the estimated cost to FEMA to collect fees which we are prohibited from charging by law. Requesters must reasonably describe the records sought.

(2) When records are being requested by representatives of the news media, the fee policy of FEMA is to levy reproduction charges only, excluding charges for the first 100 pages. Representatives of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (i.e., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. For example, a publication contract would be the clearest proof, but FEMA may also look to the past publication record, press accreditation, guild membership, business registration, Federal Communications Commission licensing, or similar credentials of a requester in making this determination. To be eligible for inclusion in this category, requesters must meet the criteria specified in this section and his or her request must not be made for a commercial use basis as that term is defined under paragraph (a)(1) of this section. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(3) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of FEMA is to levy reproduction charges only, excluding charges for the first 100 pages. Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research. Noncommercial scientific institution refers to an institution that is not operated on a commercial basis as that term is defined under paragraph (a)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a

commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research. Requesters must reasonably describe the records sought.

(4) For any other request which does not meet the criteria contained in paragraphs (a)(1) through (3) of this section, the fee policy of FEMA is to levy full reasonable direct cost of searching for and duplicating the records sought, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. The first two hours of computer search time is based on the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the computer search, including the operator time and the cost of operating the computer to process the request, equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, FEMA shall begin assessing charges for computer search. Requests from individuals requesting records about themselves filed in FEMA's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

(b) Except for requests that are for a commercial use, FEMA may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When FEMA believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, FEMA may aggregate any such requests and charge accordingly. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, however, FEMA must have a solid basis for determining that aggregation is warranted in such cases. Before aggregating requests from more than one requester, FEMA must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may FEMA aggregate multiple requests on unrelated subjects from one requester.

(c) In accordance with the prohibition of section (4)(A)(iv) of the Freedom of Information Act, as amended, FEMA shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) For commercial use requesters, if the direct cost of searching for, reviewing for release, and duplicating the records sought would not exceed $30.00, FEMA shall not charge the requester any costs.

(2) For requests from representatives of news media or educational and noncommercial scientific institutions, excluding the first 100 pages which are provided at no charge, if the duplication cost would not exceed $30.00, FEMA shall not charge the requester any costs.

(3) For all other requests not falling within the category of commercial use requests, representatives of news media, or educational and noncommercial scientific institutions, if the direct cost of searching for and duplicating the records sought, excluding the first two hours of search time and first 100 pages which are free of charge, would not exceed $30.00, FEMA shall not charge the requester any costs.

3. Section 5.43 is revised as follows:

§ 5.43 Waiver or reduction of fees.

(a) FEMA may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(b) A fee waiver request shall indicate how the information will be used, to whom it will be provided, whether the requester intends to use the information for resale at a fee above actual cost, any personal or commercial benefits that the requester reasonably expects to receive by the disclosure, provide justification to support how release would benefit the general public, the requester's and/or intended user's identity and qualifications, expertise in the subject area and ability and intention to disseminate the information to the public.

4. Section 5.44 is revised as follows:

§ 5.44 Prepayment of fees.

(a) When FEMA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, FEMA may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), FEMA may require the requester to pay the full amount owed plus any applicable interest as provided in § 5.46(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When FEMA acts under paragraphs (a) or (b) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after FEMA has received fee payments described under paragraphs (a) or (b) of this section.

5. Section 5.46 is revised as follows:

§ 5.46 Fee schedule.

(a) *Manual searches for records.* FEMA will charge at the salary rate(s), (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the search. FEMA may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. FEMA may assess charges for time spent searching, even if FEMA fails to locate the records or if records located are determined to be exempt from disclosure.

(b) *Computer searches for records.* FEMA will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. FEMA may assess charges for time spent searching, even if FEMA fails to locate the records or if records located are determined to be exempt from disclosure.

(c) *Duplication costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charge will be $.15 per page.

(2) The fee for reproducing copies of records over 8½ x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through government or commercial sources. If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the

estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For copies prepared by computer, such as tapes or printouts, FEMA shall charge the actual cost, including operator time, of production of the tape or printout. If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(4) For other methods of reproduction or duplication, FEMA shall charge the actual direct costs of producing the document(s). If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(d) Interest may be charged to those requesters who fail to pay fees charged. FEMA may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(e) FEMA shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. FEMA may choose to contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as but not limited to the Government Printing Office or the National Technical Information Service, FEMA will inform requesters of the steps necessary to obtain records from those sources.

6. Section 5.71 is amended by revising paragraph (g) and adding a new paragraph (j) to read as follows:

§ 5.71 Categories of records exempt from disclosure under 5 U.S.C. 552.

* * * * *

(g) Records or information compiled for law enforcment purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

(j) Whenever a request is made which involves access to records described in paragraph (g)(1) of this section and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, FEMA may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

PART 6—[AMENDED]

1. The authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 552a; Reorganization Plan No. 3 of 1978; and E.O. 12127.

§ 6.82 [Amended]

2. In § 6.82, remove "50" and add "300" in place thereof.

3. Section § 6.83 is revised as follows:

§ 6.83 Prepayment of fees.

(a) When FEMA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, FEMA may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), FEMA may require the requester to pay the full amount owed plus any applicable interest as provided in § 6.85(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When FEMA acts under § 5.44 (a) or (b), the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after FEMA has received fee payments described under § 5.44 (a) or (b).

4. Section 6.85 is revised as follows:

§ 6.85 Reproduction fees.

(a) *Duplication costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charge will be $.15 per page.

(2) The fee for reproducing copies of records over 8½ x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through Government or commercial sources. If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For other methods of reproduction or duplication, FEMA shall charge the actual direct costs of producing the document(s). If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of

reformulating the request to meet his/her needs at a lower cost.

(b) Interest may be charge to those requesters who fail to pay fees charged. FEMA may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.

Dated: April 20, 1987.

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-9244 Filed 4-23-87; 8:45 am]

BILLING CODE 6718-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

45 CFR Part 503

The Freedom of Information Reform Act of 1986; Revised Fee Schedule and Guidelines

AGENCY: Foreign Claims Settlement Commission of the United States.

ACTION: Final rule.

SUMMARY: This rule implements certain provisions of the Freedom of Information Reform Act of 1986, which require the Foreign Claims Settlement Commission, as a Federal agency, to promulgate a revised fee schedule and guidelines applicable to the processing of requests for records under the Freedom of Information Act.

EFFECTIVE DATE: May 26, 1987.

SUPPLEMENTARY INFORMATION: Under the terms of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) ("FOIRA"), Foreign Claims Settlement Commission of the United States ("the Commission") was required to promulgate for public notice and comment a proposed new schedule of fees to be charged and guidelines to be followed in its processing of requests for records under the Freedom of Information Act. As required by the legislation, the Commission developed these regulations pursuant to, and in conformity with, the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget on pages 10012-10019 of the **Federal Register** on March 27, 1987. The Commission published its proposed fee schedule and guidelines in the **Federal Register** on pages 11712-11713 on April 10, 1987, and subsequently added a correction thereto which was published on page 12040 of the **Federal Register** on April 14, 1987. The final deadline for receiving comments was April 21, 1987. No comments were received. However, following a review of the schedule and guidelines in their proposed form, one addition has been determined necessary. This added provision, relating to waiver or reduction of fees (subparagraph (j)), states that no charges will be assessed in connection with the processing of a request for records under the Freedom of Information Act where the amount of the applicable fees is $8.00 or less. According to information obtained from the Department of Justice, which furnishes the Commission's administrative support services, this $8.00 figure reflects the Department's costs for "routine collection and processing" of a payment of fees in connection with a request for records under the Act. Inclusion of this figure is required in order to conform the Commission's regulations to the FOIRA, which provides that "No fee may be charged by any agency under this section—(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee." (5 U.S.C. 552(a)(4)(iv)).

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities, as those terms are used in the Act. The rule will not affect or involve any appreciable percentage of the community which small entities comprise.

FOR FURTHER INFORMATION CONTACT: David E. Bradley 202-653-5883.

SUPPLEMENTARY INFORMATION:

For the reasons set out in the preamble, § 503.14 of Chapter V of Title 45 of the *Code of Federal Regulations* is revised as follows.

List of Subjects in 45 CFR Part 503

Freedom of Information.

PART 503—[AMENDED]

1. The authority citation for 45 CFR Part 503 is revised to read as follows:

Authority: 5 U.S.C. 552

2. Section 503.14 of 45 CFR Part 503 is redesignated as § 503.13 and is revised as follows:

§ 503.13 Fees for services.

The following provisions shall apply in the assessment and collection of fees for services rendering in processing requests for disclosure of Commission records under this part.

(a) *Fee for duplication of records.* $0.15 per page.

(b) *Search and review fees.* (1) Searches for records by clerical personnel—$2.00 per quarter hour, including time spent searching for and copying any record.

(2) Search for and review of records by professional and supervisory personnel—$5.50 per quarter hour spent searching for any record or reviewing a record to determine whether it may be disclosed, including time spent in copying any record.

(c) *Certification and validation fee.* $1.00 for each certification, validation or authentication of a copy of any record.

(d) *Imposition of fees.* (1) Commercial use requests—Where a request appears to seek disclosure of records for a commercial use, the requester shall be charged for the time spent by Commission personnel in searching for the requested record and in revealing the record to determine whether it should be disclosed, and for the cost of each page of duplication. "Commercial use" is defined as a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The request also must reasonably identify the records sought.

(2) Requests from representatives of news media—Where a request seeks disclosure of records to a representative of the news media, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought, and it must appear that the records are for use by the requester in such person's capacity as a news media representative. "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. A "freelance" journalist not actually employed by a news organization shall be eligible for inclusion under this category if such person can demonstrate a solid basis for expecting publication by a news organization.

(3) Requests from educational and non-commercial scientific institutions—Where a request seeks disclosure of records to an educational or non-commercial scientific institution, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages;

provided, however, that the request must reasonably describe the records sought and it must appear that the records are to be used by the requester in furtherance of its educational or non-commercial scientific research programs. "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate, graduate, professional or vocational education, which operates a program or programs of scholarly research. "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, within the meaning of paragraph (d)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular products or industry.

(4) All other requests—Where a request seeks disclosure of records to a person or entity other than one coming within paragraphs (d)(1), (d)(2) and (d)(3) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(e) *Aggregating of requests.* If there exists a solid basis for concluding that a requester or group of requesters has submitted a series of partial requests for disclosure of records in an attempt to evade assessment of fees, the requests may be aggregated so as to constitute a single request, with fees charged accordingly.

(f) *Unsuccessful searches.* Except as provided in paragraph (d) of this section, the cost of searching for a requested record shall be charged even if the search fails to locate such record or it is determined that the record is exempt from disclosure.

(g) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request under this Part within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date, to be calculated at the rate prescribed in section 3717 of Title 31, United States Code.

(h) *Advance payments.* (1) If, but only if, it is estimated or determined that processing of a request for disclosure of records will result in a charge of fees of more than $250.00, the requester may be required to pay the fees in advance in order to obtain completion of such processing.

(2) If a requester has previously failed to make timely payment (i.e., within 30 days of billing date) of fees charged under this Part, the requester may be required to pay such fees and interest accrued thereon, and to make an advance payment of the full amount of estimated fees chargeable in connection with any pending or new request, in order to obtain processing of such pending or new request.

(3) With regard to any request coming within paragraphs (h)(1) and (h)(2) of this section 3, the administrative time limits set forth in §§ 503.10 and 503.11 above will begin to run only after the requisite fee payments have been received.

(i) *Non-payment.* In the event of non-payment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365), including disclosure to consumer credit reporting agencies and referral to collection agencies, may be utilized to obtain payment.

(j) *Waiver or reduction of charges.* Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where—

(1) It is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or

(2) It is determined that the cost of collection would be equal to or exceed the amount of such fees. No charges shall be assessed if such fees amount to $8.00 or less.

Bohdan A. Futey,

Chairman.

[FR Doc. 87–9388 Filed 4–23–87; 8:45 am]

BILLING CODE 4410–01–M

FEDERAL MARITIME COMMISSION

46 CFR Part 503

[Docket No. 87–5]

Implementation of Freedom of Information Reform Act

April 21, 1987.

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its Public Information regulations to incorporate the recent changes to the Freedom of Information Act regarding requests for agency enforcement records and regarding establishment and waiver of fees to be charged for search, review and duplication of records in response to FOIA requests. The rules follow the guidelines established by the Office of Management and Budget on establishment of fees and Department of Justice on fee waivers.

EFFECTIVE DATE: May 26, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW Washington, DC 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: On October 27, 1986, President Ronald Reagan signed into law the Anti-Drug Abuse Act of 1986, an omnibus piece of legislation which includes as sections 1801–04 of the law, the Freedom of Information Reform Act of 1986 (Reform Act). This legislation expands the law enforcement protections of the Freedom of Information Act (FOIA) and also modifies its fee and fee-waiver provisions. The new law enforcement provisions were effective immediately. The fee provisions will become effective on April 25, 1987. This 180-day delay was designed to permit the Office of Management and Budget (OMB) and affected agencies time to issue new guildelines and regulations governing them. OMB published proposed guidelines on January 16, 1987 (52 FR 1992).

The Commission on March 19, 1987 (52 FR 8628) published a notice of proposed rulemaking designed to implement the above-mentioned changes mandated by the Reform Act. The proposed rules closely followed the OMB guidelines. The **Federal Register** publised a correction to this notice on March 26, 1987 (52 FR 9756). No comments were submitted in response to the notice of proposed rulemaking. Subsequent to the proposed rule publication, OMB issued its final guidelines for implementation of the Reform Act (52 FR 10012; March 27, 1987). The Department of Justice, Office of Information and Privacy (DOJ), issued new fee waiver policy guidance on April 2, 1987, also designed to assist agencies in establishing rules implementing the Reform Act.

The final rules adopted herein closely follow the proposed rules. The only changes are the result of incorporation of the final OMB guidelines on fees and the DOJ guidelines on fee waivers. The final rules contain appropriate amendments to the Commission's current Public Information rules appearing in 46 CFR Part 503. The following is a section by section discussion of the rules.

1. Section 503.35 Exceptions to availability of records. Paragraph (a)(7) of this section currently describes the circumstances under which "investigatory" records may be withheld by the Commission when responding to

an FOIA request. Paragraph (a)(7) is being revised to recite verbatim the revised standard promulgated by the Reform Act. The general thrust of the revised standard is to clarify and broaden the scope of the exemptions on law enforcement records or information.

A new paragraph (c) is also being added to this section implementing subsection (c)(1) of the Reform Act, to provide the agency the option of excluding from the requirements of the FOIA, law enforcement records involving a possible violation of criminal law, when there is reason to believe that the subject of the investigation is not aware of its pendency and disclosure of the existence of records could reasonably be expected to interfere with enforcement proceedings. The upshot of this provision is that the agency can, under the appropriate circumstances, withhold acknowledgment even of the existence of an investigation.

2. Section 503.41 Policy and services available.

This section is amended to incorporate a reference to the Reform Act and to conform the description of services available to the terminology used in the Reform Act and defined elsewhere in this rule. Clarification is also included regarding the nonapplicability of fees to requests for certain materials.

3. Section 503.43 Fees for services. Paragraphs (a) through (c) of this section are revised to incorporate the new fee requirements of the Reform Act. The rules closely follow the final guidelines of OMB.

Paragraph (a) sets forth the definitions of terms used in the Reform Act and these rules. They follow almost verbatim the OMB guidelines.

Paragraph (b) sets forth general guidelines regarding collection of fees for search, duplication and review. It acknowledges that, to the extent fees are assessable, they reflect full direct costs as required by the Reform Act. This paragraph also describes the types of fees to be assessed according to the identity of the requester and sets forth restrictions and limitations for assessment of fees as required by the Reform Act. Paragraph (b)(2)(vi) contains summary guidelines for waiver or reduction of fees and are patterned after the DOJ guidelines. The application of these guidelines will also be governed by the more detailed guidance provided by DOJ.

Paragraph (c) sets forth the actual schedule of fees and charges for search, review, and duplication. As indicated above, these charges reflect full direct costs as required by the Reform Act and as defined by OMB guidelines. The fees for certification are merely restated from the current schedule and are not affected by the Reform Act.

The following information sets forth the basis upon which the charges for search, duplication and review of records are established. Direct labor costs were separated into two groups, (a) clerical/administrative, and (b) professional/executive. An average rate per hour was developed for each group plus 16 percent of that rate to cover benefits. The computations for search and duplication services exclude salaries of Commissioners and members of the Senior Executive Service. Review of records to determine whether they are exempt from disclosure under section 503.35 is performed by the Secretary of the Commission in his/her capacity as the Commission's FOIA Officer. Accordingly, the full direct costs associated with that position are recovered.

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193 (February 27, 1981).

The Chairman of the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 46 CFR Part 503

Freedom of information.

PART 503—[AMENDED]

Therefore, for the reasons set forth above, Part 503 of Title 46 CFR is amended as follows:

1. The authority citation for Part 503 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

2. Section 503.35 is amended by revising paragraph (a)(7) and by adding a new paragraph (c) to read as follows:

§ 503.35 Exceptions to availability of records.

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

(c) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

3. Section 503.41 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 503.41 Policy and services available.

Pursuant to policies established by the Congress, the Government's costs for special services furnished to individuals or firms who request such services are to be recovered by the payment of fees (Act of August 31, 1951, 5 U.S.C. 140 and Freedom of Information Reform Act of 1986, October 27, 1986, 5 U.S.C. 552).

(a) Upon request, the following services are available upon the payment of the fees hereinafter prescribed; except that no fees shall be assessed for search, duplication or review in connection with requests for single copies of materials described in §§ 503.11 and 503.21:

(1) Records/documents search.

(2) Duplication of records/documents.

(3) Review of records/documents.

(4) Cerification of copies of records/documents.

* * * * *

4. Section 503.43 is amended by revising paragraphs (a) through (c) to read as follows:

§ 503.43 Fees for services.

(a) *Definitions.* The following definitions apply to the terms when used in this subpart:

(1) "Search" means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Search for material will be done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. Search is distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(2) "Duplication" means the process of making a copy of a document necessary to respond to a Freedom of Information Act or other request. Such copies can take the form of paper or machine readable documentation (e.g., magnetic tape or disk), among others.

(3) "Review" means the process of examining documents located in response to a commerical use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) "Commercial use request" means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the agency must determine the use to which a requester will put the documents requested. Where the agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency will seek additional clarification before assigning the request to a specific category.

(5) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(6) "Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(4) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(7) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. "Freelance" journalists, may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the agency may also look to the past publication record of a requester in making this determination.

(8) "Direct costs" means those expenditures which the agency actually incurs in searching for and duplicating (and in the case of commercial requester, reviewing) documents to respond to a Freedom of Information Act request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(b) *General.* (1) The basic fees set forth in paragraph (c) of this section provide for documents to be mailed with postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(2) The fees for search, duplication and review set forth in paragraph (c) of this section reflect the full allowable direct costs expected to be incurred by the agency for the service. Costs of search and review may be assessed even if it is determined that disclosure of the records is to be withheld. Cost of search may be assessed even if the agency fails to locate the records. Requesters much reasonably describe the records sought. The following restrictions, limitations and guidelines apply to the assessment of such fees:

(i) For commercial use requesters, charges recovering full direct costs for search, review and duplication of records will be assessed.

(ii) For educational and non-commercial scientific institution requesters, no charge will be assessed for search or review of records. Charges recovering full direct costs for duplication of records will be assessed, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(iii) For representative of the news media requesters, no charge will be assessed for search or review of records. Charges recovering full direct costs for duplication of records will be assessed, excluding charges for the first 100 pages.

(iv) For all other requesters, no charge will be assessed for review of records. Charges recovering full direct costs for search and duplication of records will be assessed excluding charges for the first 100 pages of duplication and the first two hours of search time. Requests from individuals for records about themselves, filed in a Commission system of records, will be treated under the fee provisions of the Privacy Act of 1984 which permit fees only for duplication.

(v) No fee may be charged for search, review or duplication if the costs of routine collection and processing of the fee are likely to exceed the amount of the fee.

(vi) Documents shall be furnished without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In determining whether a waiver or reduction of charges is

appropriate the following factors will be taken into consideration.

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding;

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(E) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(F) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(vii) Whenever it is anticipated that fees chargeable under this section will exceed $25.00 and the requester has not indicated in advance a willingness to pay fees as high as anticipated, the requester will be notified of the amount of the anticipated fee. In such cases the requester will be given an opportunity to confer with Commission personnel with the object of reformulating the request to meet the needs of the requester at a lower cost.

(viii) Interest may be charged record requesters who fail to pay fees assessed. Assessment of interest may begin on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31, United States Code and will accrue from the date of the billings. Receipt of payment by the agency will stay the accrual of interest.

(ix) Whenever it reasonably appears that a requester of records or a group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly. Multiple requests on unrelated subjects will not be aggregated.

(x) The agency may require a requester to make advance payment only when:

(A) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case the requester will be required to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester; or

(B) The agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250, in which case, the agency will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or will require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(xi) Unless applicable fees are paid, the agency may use the authorities of the Debt Collection Act (Pub. L. 97–365), including disclosure to consumer reporting agencies and use of collection agencies where appropriate to encourage payment.

(xii) Whenever action is taken under paragraphs (b)(2)(viii) and (b)(2)(ix) of this section, the administrative time limits prescribed in subsection (a)(6) of 5 U.S.C. 552 (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits will begin only after the Commission has received fee payments described above.

(c) *Charges for search, review, duplication and certification.* (1) Records search will be performed by Commission personnel at the following rates:

(i) Search will be performed by clerical/administrative personnel at a rate of $11.00 per hour and by professional/executive personnel at a rate of $23.00 per hour.

(ii) Minimum charge for record search is $11.00.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.35 shall be assessed to recover full direct costs at the rate of $38.00 per hour. Charges for review will be assessed only for initial review to determine the applicability of a specific exemption to a particular record. No charge will be assessed for review at the administrative appeal level.

(3) Charges for duplication of records and documents will be assessed as follows, limited to size 8½" x 14" or smaller:

(i) If performed by requesting party, at the rate of five cents per page (one side).

(ii) By Commission personnel, at the rate of five cents per page (one side) plus $11.00 per hour.

(iii) Minimum charge for copying is $3.50.

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $5.00 for each certification.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–9258 Filed 4–23–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

Common Carrier Services; Interpretation Letter

AGENCY: Federal Communications Commission.

ACTION: Interpretation letter.

SUMMARY: Under delegated authority the Common Carrier Bureau, in response to a request by Tallon, Cheeseman & Associates, Inc., has provided an interpretation of Part 67 of the FCC Rules and Regulations. The issue concerns the proper method to be used by companies having an annual separations study period to phase customer premises equipment out of the rate base over a five-year period. The interpretation is intended to clarify the separations procedures in § 67.153(b).

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles Needy, Accounting and Audits Division, Common Carrier Bureau, (202) 632–7500.

April 17, 1987.

Mr. Larry Van Ruler,

Tallon, Cheeseman & Associates, Inc., 3617 Betty Drive, Suite I, Colorado Springs, CO 80907

Dear Mr. Van Ruler: This letter is in response to your letter of March 23, 1987, in which you requested a clarification of the Commission's rules set forth in Part 67, Section 67.153(b). Specifically, you asked which of two methods should be used by companies having an annual separations study period to phase Customer Premises Equipment (CPE) out of the rate base over a five-year period.

Under the first method that you identify, such companies would use an end-of-year rate base that includes 80 percent of the initial CPE base at the end of 1983, 60 percent at the end of 1984, 40 percent at the end of 1985, 20 percent at the end of 1986, and 0 percent at the end of 1987.

Under the second method that you describe, such companies would use an annual average of the twelve end-of-month ratios calculated for each of the five years in the phase-down period. This approach would leave 89.167 percent of the initial CPE base in the rate base at the end of 1983, 69.167 percent at the end of 1984, 49.167 percent at the end of 1985, 29.167 percent at the end of 1986, and 9.167 percent at the end of 1987.

We agree that the initial CPE base would be written off in 48 months under method one and in 59 months under method two. Consequently, we believe that, of the two methods, the second is more consistent with the Commission's stated objective of writing off the base amount in 5 years.

We also agree that the first method would not provide consistent treatment for annual cost study companies and monthly cost study companies, since the effective phase-out period would be 48 months for the former group and 59 months for the latter. The second method would produce greater consistency because the effective phase-out period would be 60 months for the former group and 59 months for the latter group of companies.

It is our interpretation, therefore, that the second method for writing off CPE is consistent with the intent of Section 67.153 and is a proper implementation of *Separations Manual* requirements.

If you have any questions concerning this response, please contact Charles Needy, Audits Branch, on (202) 632-7500.

Sincerely,

Gerald Brock,

Chief, Accounting and Audits Division.

[FR Doc. 87-9267 Filed 4-23-87; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1831

Interim Changes to the NASA FAR Supplement on Travel Costs

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Interim rule with request for comments.

SUMMARY: This notice establishes interim amendments to the NASA Federal Acquisition Regulation Supplement, Chapter 18 of the Federal Acquisition Regulations System and invites written comments on these interim amendments. The rule establishes consistent application of the Federal Civilian Employee and a Contractor Travel Expense Act of 1985 to all contractors subject to the NASA FAR Supplement (NFS).

DATES: Effective April 27, 1987.

Comments are due not later than June 26, 1987.

ADDRESSES: Comments should be addressed to NASA with a copy to OMB:

NASA, Office of Procurement, Procurement Policy Division, (Code HP), Washington, DC 20546;

OMB, Office of Information and Regulatory Affairs, Attention: Mr. Bruce W. McConnell, Room 3235, New Executive Office Bldg., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division, (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-2119.

SUPPLEMENTARY INFORMATION:

Background

NASA is issuing interim changes to the NASA FAR Supplement to assure that all acquisition regulations regarding travel are compatible and consistent with existing statutory requirements. Title II, section 201, Pub. L. 99-234, states in part that ". . . costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of chapter 57 of title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter." The FAR travel cost principle applicable to commercial organizations was published as a notice for public comment in the **Federal Register** on May 29, 1986 (51 FR 19378) and as a final rule on July 31, 1986 (51 FR 27488) which accommodated the received comments. Although the statute applies the same travel cost principle to all contracts, OMB has not provided for its application to contracts with non-profit and educational organizations through appropriate modification to OMB, Circulars A-21 and A-122. In view of these urgent and compelling circumstances, the changes are being issued as an interim rule without additional public comment prior to their effectivity.

Impact

E.O. 12291. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This rule falls within the exemption.

Regulatory Flexibility Act. These revisions will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) Moreover, the proposed coverage merely implements Pub. L. 99-234, which requires comparable treatment of the costs of lodging, meals, and incidental expenses for contractors and Government employees. Therefore, the Regulatory Flexibility Act does not apply. However, comments from non-profit organizations and educational institutions are invited.

Paperwork Reduction Act. NASA has applied for an OMB approval number under the Paperwork Reduction Act and 5 CFR 1320. The estimated reporting burden for completion of the travel cost documentation is an average of 0.25 hours. One document must be completed for each trip charged to a NASA contract. Total annual burden hours for completion of the documentation for an estimated 124 submissions is 31 hours.

List of Subjects in 48 CFR Part 1831

Government procurement.

L.E. Hopkins,

Deputy Assistant Administrator for Procurement.

For the reasons set out in the preamble, Title 48, Chapter 18, of the Code of Federal Regulations is amended as follows:

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 1831 reads as follows: Authority: 42 U.S.C. 2473(c)(1).

2. Part 1831 is amended by adding Subparts 1831.3 and 1831.7 to read as follows:

Subpart 1831.3—Contracts With Educational Institutions

1831.303 Requirements.

The travel cost principles at FAR 31.205-46 shall be used in lieu of OMB Circular A-21, Section J.43, paras. a-d.

Subpart 1831.7—Contracts With Non-profit Organizations

1831.703 Requirements.

The travel cost principles at FAR 31.205-46 shall be used in lieu of OMB Circular A-122, Attachment B, Section 50, paras. a-d.

[FR Doc. 87-9275 Filed 4-23-87; 8:45 am]

BILLING CODE 7510-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 55 (Sub-No. 64]

ICC FOIA Fee Schedule Revision

AGENCY: Interstate Commerce Commission.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule revises the fee schedule utilized for processing Freedom of Information Act (FOIA) requests, in accordance with the new schedule required by the Freedom of Information Reform Act of 1986, Pub. L. 99–570; Sections 1801–1804, 100 Stat. 3207, 3207–48 (1986). The Act amended paragraph (4)(A) of Section 552(a) of Title 5, United States Code, to mandate the promulgation of regulations by April 25, 1987, specifying the schedule of fees applicable to the processing of FOIA requests and establishing procedures and guidelines for determining when such fees should be waived or reduced. Because of the short time available under the Act for putting rules into effect, we find good cause for establishing interim rules upon which we seek comment.

DATES: Interim rule effective April 24, 1987; comments must be received on or before May 26, 1987.

ADDRESS: Comments may be mailed or delivered to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. ATTN: Ex Parte 55 (Sub. No. 64).

FOR FURTHER INFORMATION CONTACT: S. Arnold Smith, (202) 275–7076.

SUPPLEMENTARY INFORMATION: Prior to its amendment in 1986, the FOIA provided for the charging of fees for document search and duplication, and further provided that such fees should be waived or reduced wherever that was found to be "in the public interest because furnishing the information can be considered as primarily benefiting the general public." 5 U.S.C. 552(a)(4)(A)(1982).

As amended, the FOIA establishes three levels of fees that may be charged depending on the identity of the requester and the anticipated use of the requested information. 5 U.S.C. 552(a)(4)(A)(ii) provides for the charging of fees for document duplication alone for certain categories of requesters (e.g. educational or noncommercial scientific institutions); fees for search time and duplication, and for review time for commercial requesters; and, for all other requesters, fees for search time and duplication. A separate provision provides for the waiver or reduction of applicable fees upon the requester's satisfaction of a revised statutory fee waiver standard.

The FOIA's new fee waiver standard, 5 U.S.C. 552(a)(4)(A)(iii), defines the term "public interest" and sets forth two basic requirements that must be met before fees can be waived or reduced. First, it must be established that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. Second, it must be established that disclosure of the information is not primarily in the commercial interest of the requester. In determining whether and to what extent such fees shall be waived or reduced, the Commission will consider six factors:

(1) The subject of the request;

(2) The informative value of the information to be disclosed;

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure;

(4) The significance of the contribution to public understanding;

(5) The existence and magnitude of commercial interest; and

(6) The primary interest in disclosure.

The Commission's fee schedule, set forth below, is designed to recover the full allowable direct costs incurred in complying with FOIA requests.

Decided: April 17, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons.

Noreta R. McGee,

Secretary.

Title 49 of the CFR is amended as follows:

PART 1002—FEES

1. The authority of 49 CFR Part 1002 is revised as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

2. Section 1002.1, paragraph (f) is revised to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(f) The fees for search, review and copying services for records not considered public under the Freedom of Information Act are as follows:

(1) When documents are requested for commercial use, requesters will be assessed the full direct costs of searching for, reviewing for release and duplicating the records sought. A "commercial use" request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(2) Requesters from educational and noncommercial scientific institutions will be assessed only for the cost of reproduction. The term "Educational Institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research. The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. They must show that their request is authorized by and under the auspices of a qualifying institution and the records are not sought for a commercial use but, instead, are in furtherance of scholarly or scientific research.

(3) Requesters who are representatives of the news media (persons actively gathering news for an entity that is organized and operated to publish or broadcast news to the public) will be assessed only for the cost of reproduction if they can show that their request is not made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered a request for a commercial use.

(4) All other requesters will be assessed fees which recover the full and reasonable direct cost of searching for and reproducing records that are responsive to the request.

(5) Requesters from educational and noncommercial scientific institutions, representatives of the news media, and all other noncommercial users, will not be assessed for the first 100 pages of reproduction or the first two hours of search time. Commercial use requesters will not be entitled to these free services. All requesters must reasonably describe the records sought.

(6) The search and review hourly fees will be based upon employee grade levels in order to recoup the full, allowable direct costs attributable to their performance of these functions. They are as follows:

GS–1	$5.07
GS–2	5.52
GS–3	6.22
GS–4	6.99
GS–5	7.82
GS–6	8.71
GS–7	9.68
GS–8	10.72
GS–9	11.84
GS–10	13.04
GS–11	14.33
GS–12	17.17
GS–13	20.42
GS–14	24.13
GS–15 and over	28.38

(7) The fee for electrostatic copies shall be $.60 per letter or legal size exposure with a minimum charge of $3.00.

(8) The fee charged for ADP data is set forth in paragraph (e) of this section.

(9) If the cost of collecting any fee would be equal to or greater than the fee itself, it will not be assessed.

(10) A fee may be charged for searches which are not productive and for searches for records or those parts of records which subsequently are determined to be exempt from disclosure.

(11) Interest charges may be assessed on any unpaid bill starting on 31st day following the day on which the billing was sent, at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing. The Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, will be utilized to encourage payment where appropriate.

(12) If search charges are likely to exceed $25, the requester will be notified of the estimated fees unless requester willingness to pay whatever fee is assessed has been provided in advance. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester agrees in writing to accept the prospective charges.

(13) An advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed $250. Requesters who have previously failed to pay a fee charged in timely fashion (i.e. within 30 days of the date of billing) may be required first to pay this amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) also will not begin until after a requester has complied with this provision.

(14) Documents shall be furnished without any charge or at a charge reduced below the fees set forth above if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The following six factors will be employed in determining when such fees shall be waived or reduced:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: whether disclosure of the requested information will contribute to "public understanding";

(iv) The significance of the contribution to public understanding: whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) The existence and magnitude of a commercial interest: whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

This fee waiver and reduction provision will be implemented in accordance with guidelines issued by the U.S. Department of Justice on April 2, 1987 and entitled "New FOIA Fee Waiver Policy Guidance." A copy of these guidelines may be inspected or obtained from the ICC's Freedom of Information Office, 12th & Constitution Avenue, NW., room 3132, Washington, DC 20423.

* * * * *

[FR Doc. 87–9149 Filed 4–23–87; 8:45 am]
BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 52, No. 79
Friday, April 24, 1987

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 915 and 944

Avocados Grown in South Florida and Imported Avocados; Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish continuous minimum maturity requirements for shipments of fresh avocados grown in South Florida, and for avocados imported into the United States effective May 1, 1987. The purpose of such maturity regulations is to prevent shipments of immature avocados to the fresh market. Providing fresh markets with mature fruit is important in creating and maintaining consumer satisfaction and sales. Such action is designed to promote orderly marketing conditions for avocados in the interest of producers and consumers.

DATE: Comments must be received by May 4, 1987.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250–1400. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be a "non-major" rule under the 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 would not have a significant economic impact on a substantial number of small entities.

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 Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated 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 an estimated 34 handlers of Florida avocados subject to regulation under the marketing order for avocados grown in South Florida, and an estimated 20 importers who import avocados into the United States. In addition, thee are approximately 300 avocado producers in South Florida. 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 $100,000, and agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers, importers, and producers are believed to be small entities.

Fresh Florida avocado shipments are projected at 1,200,000 bushels (55 pounds net weight) for the 1986–87 season, compared with fresh shipments of 1,110,130 bushels shipped in 1985–86, 1,149,017 bushels in 1984–85, and 1,036,582 bushels in 1983–84. Florida avocados are shipped every month of the year. The new season normally begins with light shipments of early varieties in late May or early June, with heavy shipments following in late June or early July. Florida avocados compete primarily with avocados produced in California, which had shipments of 5,449,307 bushels during the 12-month period which ended March 31, 1986. Avocados imported into the United States in 1986–86 amounted to about 204,382 bushels.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service has considered the economic impact on small entities. This proposed rule would establish minimum maturity requirements applicable to fresh shipments of avocados grown in South Florida on a continuous basis beginning May 1, 1987. The proposed requirements for Florida avocados are intended to prevent the shipment of immature avocados to improve buyer confidence in the marketplace, and foster increased consumption. Similar maturity requirements have been issued each year over the past several seasons, and Florida avocado producers and handlers have found such requirements beneficial in the successful marketing of their avocado crops.

Some Florida avocado shipments would be exempt from the proposed maturity requirements. Handlers may ship up to 55 pounds of avocados during any one day under a minimum quantity exemption, and may make gift shipments of up to 20 pounds of avocados in individually addressed containers. Also, avocados utilized in commercial processing would not be covered by the proposed maturity requirements.

The proposed rule also would establish minimum maturity requirements applicable to imported fresh avocados on a continuous basis. The proposed import requirements are similar to the requirements in effect during the 1986–87 season. The application of such requirements to imported avocados is required pursuant to section 8e of the Act. That section requires that certain imported commodities, including avocados, must meet the same or comparable requirements applicable to the domestic commodity under a Federal marketing order. An exemption provision in the proposed import maturity regulation permits persons to import up to 55 pounds of avocados exempt from the import requirements.

It is the Department's view that under the proposed regulations the impact of the regulation upon growers, handlers, and importers would not be adverse. The application of the naturity requirements to both Florida and imported avocados over the past several years have helped to assure that only mature avocados were shipped to fresh markets. The Avocado Administrative Committee continues to believe that the maturity requirements for Florida

avocados are needed to improve grower returns. Although compliance with these maturity requirements would affect costs to handlers and importers, these costs appear to be significantly offset when compared to the potential benefits of assuring the trade and consumers of mature avocados.

The proposed Florida avocado maturity regulation would be issued under the marketing agreement, and Order No. 915, both as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposed maturity requirements applicable to Florida avocado shipments were unanimously recommended by the Avocado Administrative Committee. The committee works with the Department in administering the marketing agreements and order program.

The proposed Florida avocado maturity regulation would establish maturity requirements for fresh shipments of Florida avocados for the 1987–88 season and for succeeding seasons as well. These maturity requirements would be in terms of minimum weights or diameters for specified time periods during the shipping season for 60 varieties and 2 seedling types of avocados grown in Florida. The starting date of the requirements would be switched from Wednesday of each week to Monday of each week. Historically, the requirements have always begun on Monday each week. In 1986, the starting days were switched to Wednesday to assist handlers in selling to some major chain stores. However, the switch to Wednesday did not accomplish the industry's objectives and the committee decided to go back to Monday.

Such requirements are used primarily during the first part of the harvest season for each variety to make sure that the avocados are sufficiently mature to complete the ripening process prior to shipment. Another maturity requirement based on the skin color of the fruit is also used to determine maturity for certain varieties of avocados which turn red or purple when mature. A minimum grade requirement of U.S. No. 2 is currently in effect on a continuous basis for Florida avocados under § 915.306 (7 CFR Part 915). The proposed maturity requirements are designed to make sure that all shipments of Florida avocados are mature, so as to provide consumer satisfaction essential for the successful marketing of the crop, and to provide the trade and consumers with an adequate supply of mature avocados in the interest of producers and consumers.

The current Florida avocado maturity regulation (§ 915.331—51 FR 18565, May 21, 1986; 52 FR 2100, January 20, 1987) and the avocado import maturity regulation (§ 944.30—51 FR 18565, May 21, 1986) were issued May 16, 1986, as an interim final rule. A period was provided for interested persons to submit written comments on this rule. The comment period ended June 20, 1986, and no comments were received. Subsequently, the interim final rule was amended on January 14, 1987, to permit certain weights and diameters of Brookslate variety avocados to be shipped earlier than under the interim final rule (52 FR 2100, January 20, 1987). The minimum weight and diameter requirements established by the interim and amended interim final rules expired on February 17, 1987. In view of these circumstances, the Department has determined that no useful purpose would be served by issuing a final rule on the two previous interim actions.

As indicated earlier, the proposed avocado import maturity regulation would be issued under section 8e (7 U.S.C. 608e–1) of the Act. Section 8e of the Act requires that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Comparable requirements may be issued whenever the Secretary determines that the application of restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the imported and domestic commodity. The proposed avocado import maturity regulation is prescribed in § 944.31. That section would establish comparable minimum weight and diameter maturity requirements for avocados imported into the United States, based on the maturity requirements specified in paragraph (a)(2) of § 915.332 for avocados grown in Florida. Moreover, avocado import grade requirements are currently in effect on a continuous basis under § 944.28 (7 CFR Part 944). Such grade requirements specify that all avocados imported from all foreign countries must grade at least U.S. No. 2, which requires that the avocados be mature.

The domestic maturity requirements for specified periods are based on the growing, harvesting, and maturity periods for the various varieties of Florida avocados. The proposed import maturity requirements for avocados grown in southern hemisphere countries such as Chile where practically all imported southern hemisphere avocados have originated in recent years, do not include minimum weight or diameter requirements. This is necessary because the growing, harvesting, and maturity periods for the various varieties of avocados grown in the southern hemisphere countries do not correspond with those in Florida, and it would be impracticable to apply the minimum weight or diameter requirements developed for Florida avocados to the imports from these origins. Avocados from foreign countries in close proximity to Florida with similar growing, harvesting, and maturity periods have met these maturity requirements without any apparent problems. Hence, the proposed import maturity requirements applicable to avocados grown in northern hemisphere countries, such as the Bahamas, the Dominican Republic, and Costa Rica where practically all northern hemisphere imported avocados have originated in recent years, include minimum weight and diameter requirements.

The proposed import maturity requirements based on skin color would apply to avocados which turn red or purple when mature grown in both the southern and northern hemispheres, because these varieties turn color when mature regardless of where grown. The U.S. No. 2 grade requirement also applies regardless of whether or not the avocados were grown in a southern or northern hemisphere country.

The maturity requirements contained in this proposed rule would continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary, upon the recommendation and information submitted by the committee, or upon other information available to the Secretary. Heretofore, maturity regulations issued under Marketing Order 915 were effective for a single marketing season. However, over the past several years the same maturity requirements have been imposed each season without substantial revision. The proposed maturity requirements are expected to continue with little or no change from season to season. Therefore, it appears unnecessary to issue such regulations for only a single season. In addition, this action should result in a reduction in operational costs to the committee and the government.

Although, the maturity requirements in the proposed rule would be effective

for an indefinite period, the marketing order requires the committee to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the Florida avocado regulation. Prior to making any such recommendations, the committee submits to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department evaluates committee recommendations and information submitted by the committee, comments filed, and other available information, and determines whether modification, suspension, or termination of the regulations on shipments of avocados would tend to effectuate the declared policy of the Act.

It is hereby found and determined that a comment period of less than 30 days is appropriate, because the proposed rule needs to become effective before May 18, 1987, the date when shipments of early season varieties of avocados will likely begin. As a result time is insufficient to provide more than 10 days for filing comments.

List of Subjects

7 CFR Part 915

Marketing agreements and orders, Avocados, Florida.

7 CFR Part 944

Food grades and standards, Imports, Avocados.

1. The authority citation for 7 CFR Parts 915 and 944 continues to read as follows:

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

2. The first proposal would add a new § 915.332 reading as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.332 Florida avocado maturity regulation.

(a) No handler shall handle any variety of avocados grown in the production area unless:

(1) Any portion of the skin of the individual avocados has changed to the color normal for that fruit when mature for those varieties which normally change color to any shade of red or purple when mature, except for the Linda variety; or

(2) Such avocados meet the minimum weight or diameter requirements for the specified Monday through Sunday effective periods for each variety listed in the following Table I: *Provided,* That avocados may not be handled prior to the earliest date specified in column 2 of such table for the respective variety: *Provided further,* That up to a total of 10 percent, by count, of the individual fruit in each lot may weigh less than the minimum specified or be less than the specified diameter, except that no such avocados shall be over 2 ounces lighter than the minimum weight specified for the variety: *Provided further,* That up to double such tolerance shall be permitted for fruit in an individual container in a lot.

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Kosel	3rd Mon May	5th Sun May	16	
	1st Mon June	2nd Sun June	13	
Arue	3rd Mon May	5th Sun May	16	
	1st Mon June	1st Sun July	14	3 3/16
Donnie	4th Mon May	1st Sun June	16	3 5/16
	2nd Mon June	1st Sun July	14	3 5/16
Dr. Dupuis #2	1st Mon June	2nd Sun June	16	3 5/16
	3rd Mon June	1st Sun July	14	3 7/16
	1st Mon July	3rd Sun July	12	3 5/16
Fuchs	2nd Mon June	3rd Sun June	14	3 5/16
	4th Mon June	1st Sun July	12	3
K-5	3rd Mon June	4th Sun June	18	3 5/16
	5th Mon June	2nd Sun July	14	3 5/16
Hardee	3rd Mon June	3rd Sun June	18	3 5/16
	4th Mon June	4th Sun June	16	3 5/16
	5th Mon June	5th Sun July	14	2 13/16
West Indian Seedling [1]	4th Mon June	3rd Sun July	18	
	3rd Mon July	4th Sun Aug	16	
	4th Mon Aug	3rd Sun Sept	14	
Pollock	4th Mon June	1st Sun July	18	3 1/16
	1st Mon July	3rd Sun July	16	3 7/16
	3rd Mon July	1st Sun Aug	14	3 9/16
Simmonds	4th Mon June	1st Sun July	16	3 9/16
	1st Mon July	3rd Sun July	14	3 7/16
	3rd Mon July	1st Sun Aug	12	3 1/16
Nadir	4th Mon June	4th Sun June	14	3 5/16
	5th Mon June	1st Sun July	12	3 1/16
	1st Mon July	3rd Sun July	10	2 13/16
Gorham	1st Mon July	3rd Sun July	29	4 5/16
	3rd Mon July	3rd Sun Aug	27	4 3/16
Day	1st Mon July	3rd Sun July	14	3 5/16
	3rd Mon July	3rd Sun Aug	10	2 13/16
Reuhle	1st Mon July	2nd Sun July	18	3 1/16
	2nd Mon July	3rd Sun July	16	3 9/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
	3rd Mon July	1st Sun Aug	14	3 7/16
	1st Mon Aug	2nd Sun Aug	12	3 5/16
	2nd Mon Aug	3rd Sun Aug	10	3 3/16
Peterson	2nd Mon July	3rd Sun July	14	3 9/16
	3rd Mon July	4th Sun July	12	3 5/16
	4th Mon July	2nd Sun Aug	10	3 3/16
Biondo	2nd Mon July	3rd Sun Aug	13	
Bernecker	3rd Mon July	1st Sun Aug	18	3 9/16
	1st Mon Aug	3rd Sun Aug	16	3 5/16
	3rd Mon Aug	5th Sun Aug	14	3 1/16
232	3rd Mon July	1st Sun Aug	14	
	1st Mon Aug	3rd Sun Aug	12	
Pinelli	3rd Mon July	1st Sun Aug	18	3 13/16
	1st Mon Aug	3rd Sun Aug	16	3 11/16
Trapp	3rd Mon July	1st Sun Aug	14	3 11/16
	1st Mon Aug	3rd Sun Aug	12	3 7/16
Miguel (P)	3rd Mon July	1st Sun Aug	22	3 13/16
	1st Mon Aug	3rd Sun Aug	20	3 12/16
	3rd Mon Aug	5th Sun Aug	18	3 11/16
Nesbitt	3rd Mon July	1st Sun Aug	22	3 13/16
	1st Mon Aug	2nd Sun Aug	16	3 5/16
	2nd Mon Aug	4th Sun Aug	14	3 3/16
Beta	1st Mon Aug	2nd Sun Aug	18	3 9/16
	2nd Mon Aug	5th Sun Aug	16	3 5/16
K-9	1st Mon Aug	4th Sun Aug	16	
Tower 2	1st Mon Aug	3rd Sun Aug	14	3 5/16
	3rd Mon Aug	1st Sun Aug	12	3 1/16
Christina	1st Mon Aug	4th Sun Aug	11	2 15/16
Tonnage	1st Mon Aug	3rd Sun Aug	16	3 9/16
	3rd Mon Aug	4th Sun Aug	14	3 3/16
	4th Mon Aug	5th Sun Aug	12	3
Waldin	1st Mon Aug	3rd Sun Aug	16	3 9/16
	3rd Mon Aug	5th Sun Aug	14	3 7/16
	5th Mon Aug	2nd Sun Sept	12	3 1/16
Lisa (P)	2nd Mon Aug	3rd Sun Aug	12	3 1/16
	3rd Mon Aug	4th Sun Aug	11	3
Catalina	3rd Mon Aug	5th Sun Aug	24	
	5th Mon Aug	3rd Sun Aug	22	
Pinkerton (CP)	3rd Mon Aug	5th Sun Aug	13	
	5th Mon Aug	2nd Sun Sept	11	
	2nd Mon Sept	4th Sun Sept	9	
Fairchild	3rd Mon Aug	5th Sun Aug	16	3 11/16
	5th Mon Aug	2nd Sun Sept	14	3 7/16
	2nd Mon Sept	3rd Sun Sept	12	3 1/16
Black Prince	3rd Mon Aug	5th Sun Aug	28	4 1/16
	5th Mon Aug	2nd Sun Sept	23	3 15/16
	2nd Mon Sept	1st Sun Oct	16	3 9/16
Loretta	5th Mon Aug	2nd Sun Sept	30	4 3/16
	2nd Mon Sept	1st Sun Oct	26	3 15/16
Blair	5th Mon Aug	2nd Sun Sept	16	3 9/16
	2nd Mon Sept	1st Sun Oct	14	3 5/16
Booth 8	5th Mon Aug	3rd Sun Sept	16	3 9/16
	3rd Mon Sept	1st Sun Oct	14	3 9/16
	1st Mon Oct	3rd Sun Oct	10	3 1/16
Booth 7	5th Mon Aug	2nd Sun Sept	18	3 13/16
	2nd Mon Sept	4th Sun Sept	16	3 11/16
	4th Mon Sept	2nd Sun Oct	14	3 5/16
Booth 5	1st Mon Sept	3rd Sun Sept	14	3 5/16
	3rd Mon Sept	1st Sun Oct	12	3 1/16
Guatemalan Seedling [2]	1st Mon Sept	1st Sun Oct	15	
	1st Mon Oct	1st Sun Dec	13	
Marcus	1st Mon Sept	3rd Sun Sept	32	4 13/16
	3rd Mon Sept	1st Sun Nov	24	4 5/16
Brooks 1978	1st Mon Sept	2nd Sun Sept	12	3 3/16
	2nd Mon Sept	3rd Sun Sept	10	3 1/16
	3rd Mon Sept	2nd Sun Oct	8	2 15/16
Collinson	2nd Mon Sept	2nd Sun Oct	16	3 11/16
Rue	2nd Mon Sept	3rd Sun Sept	30	4 3/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
	3rd Mon Sept	1st Sun Oct	24	3 15/16
	1st Mon Oct	3rd Sun Oct	18	3 9/16
Hickson	2nd Mon Sept	4th Sun Sept	12	3 3/16
	4th Mon Sept	2nd Sun Oct	10	3
Simpson	3rd Mon Sept	2nd Sun Oct	16	3 9/16
Choquette	4th Mon Sept	3rd Sun Oct	28	4 4/16
	3rd Mon Oct	1st Sun Nov	24	4 1/16
	1st Mon Nov	3rd Sun Nov	20	3 15/16
Winslowson	4th Mon Sept	3rd Sun Oct	18	3 14/16
Leona	4th Mon Sept	2nd Sun Oct	18	3 10/16
Hall	4th Mon Sept	2nd Sun Oct	26	3 14/16
	2nd Mon Oct	4th Sun Oct	20	3 9/16
	4th Mon Oct	2nd Sun Nov	18	3 8/16
Herman	1st Mon Oct	3rd Sun Oct	16	3 9/16
	3rd Mon Oct	1st Sun Nov	14	3 8/16
Lula	1st Mon Oct	3rd Sun Oct	18	3 11/16
	3rd Mon Oct	1st Sun Nov	14	3 8/16
	1st Mon Nov	3rd Sun Nov	12	3 3/16
Ajax (B-7)	2nd Mon Oct	1st Sun Nov	18	3 14/16
Taylor	2nd Mon Oct	4th Sun Oct	14	3 8/16
	4th Mon Oct	2nd Sun Nov	12	3 3/16
Booth 3	2nd Mon Oct	3rd Sun Oct	16	3 8/16
	3rd Mon Oct	1st Sun Nov	14	3 8/16
Linda	1st Mon Nov	4th Sun Nov	18	3 13/16
Monroe	2nd Mon Nov	4th Sun Nov	26	4 3/16
	4th Mon Nov	1st Sun Dec	24	4 1/16
	1st Mon Dec	3rd Sun Dec	20	3 14/16
	3rd Mon Dec	1st Sun Jan	16	3 9/16
Booth 1	3rd Mon Nov	5th Sun Nov	16	3 13/16
	5th Mon Nov	2nd Sun Dec	12	3 6/16
Zio (P)	3rd Mon Nov	5th Sun Nov	12	3 1/16
	5th Mon Nov	2nd Sun Dec	10	2 14/16
Wagner	4th Mon Nov	1st Sun Dec	12	3 5/16
	1st Mon Dec	3rd Sun Dec	10	3 2/16
Brookslate	2nd Mon Dec	4th Sun Dec	18	3 13/16
	4th Mon Dec	2nd Sun Jan	14	3 8/16
	2nd Mon Jan	4th Sun Jan	12	3 5/16
	4th Mon Jan	1st Sun Feb	10	
Meya (P)	2nd Mon Dec	4th Sun Dec	13	3 3/16
	4th Mon Dec	2nd Sun Jan	11	3
Reed (CP)	2nd Mon Jan	4th Sun Jan	14	
	4th Mon Jan	1st Sun Feb	12	
	2nd Mon Feb	2nd Sun Feb	10	

[1] Avocados of the West Indian type varieties and the West Indian type seedlings not listed elsewhere in Table I.
[2] Avocados of the Guatemalan type varieties, hybrid varieties, and unidentified seedlings not listed elsewhere in Table I.

(b) The term "diameter" means the greatest dimension measured at a right angle to a straight line from the stem to the blossom end of the fruit.

3. The second proposal would add a new § 944.31 to read as follows:

PART 944—FRUITS; IMPORT REGULATIONS

§ 944.31 Avocado import maturity regulation.

(a) Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, the importation into the United States of any avocados is prohibited unless such avocados meet the requirements specified in § 915.332 Florida Avocado Maturity Regulation, for avocados grown in South Florida under M.O. 915 (7 CFR Part 915): *Provided,* That the minimum weight or diameter maturity requirements for specific time periods for various varieties of avocados specified in paragraph (a)(2) of that section shall not apply to avocados grown in countries in the southern hemisphere.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of avocados that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of avocados, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR 944.440).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any person may import up to 55 pounds of avocados exempt from the requirements specified in this section.

(e) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditoning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such lot borne by the importer.

Dated: April 17, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87-9212 Filed 4-23-87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

29 CFR Part 94

[Docket No. 87-038]

Change in Disease Status of the Netherlands Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation into the United States of pork and pork products by removing the Netherlands from the list of countries regulated because of African swine fever (ASF). We have determined that ASF has now been eradicated from the Netherlands. The effect of the adoption of this proposal would be to remove certain restrictions on the importation into the United States of pork and pork products from the Netherlands. However, the Netherlands is not included in the lists of countries declared to be free of rinderpest and foot-and-mouth disease, hog cholera, and swine vesicular disease. Therefore, even if the proposal is adopted, the restrictions imposed because of these diseases would remain in effect for the Netherlands, and pork and pork products would still have to be heat treated or cured as a condition of importation into the United States.

DATE: We will consider your comments if we receive them on or before June 23, 1987.

ADDRESSES: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-038. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Senior Staff Veterinarian, Animal Products and Byproducts of the Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations), among other things, regulate the importation of pork and pork products in order to prevent the introduction into the United States of African swine fever (referred to below as ASF). ASF is potentially the most dangerous and destructive of all communicable swine diseases. The causative virus is highly virulent and may be present in swine, pork, and pork products originating in countries where the disease exists.

Section 94.8 of the regulations restricts the importation into the United States of pork and pork products from listed countries in which ASF exists or the Administrator of the Animal and Plant Health Inspection Service has reason to believe the disease exists. These restrictions are designed to ensure that the pork or pork products are cooked or heated sufficiently to destroy organisms capable of spreading ASF.

On April 1, 1986, the Department was notified by the International Office of Epizootics that an outbreak of ASF had been diagnosed in swine in the Netherlands. The Netherlands was added on April 8, 1986 (51 FR 11902-11903, Docket No. 86-038), to the list of countries regulated because of ASF. The Government of the Netherlands immediately began an eradication program, which included slaughter of swine confirmed or suspected of having ASF, and cleaning and disinfecting the farms and buildings housing the swine. Based on surveys, we have determined that the last case of ASF in the Netherlands was diagnosed April 1, 1986.

The Department recently received a request from the Government of the Netherlands that the regulations be amended by removing the Netherlands from the list of countries regulated because of ASF. Based on information furnished by the Netherlands and a review of their eradication and reporting methods, the Administrator has determined that there is no reason to believe that ASF exists in the Netherlands. Therefore, we propose to remove the Netherlands from the list of countries in which ASF exists or is reasonably believed to exist.

Effect of Adoption of This Proposal

The regulations in § 94.8 currently restrict the importation into the United States of pork and pork products from countries in which ASF exists or countries in which the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, has reason to believe ASF exists.

If the proposal were adopted, pork or pork products from the Netherlands would no longer be subject to the restrictions in § 94.8. Section 94.8 requires, among other things, that the processing establishment obtain all pork or pork products from countries recognized by the Department as free of ASF. However, the importation into the United States of pork and pork products derived from swine of the Netherlands origin would remain subject to the provisions in Part 94 imposed because of rinderpest and foot-and-mouth disease, hog cholera, and swine vesicular disease. These provisions, among other things, require that pork or pork products from the Netherlands be heat treated or cured as a condition of importation.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than § 100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

In the year prior to the 1986 outbreak of ASF, less than nine-tenths of one percent of the pork and pork products imported into the United States came

from the Netherlands. We therefore anticipate that insignificant quantities of pork and pork products would be imported into the United States from the Netherlands as a result of the adoption of this proposal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 9 CFR Part 94

African swine fever, Animal disease, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, it is proposed to amend 9 CFR Part 94 as follows:

1. The authority citation for Part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111 114a, 134a, 134b, 134c, 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.8 [Amended]

2. The introductory paragraph in § 94.8 would be amended by removing "Netherlands."

Done at Washington, DC, this 21st day of April, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-9286 Filed 4-23-87; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Farm Credit System Capital Corporation; Funding

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration Board (Board) proposes to adopt amendments to its regulation 12 CFR 611.1142(h) governing the funding activities of the Farm Credit System Capital Corporation (Corporation or Capital Corporation). The Corporation was chartered by the Farm Credit Administration (FCA) on February 24, 1986, pursuant to section 4.28A of the Farm Credit Act of 1971 (Act), as amended by the Farm Credit Amendments Act of 1985 (1985 Amendments).

The June 12, 1986 regulations relate to the funding activities of the Corporation. They establish the criteria pursuant to which the Corporation may assess Farm Credit System (System) institutions and require System institutions to purchase the Corporation's capital stock and debt obligations. Funds obtained from such assessments and required purchases are used by the Corporation to purchase assets and provide financial assistance to System institutions expriencing financial difficulties. The proposed amendments repond to comments received by the FCA during the public comment period provided following publication of the final regulation.

DATE: Written comments must be received on or before May 25, 1987.

ADDRESS: Submit comments in writing to Frederick R. Medero, 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: Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: On June 12, 1986, the FCA published final regulations implementing the provisions of the 1985 Amendments governing the funding activities of the Corporation (51 FR 21332). The regulations establish criteria and limitations under which the Corporation may assess System institutions to pay the Corporation's operating expenses and require System institutions to purchase the Corporation's capital stock and debt obligations (collectively termed "obligations"). Funds obtained from the sale of those obligations are used by the Corporation to provide direct financial assistance to System institutions experiencing financial difficulties and to purchase eligible loans and acquired properties from System institutions. The regulations implement express statutory provisions which require that the System commit its available capital and reserves before it may be in a position to receive Federal assistance.

The regulations were effective upon publication and the public was given until August 18, 1986, to provide the agency with their views and comments. Comments were received from two System borrowers, 44 System associations, nine district banks, the Central Bank for Cooperatives (CBC), Touche Ross on behalf of the Farm Credit banks and associations in the Springfield District and the Farm Credit Banks of Texas, the Farm Credit Corporation of America (FCCA) on behalf of the 37 banks of the System, 32 Congressmen, 8 Senators, and 6 cooperatives. Some of the responses also included comments on the proposed capital adequacy regulations which were published on July 23, 1986 (51 FR 26402). The Board is considering the comments on the proposed capital adequacy regulations separately and will be addressing those comments in the near future.

The Board carefully analyzed and considered each comment and responds to the comments on the basis of a thorough consideration of the merits of the positions expressed therein. Based on those comments the Board proposes to adopt amendments to the regulations and is soliciting public comments on those amendments.

The responses to the comments are divided into two sections: (I) General Comments; and (II) Comments on Specific Sections and Reponses to Recommended Amendments.

I. General Comments

Use of Emergency Rulemaking

The Texas and Springfield banks and Springfield District associations, in a collective response, (hereafter referred to as Texas and Springfield commenters) stated that the FCA should have published proposed regulations and provided a public comment period prior to issuing final regulations. They claimed that the use of emergency rulemaking authority in issuing the assessment regulation in final form was unwarranted.

The Board disagrees that the use of emergency rulemaking authority in this case was unjustified. Section 553(b)(B) of the Administrative Procedures Act (APA) provides that notice and comment may be waived "when an agency for good cause finds (and incorporates the finding in a brief statement of reasons therefor in the

rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). In addition, section 553(b)(3) provides that an agency may waive the 30-day delayed effective date requirement of that section upon a "good cause" finding published with the rule. 5 U.S.C. 553(d)(3). The FCA made such findings upon its promulgation of the final regulations, and, in addition, ensured that the public would have an opportunity for comment by providing a post-effective date comment period.

The reasons for the FCA's waiver of public procedures prior to the effective date of the regulations are set forth in the Supplementary Information to the final rule published on June 12, 1986 (51 FR 21332). As discussed in detail below, the agency has considered all of the comments and, where appropriate, has proposed amendments to the regulations in reponse to those comments.

The need for regulations with an immediate effective date has been reinforced by events occurring subsequent to publication of the final regulations. When the final regulations were published the FCA was aware that during 1986 it would be necessary for significant amounts of money to be transferred between System institutions in different districts and that those transfers could occur either under the new regulations or under the existing mechanisms. Until the Capital Corporation could begin assessments, the only method for distributing System resources between institutions in different districts were the bank capital preservation agreements. It was recognized by the Congress and the FCA, and reiterated in many of the comments on these regulations, that the capital preservation agreements have serious deficiencies which can cause an inequitable sharing of the burden between institutions. Because the System's condition continued to deteriorate and future transfers of funds were inevitable, the FCA believed it was in the best interest of the System and the public to implement the regulations as quickly as possible in order to provide an equitable alternative to the capital preservation agreements.

The regulations were published in June; however, the assessment process was delayed by startup difficulties in the Capital Corporation and, subsequently, by lawsuits challenging the 1985 Amendments, the regulations, and assessments made thereunder. The need for intra-System transfers of resources did not abate. During the period following issuance of the regulations, $857 million was transferred between institutions under the capital preservation agreements. Due to the inequities in the capital preservation agreements some institutions that contributed earlier in the year were reduced to the point of requiring assistance later in the year. These events confirm the FCA's initial determination that the immediate need for a more equitable alternative to the capital preservation agreements warranted the issuance of final regulations on a expedited basis.

Capital Preservation Agreements

The Texas and Springfield commenters stated that the regulations should provide that the funding actions of the Capital Corporation supersede the existing capital preservation agreements. Four associations from Texas stated their support for the startup of the Capital Corporation as a preferable alternative to the "devastating effects of the Capital Preservation Agreements." All of these commenters reiterated that the capital preservation agreements are not designed to equitably deal with the current situation facing the System.

The Board agrees that the Capital Corporation assessment regulations provide a more effective, equitable, and timely mechanism for System self-help than the capital preservation agreements. When the Capital Corporation is able to function in accordance with these regulations it is anticipated that there will be no further need for funds transfers under the agreements.

Implementation of Criteria in the 1985 Amendments

The FCCA, in a general comment, stated that the regulations, as currently written, are vulnerable to serious challenge and should be revised to comply with statutory direction given to FCA in section 4.28G of the 1985 Amendments (12 U.S.C. 2216f). (FCCA's specific comments and recommendations are addressed below.)

The Board disagrees with the FCCA's suggestion that the regulations as currently written do not comply with statutory direction given in the 1985 Amendments. As discussed in greater detail with regard to each section, the Board believes that the FCCA's position is based in large part on a misunderstanding of this structure and requirements of the regulations. The regulations incorporate the statutory criteria established by Congress, place necessary limitations on Capital Corporation action, and accomplish the congressional goal of using the System's own resources to save the System, prior to the possible use of taxpayer funds.

In response to very serious problems in the farm economy, Congress enacted the 1985 Amendments to provide a mechanism that would enable the System to marshal its resources to prevent further financial deterioration and possible System collapse. The 1985 Amendments required the FCA to charter the Capital Corporation which was empowered to require the financially stronger System institutions to provide assistance to institutions experiencing financial difficulties. The legislation directed the FCA to promulgate implementing regulations governing the funding activities of the Capital Corporation consistent with the general objective embodied in the statute. The regulations issued in June implement the statutory directives of the Congress and provide the type of objective criteria that are necessary in order for the Capital Corporation to have a clear and quantifiable basis to carry out its statutory responsibilities.

While the Board reaffirms the essential direction and framework of the regulations, in response to many of the comments received, the Board has adopted several proposed amendments which correct certain provisions that are subject to misinterpretation, more clearly reflect the position of the Board, and adjust certain criteria to reflect the current operating environment of the System.

Due Process

An interregional farm cooperative that is a stockholder of the St. Louis Bank for Cooperatives (BC) stated that the funding process should provide a means by which System institutions can discuss their individual circumstances with the Capital Corporation before they become obligated to commit funds. They contend that the regulations do not establish a mechanism for System institutions to demonstrate that unsafe or unsound practices would occur if it was required to provide funds in accordance with the regulations. They stated that System institutions and their borrowers are deprived of due process if the FCA fails to establish a method of communication through which System institutions can disagree with, or obtain relief from, the applicable zone classifications.

In response to these comments the Board notes that the regulations contain provisions which ensure that each institution is adequately protected during the assessment process. First, each institution's unallocated retained earnings percentage (UREP) and zone

classification are based on financial information produced and certified to by the institution. The FCA retains the authority to make adjustments to those figures if they were not prepared in accordance with Generally Accepted Accounting Principles (GAAP), if an institution has unrecorded assets, or if an institution has diverted resources to avoid assessments. The FCA must provide for such adjustments in order to protect the interests of other institutions whose assessments would be increased if diversions were to occur. As discussed in greater detail below with regard to § 611.1142(h)(5), the Board has adopted proposed amendments to this provision which will clarify the scope and breadth of the FCA's authority in this area.

In addition, the Corporation's guidelines for apportioning assessments and required purchases currently provide that each System institution will be advised of its right to make a submission regarding the impact on its financial condition of an assessment or purchase within 10 days after the notice of such action is received. As discussed in greater detail below in response to specific comments on § 611.1142(h)(2), the Board believes that the current regulation together with the procedures adopted by the Capital Corporation, provide assurances to institutions that the assessment process will be carried out in accordance with the regulation and that procedures exist to correct errors that may occur.

While the Capital Corporation developed procedures on its own initiative, the Board believes the regulation should be amended to ensure that procedures remain in place and are expanded to ensure that institutions have an adequate time to respond to notices. Accordingly, the Board adopted a proposed amendment which requires the Capital Corporation to develop procedures which will permit an institution to request the Corporation to reconsider its notice of assessment on the ground that such notice is not in accordance with the provisions of these regulations. The procedures should set forth the circumstances under which an institution can request an extension of the period to respond to the notice and the circumstance under which an institution can delay compliance with the notice pending a final decision by the Capital Corporation.

Finally, the Board does not believe there is any merit to the "safety and soundness" concern that was expressed. The FCA is the sole Federal agency with responsibility for enforcing "safety and soundness'" criteria on System institutions. The FCA cannot proceed against an institution for conduct that is specifically provided for by FCA regulations. Additionally, the proposed capital adequacy regulations recognize the impact of assessments on capital levels and provide an adjustment to capital, for regulatory purposes, which takes into account financial assistance provided to the Capital Corporation (51 FR 26402).

Effect of Prior Assistance

The FCCA stated that the regulations do not comply with section 4.28G(a)(15)(B)(i)(III) of the Act, which requires that the regulations take into account "the effect on lending rates of financial assistance already provided to other System institutions" (12 U.S.C. 2216f(a)(15)(B)(i)(III). Similarly, a Texas association stated that the regulations do not consider assistance already provided under the System capital preservation agreements.

At the outset, it must be noted that there is a difference between subclauses (II) and (III) of section 4.28G(a)(15)(B)(i) of the Act. The first requires the FCA to establish regulations which include criteria which will take into consideration all effects, including the effect on interest rates, of financial assistance provided to the institutions of the System through the Capital Corporation. Subclause (III), which is commented on here, requires the regulations to take into consideration and include criteria relating to the effect on interest rates of financial assistance which had already been provided by an institution to other institutions. Since subclause (II) deals with all effects, including the effect on interest rates of financial assistance provided under the Act, in order for subclause (III) to have any meaning, it must relate to some other form of financial assistance and its potential effect on interest rates.

When the 1985 Amendments were enacted, it was expected that the Capital Corporation would be the sole mechanism under which all future System financial assistance would be provided. The need for this type of mechanism was highlighted by deficiencies in the capital preservation agreements and the predecessor Capital Corporation, which were existing mechanisms under which financial assistance could be provided at that time (H.R. Rep. 425, 99th Cong., 1st Sess., pp. 13, 17). While those deficiencies were recognized, Congress was aware that one or both of those mechanisms had previously been used to provide assistance. Subclause (III) reflects Congress' determination that the Capital Corporation, in making assessments, should take into consideration, to the extent appropriate, the effect on each individual institution's interest rates of the financial assistance which that institution had previously provided. Since there had never been any payments under the bank capital preservation agreements prior to 1986, the practical impact of this provision relates to the funds which had been provided by certain System banks, through the predecessor Capital Corporation, to assist the Spokane and Omaha Farm Credit Districts in 1985.

The fact that the provisions of subclauses (II) and (III) are intended for different purposes is highlighted by their separation in the statute under two separate provisions. Subclause (II) is designed to ensure consideration of the reduction in an institution's financial resources during the assessment process, while subclause (III) was designed to compensate for increases in interest rates that may have been caused by prior financial assistance. The distinction between these two provisions is supported by the limited legislative history relating to this section which provides that the Corporation shall take into account "factors including the effect these transfers would have on loan interest rates that contributing units charge their borrowers *and* the effect of financial *aid that has already been provided* by some System units to weaker parts of the system." (Emphasis added). H.R. Rep. No. 425, 99th Cong., 1st Sess. 2 (1985).

The regulations did not include a provision relating to subclause (III) because institutions did not raise rates as a result of making contributions prior to enactment of the 1985 Amendments. Prior to enactment of the 1985 Amendments, the System banks, through the predecessor Capital Corporation, provided, or approved the provision of, financial assistance to Federal intermediate credit banks (FICBs) in the Omaha and Spokane districts. The transactions were structured such that the predecessor Capital Corporation purchased nonaccrual loans and acquired properties from weakened institutions and sold participations in those assets to contributing banks. The Spokane FICB received assistance during the second quarter of 1985. Terms of the Omaha FICB assistance program were approved in 1985, however, the assistance was not actually provided until 1986. Therefore, payments under the Omaha FICB assistance program did not precede passage of the 1985 Amendments.

None of the commenters stated that their contributions under the special assistance programs had any specific effect on the loan rates they charged their borrowers. The FCA had reached the same conclusion, prior to publication of the final regulations, based on its review of loan pricing by System institutions. However, in light of the comments regarding this section, the FCA determined that it was necessary to do a more detailed and exhaustive analysis of the impact of the Spokane special assistance program to determine if such assistance had any effect on the interest rates of contributing institutions. (Analysis of the potential impact of the Omaha assistance program is discussed later in connection with the analysis of all assistance provided in 1986.)

The FCA evaluated the effect of prior assistance in two ways. First, the FCA examined each bank's maximum reported interest rate during the two quarters immediately following the provision of financial assistance to the Spokane FICB to determine if any institution increased its loan interest rate at any time during the 6-month period preceding passage of the 1985 Amendments. The FCA found that of the 35 banks that had assisted the Spokane FICB, only two banks, the Federal Land Banks (FLBs) of Omaha and Jackson, increased loan rates at any time in the 6 months following implementation of the Spokane assistance program and preceding the 1985 Amendments. The Jackson FLB increased its loan rate by ½ percent on July 1, 1985. The Omaha FLB increased its loan rate by ¾ percent during the third quarter of 1985, but subsequently reversed this increase during the first two quarters of 1986. Of the remaining banks, 19 reduced their interest rates and 14 banks did not change their loan rates during this period.

It is clear that the loan rate increases in the Jackson and Omaha FLBs resulted from severe financial difficulties experienced by the banks and not from assisting the Spokane FICB. The Omaha FLB impaired its capital stock at yearend 1985 and has received $410.7 million of assistance from other Federal land banks under the System's capital preservation agreements. The Jackson FLB impaired its capital stock during the second quarter of 1986 and, to date, has received $138.9 million of financial assistance from other banks.

Even if there had been an interest rate effect, that effect could not have been reflected in the regulation because the Omaha and Jackson FLBs were not potential contributors to the Capital Corporation at the time the regulations were promulgated. Rather, both institutions had impaired stock and thus were eligible to receive financial assistance from the Capital Corporation. If they had not been impaired they would have been classified in Zone D. As such they could not have been assessed while there were any institutions classified in Zone C or higher, and any assessment could have only occurred after a case-by-case determination of the effects on each of them.

A second analytical approach used by the FCA involved examination of the net operating margin of System banks over the 6-month period following the Spokane assistance package to determine if other factors, such as lower borrowing costs, explained the bank's interest actions during this period. Net operating margin refers to the interest income an institution earns on its loans and other assets minus the sum of: (1) The interest expense it pays on its own debt obligations; (2) the institution's operating expenses; and (3) its provisions for loan losses. This value is divided by the dollar amount of earning assets held by the institution to determine the percentage yield the institution earns from its operations. Net operating margin excludes items such as the payment of financial assistance and other nonrecurrent expenses that are not directly related to an institution's operations.

A positive net operating margin indicates an institution has generated positive income during the period from its operations, while a negative value indicates the institution has incurred a loss. If an institution's net operating margin increases over time, it has either increased its loan rates, reduced its operating expenses and other expenses, or paid a lower interest rate on its own debt obligations. The reverse holds when the net operating margin declines over time.

This analytical approach was used to determine if, during the 6-month period between adoption of the Spokane assistance package and passage of the 1985 Amendments, System banks increased interest rates or reduced expenses to provide assistance to the Spokane FLB; or, if contributing institutions simply reduced their URE and absorbed the cost. An increasing net operating margin that is achieved by increasing loan interest rates may indicate the institution has purposely generated additional income to pay the cost of assistance or to rebuild its URE. A declining net operating margin that is caused either by a reduction in loan interest rates or no change in rates indicates the institution has not attempted to generate additional income.

Only 3 of the 35 banks that provided assistance to the Spokane FICB had an increasing net operating margin during the two consecutive quarters preceding passage of the 1985 Amendments. However, none of the three banks increased their margin by increasing their loan rate. Seventeen banks had declining margins in the two quarters subsequent to providing assistance to the Spokane FICB. The net operating margin was lower in six of these banks due to loan rate reductions which reduced interest income. Two FLBs increased loan rates but still experienced a declining net interest margin. These two banks subsequently required financial assistance from other banks.

The FCA concluded based upon this analysis that there is no evidence which indicates that financial assistance provided prior to the 1985 Amendments had an impact on the interest rates charged by contributing institutions. There are a number of reasons for this result. First, a relatively small amount of assistance was provided to the Spokane FICB. Second, the assistance was in the form of a purchase of nonaccrual loans and acquired properties from the Spokane FICB rather than as cash contributions. Therefore, the interest expense incurred in holding the nonearning loans while they were being restructured or liquidated, and the chargeoffs recorded in the liquidation process, were the actual costs incurred. These costs were relatively small, were borne by a large number of institutions, and were spread over a lengthy time period. Thus, there was no need for these effects to be explicitly considered in the assessment regulation.

While the FCA could identify no effect that would provide a basis for a regulatory provision, if an individual institution believes that its loan rates were affected as a result of assistance provided prior to passage of the 1985 Amendments it should submit documentation supporting that conclusion in connection with its responses to the proposed amendments. The FCA will review those materials and adjust the regulation or provide specific supplementary direction to the Capital Corporation, as appropriate.

While there were no effects on interest rates, the prior financial contributions *were* taken into account in developing the zones upon which Corporation assessments are based. Any reduction in an institution's UREP as a result of prior assistance was taken

into account by the zone determinations, which link an institutions capacity to absorb the losses of an assessment to its current UREP. In addition, each institution's level of adjusted loanable funds reflects the noninterest-bearing loans it may have purchased from, or other forms of financial assistance that it may have previously provided to, other System institutions.

With regard to the comment by the Texas association, this statutory provision does not relate to effects on interest rates of assistance provided subsequent to passage of the 1985 Amendments; such effects are included under subclause II. However, as discussed above, other provisions in the regulations do consider all subsequent effects on an ongoing basis since each subsequent assessment will cause a reduction in an institution's UREP which will, in turn, delay and/or reduce the occurrence of a future assessment. As discussed below and with regard to the comments on § 611.1142(h)(6)(i), the Board determined that institutions with certain levels of URE have the resources to pay assessments or purchase obligations without raising their rates and therefore there is no requirement for the Capital Corporation to make a case-by-case determination of interest rate effects with regard to those institutions.

This determination by the Board has been confirmed by an analysis of possible interest rate effects on institutions as a result of transfers of funds under the capital preservation agreements during 1986. The loan rates charged by System banks were analyzed using monthly data reported by the banks to determine if any banks increased loan rates after providing financial assistance under the assistance agreements. Rate changes made after June 1, 1985, were examined to determine if assistance provided under the three assistance programs required any bank to increase its loan rate. Thirty-one banks (7 FLBs, 12 FICBs, 12 BCs) reduced their loan rates after June 1, 1985. The average rate reduction was: 86 basis points for FLBs; 187 basis points for FICBs; and 181 basis points for BCs. The loan rate in four FLBs did not change during this period. The Jackson FLB was the only System bank to increase its loan rate during the period. However, as discussed earlier this increase was not the result of providing assistance to other banks.

Loan rate changes were also examined after January 1, 1986, since the bulk of assistance to troubled banks was provided under the capital preservation agreements between December 1985 and September 1986. No System bank increased its loan rate after January 1, 1986, even though nearly $1.1 billion of financial assistance was provided to troubled banks during this period. Thirty banks decreased their loan rate during this period. The average reduction in the 6 FLBs that lowered rates was 92 basis points. Each of the 12 FICBs and 12 BCs reduced rates by an average of 155 basis points and 141 basis points, respectively. Six FLBs did not change their loan rate during the period examined. However, at yearend 1986, five of the six land banks had impaired borrower-invested capital stock.

Correlation analysis was used to determine if a statistically significant relationship exists between the loan rate an institution charged and the amount of financial assistance it contributed to other System institutions. Individual statistical tests were run on each bank group. Each institution's effective loan rate, defined as the institution's interest income divided by the average volume of accruing loans outstanding, was calculated on a quarterly basis. This computation considers the effects of differential loan rate programs recently introduced by many banks. Under these programs, a borrower's loan rate is based on the relative credit risk of the loan and other related factors. As a result, a number of different loan rates may be offered by the same bank.

A statistically significant inverse relationship was found between effective interest rates charged by FLBs and contributions made to other banks. This means that as FLBs contributed assistance they simultaneously reduced their effective loan rates. Thus, provisions of assistance not only did not cause FLB loan rates to increase but did not preclude rates from declining. No significant statistical relationship was found between the effective rates charged by FICBs and BCs and the amount of assistance they provided to other banks. This finding indicates assistance provided in 1985 and 1986 did not impact the loan rates charged by these groups.

This finding strongly indicates that financial assistance provided to other banks is funded by means other than increasing loan interest rates. This conclusion was further explored by computing the correlation coefficient between unallocated retained earnings and assistance provided to other banks. A *highly* significant inverse relationship was found in each bank group. This means, that as the amount of assistance provided by banks increased, regardless whether the bank was a FLB, FICB or BC, the bank reduced its level of URE. Statistically, this was the strongest relationship discovered. The significant inverse relationship between contributions and reductions in URE, together with the insignificant relationship between effective loan rates and contributions, indicates that the banks funded their payments of assistance by reducing their URE and that such assistance had no impact on the institution's loan rate.

Separate Rules for CBC

The CBC suggested that FCA should consider allowing the Capital Corporation to establish separate rules for the CBC because it is a unique entity that is effectively controlled by district banks.

The Board does not concur with the suggestion that the CBC should receive different treatment than that of any other bank in the System. Each type of System institution has operating characteristics that are unique to that type of institution. The regulations take those into consideration by incorporating different UREP for each type of institution that reflect the differences in their operating environments. Beyond that, the CBC did not identify and the Board is not aware of any individualized characteristics of the CBC that warrant its exclusion from the regulatory criteria.

Repayment of Assessed Funds and Obligation Purchases

A group of cooperatives responding collectively stated that the regulations do not provide for the repayment of assessed funds, as required by the 1985 Amendments. They recommended that the FCA amend the regulations to specify the circumstances under which the Corporation would repay contributing institutions, and set forth procedures providing for the distribution of the Corporation's surpluses.

The matter raised by these commenters is not the subject of these regulations, since these regulations relate only to the funding activities of the Corporation. Rather, those concerns relate to the Capital Corporation's general powers and are provided for in 12 CFR 611.1140–1142 (51 FR 8665). As a general matter it should be noted that the rights of redemption and retirement of Capital Corporation equities are set forth in the bylaws of the Capital Corporation. With regard to the interest rates and repayment rights on debt obligations, those matters will be specified in the debt obligations used by the Capital Corporation.

To the extent this comment relates to the distribution of assets upon

liquidation of the Capital Corporation, all holders of debt and equity are creditors or shareholders of the Capital Corporation, and, upon its liquidation, are entitled to receive the proceeds from the sale of its assets in accordance with the priorities established for the distribution of assets of institutions in liquidation. See 12 CFR Part 611, Subparts K and M.

II. Comments on Specific Sections and Responses to Recommended Amendments

Section 611.1142(h)(1)(i)–(ix) Definitions.

This section contains definitions of accounting and technical terms used in the paragraph.

The FCCA suggested that the term "adjusted loanable funds" needs to be clarified. It inquired whether the term "book value," as used in that definition, means the amount of the loan (or the value of acquired property) net of any chargeoffs already taken with respect to the property, or such value net of any reserve allowance with respect to the property, or both? The Texas and Springfield commenters, while objecting to the use of this criteria in the regulation, stated that if an adjustment to loanable funds is made it should be based on 50 percent, rather than 80 percent, of the book value. They asserted that a 50-percent adjustment would more properly reflect past operating history.

The Board reviewed the operating history of asset purchases by the Capital Corporation. The facts revealed that the amount of the writedown taken on assets varied depending on the accuracy with which each institution valued the assets on its books. The differences were especially evident as institution's began to revalue their assets, take appropriate chargeoffs, and make appropriate allowance to reflect the requirements of GAAP. Based on this review the Board determined that the adjustment mechanism would be more uniformly accurate if it were tied directly to the purchase price definition used by the Capital Corporation when it actually purchases assets. Accordingly, the Board has adopted a proposed amendment that defines "book value" to mean fair market value determined in accordance with GAAP, which is the value at which the Capital Corporation is required to purchase assets in accordance with 12 CFR 611.1142(1)(4).

There are several methods the Capital Corporation can use in implementing this requirement. It could make a case-by-case analysis of the portfolio of each institution; however, in most instances this would probably be impractical. Alternatively, it could make the adjustment based on the book value of the assets, which reflects the chargeoffs that have been taken against each asset, and in addition, subtract from such value any specific allowance provided for with respect to the asset or any general allowance which has been provided for a class of eligible assets. It could also make the adjustment on the basis of a combination of the two approaches based on a testing of the accuracy of an institution's allowance.

The proposed amendment would also eliminate the limitation relating to adjustments that could cause imputed reductions in URE below the level for Zone C institutions. The elimination of the 80-percent imputed sale requirement and the substitution of the GAAP fair market value provision eliminate the need for this safety valve provision because each institution's URE has already been reduced by the amount of its chargeoffs on loans and its allowance for loan losses.

The FCCA also posed a question relating to the 20-percent imputed loss on the sale of assets to the Capital Corporation. The FCCA inquired whether such imputed loss should be treated as a charge to earnings. In that regard, the FCCA observed that the loss on a sale of a loan would typically be recorded as a charge against the institution's allowance for losses and that the effect of such action on the institution's UREP would depend on whether the institution replenished the allowance by the amount of the chargeoff.

In response to this comment, the Board notes that the adjustment is only made for the purpose of obtaining a more accurate measure of the institution's ability to provide assistance to other institutions. Since it only involves an adjustment to a viability measure and not a balance sheet item it will have no impact on the institution's balance sheet or income statement.

The Board also adopted proposed technical amendments that eliminate the references to specific account numbers throughout the definitions. The chart of accounts is now maintained by the FCCA, not the FCA, and there is no necessity for continuing their reference in the regulation.

Section 611.1142(h)(2) Notice of assessment and issuance of obligations

This section requires the Corporation to provide a written notice to each System institution that is assessed or required to purchase the Corporation's obligations. The notification must describe the nature of the funding transaction and also provide transfer instructions and accounting information. Each institution receiving a notification is required to pay the assessment or purchase the obligations not later than 10 days after the date of the notification and in the manner directed by the Corporation.

The FCCA commented that the 10-day notice of assessments is too short. They suggest that the Corporation should make quarterly notices to institutions. A group of cooperatives suggested that the notification requirements should be modified to require the Corporation to justify its decision to assess a particular institution, and to permit institutions to obtain extensions of the 10-day response deadline upon a showing of "good cause." They further suggested that the notice should contain an explanation of why that particular institution is being assessed or asked to purchase Corporation obligations.

The Board recognizes the appropriateness of adequate procedures to ensure that assessments are made in accordance with the regulations and that institutions have sufficient opportunity to communicate their concerns to the Capital Corporation. Currently, the Capital Corporation is administering the assessment process in a manner that is responsive, in large part, to the comments made on this regulation. The Capital Corporation sends institutions a preliminary notice of "assessment or required purchase" (ARP) and provides each institution with a period of 10 days to present documentation which the institution believes would justify a change in the assessment. Following the 10-day period, the Capital Corporation sends institutions a final ARP notice, which includes any relevant changes. Thereafter, institutions have 14 days to remit proceeds following receipt of the final notice. In its last round of assessments and required purchases 12 institutions requested changes following receipt of the preliminary notice. Based on its reconsideration of those requests, the Capital Corporation reduced the assessments of 10 institutions and canceled the assessments of the remaining 2 institutions.

These procedures of the Capital Corporation appear to be adequate for the most part, however the Board believes there should be a provision allowing for extensions in the response time of institutions. Even though procedures are in place, the Board determined that the regulation should be amended to specifically direct the implementation of such procedures and give a general outline of their contents.

Accordingly, the Board adopted a proposed amendment that specifically directs the Capital Corporation to develops procedures that will (1) permit an institution to request the reconsideration of a notice of assessment; (2) authorize the institution to request an extension in the response time on a notice; and (3) permit an institution to delay compliance with the notice pending a final determination by the Capital Corporation.

In adopting the proposed amendment, the Board is mindful that, in most instances, the 10-day response time should be adequate, given the severe financial crisis currently facing the System and the need for the Capital Corporation to respond quickly to requests for financial assistance from seriously weakened institutions. The contributing institutions will have already had input into funding decisions because those decisions are based, in large part, on the UREP and zone classification that were derived from information provided by each institution being assessed. Since the Corporation is not supposed to maintain large cash reserves, if it is unduly delayed in receiving funds from contributing institutions, it may be unable to provide assistance to financially troubled institutions in a timely manner.

For these reasons, the response time must be kept as short as possible. The procedures must minimize the potential for frivolous requests for extensions and reviews if the Capital Corporation is to be in a position to respond in a timely and orderly fashion to requests for assistance. Otherwise, the Capital Corporation will have to begin maintaining large reserves and/or increase the anticipated time between an assessment and the distribution of assistance. While no specific timetables are included in the regulation, the Board will consider any recommendations received during the comment period regarding such timetables.

Section 611.1142(h)(3) Assessment for operating expenses

This section requires that assessments be used only to cover the Corporation's operating expenses, excluding interest expense. It defines operating expenses as all expenses incurred in the routine operation of the institution, including salaries, benefits, cost of space occupied, and all other business expenses included in an operating budget approved by the Corporation's board of directors.

A group of cooperatives expressed support for this definition and particularly for the exclusion from its coverage of expenses associated with the payment of direct financial assistance to eligible System institutions, purchases of eligible loans and acquired property, and interest expenses. The Board concurs, and reiterates its conviction that the payment of direct financial assistance to eligible System institutions, purchases of Corporation obligations, and interest expenses are best accomplished through required purchases of Corporation obligations. (See § 611.1142(h)(4)).

Section 611.1142(h)(5) Adjustment of capital zones and UREP

This section establishes the circumstances in which the FCA may adjust an institution's UREP for purposes of determining its ability to pay assessments or purchase obligations. For example, when the FCA determines that an institution's allowance for loan losses is not maintained in accordance with GAAP, the amount in the allowance that exceeds the amount required by GAAP will be included in the institution's UREP for assessment purposes.

The Texas and Springfield commenters objected to these adjustment provisions on the grounds that they authorize the FCA to adjust the calculation of an institution's UREP, which should have already been determined in accordance with GAAP. Touche Ross, on behalf of the Texas and Springfield commenters, stated that the criteria for adjustments in UREP are highly subjective and vague, and should be clarified. Similarly, the FCCA recommended that the regulation include a description of the types of transactions which the FCA believes would fall within the scope of this provision.

The CBC expressed concern that if the FCA adjusts an institution's allowance for loan losses this could cause the Internal Revenue Service to question the appropriateness of the institution's allowance, and could potentially create adverse tax consequences. In addition, the CBC stated that paragraphs (ii), (iii), and (iv) give the FCA too much discretion and should be more clearly defined or eliminated.

In a similar comment, the Columbia banks stated that paragraphs (iii) and (iv) give the FCA too much latitude and recommended the use of GAAP as the standard.

Taking the contrary position, a group of cooperatives stated that they support the approach taken in the regulations for determining an institution's ability to pay based on its UREP, and authorizing the FCA to increase an institution's UREP to take into account hidden financial resources.

The Board is mindful of the concerns expressed regarding this provision but believes they reflect, in large part, a misreading of the regulation. Generally, this section does not authorize the FCA to make adjustments that would be inconsistent with the requirements of GAAP. On the contrary, one of the principal purposes of this provision is to ensure that the financial information submitted to the Capital Corporation by institutions regarding their URE and other relevant matters is determined in accordance with GAAP. As one of the commenters noted, it is important that the FCA be able to prevent an institution from sequestering its resources by failing to avail itself of opportunities that could improve its financial condition and also enable it to increase the amount of assistance it could provide to sister institutions for the benefit of the entire System. If a System institution were permitted to take such actions, the Capital Corporation would have to increase assessments from other institutions or be prevented from providing financial assistance to an institution that is impaired.

While the principal focus of this regulation, particularly paragraph (h)(5)(i), is to ensure that institutions comply with GAAP, there are some circumstances in which the application of GAAP would conflict with the requirement of the 1985 Amendments that assessments be based, in part, on each institution's ability to pay. Under certain circumstances an institution's financial strength and ability to pay are not accurately measured under GAAP. For instance, when an institution owns mineral interests, GAAP only requires the institution to value those assets on the basis of their acquisition costs. If there are no identified acquisition costs, they are not reflected on the institution's books. In most instances the mineral interests owned by System institutions are carried at negligible values or are not reflected on their financial statements. Under GAAP, those assets do not have to be valued at their fair market value until they are actually sold.

This regulation recognizes that if an institution has the capacity to sell an asset and improve its net worth, that institution has a greater capacity to provide assistance than an institution which has the same net worth but does not have the same marketable asset.

Therefore, paragraph (h)(5)(iii) authorizes the FCA to adjust an institutions URE to reflect the income it could generate by selling its marketable assets. This type of adjustment is

necessary in order to avoid prejudicing other contributing institutions and to carry out the provisions and intent of the 1985 Amendments.

In response to the comments received the Board is proposing an amendment that would clarify paragraph (h)(5)(ii). The current regulation provides that an adjustment may be based on the FCA's determination that an institution has "diverted unallocated retained earnings without substantial economic benefit to the institution." The proposed amendment to this paragraph would provide that an adjustment would only be made if the institution has diverted URE "in violation of a Farm Credit Administration regulation or capital directive." This amendment addresses the concerns of the commenters since the adjustment will be based on specific requirements of which the institution will have notice. Additionally, the Board adopted a proposed amendment that would delete paragraph (h)(5)(iv), which provides for an adjustment based on an institution entering into "transactions which elevate form over substance." The Board agrees that this provision is too subjective, and believes that the issues with which this provision was designed to deal are adequately addressed by the other criteria.

Section 611.1142(h)(6) Funding Criteria (Generally)

The Act requires that the assessment regulations (1) Provide for an equitable sharing of the burden among institutions; (2) assessments and required purchases will not cause institutions to be unable to provide reasonable and competitive credit to their borrowers; and (3) ensure that assessments and required purchases will not preclude a bank from being able to borrow and repay funds in the public financial markets. In providing for an equitable sharing of the burden of assessments or purchases, the Corporation must take into account the institutions' relative financial strength and ability to pay, the effects, including the effect on loan interest rates, of providing assistance, and the impact on interest rates of assistance previously provided to other institutions.

Section 611.1142(h)(6) provides that the Corporation can determine each institution's ability to pay based, in part, on the institution's level of URE, which consists of the institution's total capital minus capital stock, participation certificates, and equities allocated to borrowers that are not associations. The URE of an institution also excludes its allowance for loan losses, which, if properly maintained by the institution, will protect the institution against all known losses in its portfolio. The level of URE is the basis for determining the UREP of an institution and its placement in one of four regulatory zones, designated A through D.

The regulation establishes a two-stage process for the Corporation to follow that will delay the adverse effect of contributions on the weakest institutions until such time as the System's financial condition has deteriorated to the point that such contributions are necessary.

The Corporation must first assess and require purchases of obligations from institutions that have capital at or above the lower level of a Zone C institution. For each institution, on an individual basis, the UREP represented by the bottom of Zone C is the level at which assessments and required purchases should stop unless Federal assistance has not been provided and there is a continuing need for additional resources to assist institutions. Assessments against all institutions, regardless of their zone classification, must take into consideration the regulatory criteria relating to interest rates, loanable funds, and collateral requirements. The regulation contains interest rate presumptions for Zone A and B institutions and certain institutions in Zone C; but such presumptions do not apply to the remainder of the institutions. Therefore, assessments against certain Zone C institutions and all Zone D institutions must be done on a case-by-case basis.

If and when all institutions are at or below the lower level of Zone C and the Corporation needs additional funds to provide financial and technical assistance to institutions, it may continue to then assess institutions on the basis of all of the criteria in the regulation. This authority to obtain funds from institutions in Zone D ensures that the System will be able to continue operating until, if necessary, Federal assistance is provided. As discussed below, the Board has adopted proposed amendments that set forth in detail the circumstances under which the Capital Corporation can assess an institution in Zone D, and require that all such assessments take into consideration the regulatory criteria in § 611.1142(h)(6)(iii) regarding interest rates, loanable funds, and collateral.

Section 611.1142(h)(6) also incorporates the specific statutory criteria governing the Corporation's funding activities. These regulatory provisions require the Corporation to develop procedures that will determine the sequence of periodic assessments and the amounts of individual assessments each institution will be required to pay. The Corporation is required to obtain funds based on each contributing institution's relative financial strength and ability to pay, taking into consideration the criteria contained in § 611.1142(h)(6) (i) through (iii). These provisions ensure that the financially stronger System institutions bear a greater share of the burden of providing funds to the Corporation, while maintaining their ability to continue providing credit to their borrowers on reasonable and competitive terms. In taking those factors into consideration, the impact of assessments on individual institutions must be weighed against the funding needs of the Corporation and the financial strength of each System institution when compared with the other institutions in the System.

The Texas and Springfield commenters stated that the provisions of this section which provide for assessments and required purchases by System institutions "to the full extent of their available capital and reserves" is contrary to section 4.28G(15)(A) of the Act. The same point was made in a separate comment by a farm cooperative. In addition, the Texas and Springfield commenters asserted that the use of the zone classifications will require stronger institutions to provide financial assistance before such assistance is required of weaker institutions and that this distribution of the burden is contrary to section 4.28G(a)(15) of the Act. (12 U.S.C. 2216f(a)(15)).

The FCCA stated that this section seems to imply that the entire URE of System institutions is available for assessment without regard to whether the institution remains viable and competitive. They suggest that the regulation be clarified to indicate that assessments may be made only to the extent that contributory institutions remain viable and competitive, continue to have access to funds, and are able to satisfy their own obligations. In a similar comment, the CBC stated that the FCA should clarify whether the Capital Corporation may assess or require System institutions to purchase obligations to the full extent of their available capital and reserves. They question whether this criterion must be met before certification to the Department of the Treasury that the financial resources of the System have been exhausted.

The Board disagrees with the assertion of these commenters that the inclusion in the regulations of a provision which provides for the Capital

Corporation to assess or require purchases from an institution "to the full extent of its available capital reserves" is inconsistent with the provisions of the Act. Section 4.28(a)(15) defines the "available capital and reserves" of the institutions and provides that any assessments of such capital and reserves shall be made in accordance with regulations of the FCA that take into consideration certain statutory criteria. In addition, section 4.28J authorizes the Secretary of the Treasury, subject to an appropriations act, to provide financial assistance to the Capital Corporation. As a condition precedent to providing such assistance, the FCA must certify to the Treasury that: (1) The System is in need of financial assistance to address financial stress; (2) the System has committed its available capital and reserves to address such stress; (3) the salaries of the System institutions' officers have been frozen; and (4) any further assessments from a System institution would preclude such institution from making credit available to borrowers on reasonable terms. The authority contained in section 4.28J is a discretionary authority that rests with the Board.

The Congress, in enacting the 1985 Amendments, acknowledged that the System had significant amounts of financial resources and that before any Treasury funds would be put at risk, the System had to utilize those resources. The Congress did not state at what point the System's commitment of its own resources would be sufficient to trigger the availability of taxpayer funds. Rather, the Congress left such determination to be made at a later date at the discretion of the FCA and the Treasury, and ultimately, at the discretion of the Congress.

The FCA does not know at this time when the resources of the System will have been committed to the point that it will certify the need for Federal assistance to the Treasury. In addition, the FCA does not know whether, and at what point after such certification, the Treasury and the Congress would agree to provide financial assistance to the System. Therefore, it was imperative for the FCA to structure regulations that would not permit a gap between the time assessments stopped and Federal financial assistance was provided. For that reason, the regulations promulgated by the FCA had to include a provision that reconciled these two statutory provisions and thereby avoid creating the potential crisis that could occur from a gap in funding.

The situation which the FCA sought to avoid continues to this day. All System institutions are tied together through joint and several liability, and association and bank loss-sharing agreements. (Bank agreements are referred to as "capital preservation agreements"). To a large extent, the successful operation of each individual institution and the System as a whole is conditioned on the continuing ability of the System to obtain funds in the public money markets. The key factor that will maintain access to the money markets is the continuation of investor confidence. If the Capital Corporation were no longer able to obtain funds from institutions, and if as a result it was not able to provide assistance to insolvent institutions, the FCA would be left with no choice but to liquidate those institutions. If that were to occur on a large-scale basis, it would have a significant adverse impact on the confidence of investors. If the System's obligations could not be sold in sufficient volume, or if the interest rates on those instruments rose significantly, all institutions would be adversely impacted, not just those being liquidated. The Board continues to believe that the chaos that would be created by such a gap in Capital Corporation funding activities must be avoided to the maximum extent possible.

In reviewing the comments on this section, the Board determined that it was necessary to adopt proposed amendments to this regulation that would clarify the intent of the Board. Accordingly, the proposed amendments provide that no institution may be assessed below its Zone C level unless all three of the following conditions have been satisfied: (1) There are no institutions above Zone D; (2) the Capital Corporation needs additional financial resources to provide assistance to eligible institutions; and (3) the FCA has not certified that the System is in need of financial assistance and the Secretary of the Treasury has not purchased any obligations of the Capital Corporation in accordance with section 4.28J of the Act. Only if all three of these criteria are satisfied may the Capital Corporation assess or require purchase of obligations from institutions classified in Zone D. In addition, the proposed amendments make clear that assessments of all institutions, whether classified in Zone A, B, C, or D shall be made by the Capital Corporation taking into consideration all of the criteria set forth in § 611.1141(h)(6)(iii) relating to loan rates, loanable funds, and access to the financial markets. These amendments make clear that all assessments of Zone D institutions will be on a case-by-case basis and that no assessment can occur against a Zone D institution unless it can continue to make credit available on reasonable and competitive terms and satisfy the other regulatory criteria.

The Board disagrees with the assertion by the Texas and Springfield commenters that the use of zone classifications to force stronger institutions to provide financial assistance before contributions are required of weaker institutions is contrary to section 4.28G(a)(15). At the outset, the Board notes that Touche Ross, the accounting firm that submitted a detailed analysis of the regulations on behalf of those institutions, endorsed the concept of the assessment regulations because they ". . . attempt to leverage the capital of the stronger FCS institutions to assist the weaker institutions. This approach is preferable to the present capital preservation agreements which directly draw down the excess capital of strong banks, without the benefit of leverage or the opportunity to recoup funds provided to the System."

This approach was used as an objective means for identifying which System institutions have the greatest capacity to provide assistance to other institutions in accordance with the statutory directives. The alternative implied in these comments would be to require financially weaker institutions to provide assistance while preserving large pockets of resources in the wealthier institutions. The effect of this approach would be to place those weaker institutions in a position where they have little or no capacity to absorb future losses and possibly accelerate the time at which they, in turn, would be eligible for assistance. This would be neither an efficient nor logical approach and would be totally inconsistent with the statutory directive contained in section 4.28G(a)(15)(B) of the Act. As set forth in the regulations, assessments from these institutions should only occur if it is absolutely necessary as a precondition to obtaining Federal assistance.

Section 611.1142(h)(6)(i) Effect of Obtaining Funds on Interest Rates

This section implements the criterion in the 1985 Amendments requiring that the assessment regulations ensure that the financial position of institutions providing funds are not reduced by assessments to the point where they are unable to provide credit on reasonable and competitive terms to their

borrowers. The regulation requires the Corporation to consider the effect of obtaining funds from an institution on the lending rates charged by the contributing institution. In issuing these regulations, the FCA developed an objective mechanism to be used by the Corporation that would permit the Corporation to identify which institutions had sufficient financial resources to provide assistance without increasing their interest rates. While all assessments and purchases in any amount will reduce the financial resources of an institution, the institutions with higher URE levels have a greater capacity to absorb the losses that result from providing assistance and therefore can provide such assistance without raising their rates.

Accordingly, this section provides that, for purposes of determining their capacity to provide assistance, institutions classified in Zones A and B, and those classified in Zone C that charge interest rates below the average rates for like institutions in Zone C, can pay assessments or make purchases without a negative impact on their rates.

The Texas and Springfield commenters stated that the assessment regulations will reduce the ability of their districts to offer reasonable and competitive interest rates to borrowers. They stated that real interest rates will increase, borrower flight will occur as loan volume declines, and higher interest rates will force liquidation by farmers and ranchers. They argue that real interest rates in their districts will increase in three ways: (1) Stated rates on loans will increase; (2) patronage refunds to members will cease; and (3) borrowers will be required to purchase additional capital stock. In summary, they believe that this section is contrary to section 4.28G(a)(15)(A) of the 1985 Amendments, which, they argue, requires that the circumstances of each institution shall be considered on an individualized basis.

Touche Ross, on behalf of the Texas and Springfield commenters, recommends that the FCA allow banks to maintain market-driven interest rates based on the costs of business and local rates. Touche Ross stated that the banks charging rates lower than the national average should not be expected to raise interest rates when they become less viable and are classified in Zone C.

The FCA received numerous comments that object to the portion of this section that referred to a comparison of rates between like System institutions. This point was raised by almost all of the commenters. In summary, these commenters stated that competitiveness should not be measured on national standards of like institutions. Since institutions do not compete with themselves, competitiveness should be measured within the local markets served. They stated that considering competitiveness on the basis of average loan rates charged by similar System institutions completely ignores the variation in local market conditions, and is a "highly inappropriate and arbitrary way to determine an institution's competitive position."

The FCCA recommended that this section be amended to establish criteria by which the competitiveness of an institution's loan interest rate can be determined, and that the regulations should not require assessments of an institution whose loan interest rates are not competitive. This point was reiterated in a comment by eight Senators who expressed concern that the depletion of an institution's URE can have adverse impacts on future loan rates.

The CBC stated that this section does not provide an accurate measure of each individual institution's competitiveness. In addition, the CBC stated that this section implies that a BC's loan rate is its face rate. The CBC recommended that comparisons of rates should be based on the effective rate, taking into account patronage paid and revolvements of equity.

Most of the commenters also expressed concern that the payment of assessments or purchases of obligation could adversely affect their interest rates to borrowers, causing borrower flight, higher interest rates, stock devaluation, exhaustion of URE and impairment of capital.

The Board believes that the commenters who object to the basic structure of this regulation and the use of the zone classifications, and those who assert that their interest rates will increase if they are required to provide any assistance to other institutions are all ignoring the express will of the Congress embodied in the 1985 Amendments. When the 1985 Amendments were enacted, the System had $5.1 billion of URE. The Congress stated that it did not know if the System would ever need Federal assistance in the future but that before the provision of such assistance would ever be considered, the System would, first, have to utilize the earnings it had accumulated over the years. Since, in many instances, the resources of the System were not located in the institutions that needed them, the Capital Corporation was established as an alternative mechanism to existing bank and association loss-sharing agreements for redistributing System resources. It is axiomatic, and was well recognized by the Congress, that when an institution is required to give up its resources, on either a temporary or permanent basis, that action will reduce the financial resources of the institution. However, Congress mandated that the System institutions, individually and collectively, must be willing to commit their own financial resources until such time as the Congress determines that the System has insufficient resources to continue operating without Federal assistance.

To take the System from $5.1 billion of surplus to the point where it would be eligible for Federal assistance, the Congress directed the FCA to issue implementing regulations for the Capital Corporation that would take into consideration a series of criteria that were designed to achieve two purposes. First, the regulations had to identify the institutions that have the greatest capacity to absorb the losses that would result from providing assistance. Second, the regulations had to ensure that no institution would be required to provide contributions beyond the point where it could continue to provide credit to its borrowers on reasonable and competitive terms.

While the Board believes that the regulations should be amended in certain respects to clarify certain matters and to make certain adjustments in the criteria used by the Capital Corporation, the underlying zone structure and assessment process remains valid and has been validated by events that have occurred since the regulations were first issued.

The use of the zone structure as the basis for determining both the sequence of assessments and the amounts of assessments at each stage is based on the principle that the greater the financial reserves of an institution are, the greater is its capacity to absorb the expenses associated with paying assessments or purchasing Corporation obligations without raising its interest rates. This occurs because an institution can absorb the cost of providing financial assistance by reducing its current year earnings or, if necessary, reducing its URE accumulated from prior years' earnings.

This section incorporates the legislative requirement that the regulations "take into account . . . the effect, including the effect on loan interest rates, on current borrowers and members of each System institution . . . ." Section 4.28G(a)(15)(B)(i)(II). This section states that institutions that are classified in

Zones A and B and certain Zone C institutions are able to absorb an assessment without having an effect on their current loan rates. In addition, the section provides that the Corporation must review the effects of contributions on a case-by-case basis on Zone D institutions and Zone C institutions that charge above the weighted average loan rate charged by all System institutions chartered under the same title of the 1971 Act.

This conclusion is supported by an examination of the relationship between the interest rates charged by System banks and the capital zone in which the institution is classified. Changes in interest rates reported by System banks during the 2-year period January 1, 1985 through December 31, 1986, were compared to the zone in which the institution was classified. The FCA found that even System banks which, due to the weakened financial condition, were classified in Zone D were able to reduce their loan interest rates. Over this time period, institutions classified in Zone A and B reached their loan rates a total of 119 times, with a reduction of approximately 30 basis points per change. Zone C institutions reduced loan rates 81 times with an average reduction of 27 basis points. Zone D institutions reduced their rates 52 times by an average of 35 basis points. The relationship between an institution's interest rates and its level of URE was also tested using the multiple regression procedure to determine if an institution's level of URE effected its interest rates. In each test, no statistical relationship was found between an institution's URE and the institution's effective interest rates. Based on the results of this analysis, it appears clear that interest rate setting is independent of the institution's level of URE.

The competitiveness issue raised by several commenters, especially the Springfield and Texas commenters, is based almost exclusively on their assumption that there is a regulatory provision which directs System institutions to raise their interest rates. This assumption arises from a misreading of § 611.1142(h)(6)(i)(B), and from the assumption of the commenters that the capital adequacy regulations that were published as proposed, not final, regulations, are currently effective. (51 FR 36824).

There is no provision in the Capital Corporation assessment regulation that requires institutions to raise their interest rates. Section 611.1142(h)(6)(i)(B) refers to the interest rates charged by Zone C institutions for the sole purpose of identifying the capacity of certain institutions to absorb losses; it does not require any institution to raise it rates to any level. The proposed capital adequacy regulations do contain provisions that would require institutions to maintain certain interest margins based on their historical performance, which some institutions have interpreted to require them to raise rates. However, those are only proposed regulations that are out for public comment. Additionally, those proposed regulations were issued prior to passage of the Farm Credit Act Amendments of 1986 (1986 Amendments), which deleted the FCA's authority to approve specific interest rates of institutions and which amended the preamble to the Act to include a policy direction to institutions on their interest rate setting activities. The FCA is reviewing the comments on the proposed capital adequacy regulations and will be revising those regulations, as appropriate, to reflect the 1986 Amendments. Interest rates are now set on the basis of the prudent judgment of the individual institutions.

In light of the comments received, the FCA Board does recognize that the reference to interest rates in § 611.1142(h)(6)(i)(B) has created unintended problems that need to be corrected. Accordingly, the Board adopted a proposed amendment to that section which will eliminate any interest rate reference for Zone C institutions. The FCA Board, in adopting amendments to this section, is establishing a two-tier assessment process under which the Capital Corporation is required to obtain funds from institutions classified in Zones A and B prior to obtaining funds from institutions in Zone C. Zone A and Zone B institutions retain the greatest amount of the System's URE and, thus, are best able of all System institutions to absorb costs incurred in providing funds to the Capital Corporation. Their financial strength enables them to maintain competitive loan rates while reducing their URE to provide assistance to other institutions. Institutions classified in Zone C have a lower level of URE than institution in Zones A and B and, therefore, their ability to reduce URE to absorb assessment is not as great. While this approach directs the order in which assessments are made, it in no way overrides the assessment criteria relating to financial viability, and access to the public debt markets contained elsewhere in the regulation. The Board believes the adopted approach fully implements the intent of the 1985 Amendments for assessments and purchase of obligations to be based on each institution's ability to pay and, as discussed earlier, fully takes into consideration the potential impact on interest rates.

Section 611.1142(h)(6)(ii) Loanable Funds Criterion

This section requires the Corporation to consider the impact of assessments and required purchases of obligations on the "adjusted loanable funds" of the institution. This provision contains an additional criterion that supplements the zone classifications and URE determinations that are addressed in § 611.1142(h)(6)(i). "Loanable funds" are not a balance sheet item but rather a calculation that can be used to measure the future earnings capacity of a financial institution. Since System institutions do have the capacity to alter their "loanable funds" by either keeping or sell their noninterest-accruing loans to the Capital Corporation, the regulation provides for an adjustment to the loanable funds computation that will reflect the imputed sale of those assets. Thus, the regulations require that adjustments be equal to 80 percent of the book value of loans and acquired property eligible for sale to the Corporation (provided that such amount will not exceed the amount that would cause the institution's UREP to fall below the level required for classification as a Zone C institution if the institution sold eligible loans and acquired property to the Corporation.) (See definitions in § 611.1142(h)(1)(i)).

The Columbia District banks stated that this section does not contain a criterion that reflects their competitive environment. They recommended that some type of criteria be developed to take this into account since it can also affect the overall financial viability of an institution.

The Texas and Springfield commenters stated that this section contains an incorrect "conclusive presumption" that assessments from an institution with a positive level of adjusted loanable funds have no effect on whether the institution can provide credit on reasonable and competitive terms. They suggest that this is contrary to section 4.28G(a)(15)(A) of the 1985 Amendments. These banks state that this section would force all districts to increase their loanable funds by an amount equal to the value of their nonearning assets. If that were to occur, the districts then would be forced to carry the nonearning assets, while at the same time borrowing so as to have the funds available to purchase Corporation obligations increased by the same amount. They argued that it is inequitable to adjust loanable funds of

contributing institutions without making a corresponding adjustment for receiving institutions.

The FCCA objected to this provision on the grounds that an institution with a positive level of adjusted loanable funds may not be viable because of other factors such as its cost structure or risk exposure. The FCCA asserted that viability cannot be measured by any single quantitative standard and that the regulation should be expanded to include additional criteria, such as those included in the transfer of funds regulations at 12 CFR 611.1130. The FCCA also stated that if the regulation is not changed substantively, it should be amended to clarify whether the Capital Corporation can obtain funds from an institution even if it has a negative level of adjusted loanable funds.

Seven Senators stated that making "paper" adjustments to the actual amount of retained earnings and loanable funds will result in higher costs for institutions' borrowers and camouflage differential capital requirements for different institutions. They stated that if an institution is required to provide assistance to the point where it has zero adjusted loanable funds, that action will "certainly" have an impact on the institution's earnings capacity, future retained earnings level, and viability.

Some of the comments demonstrate a misunderstanding of the regulations. The loanable funds criterion is merely one of three objective criteria that the Corporation must apply in its funding decisions. Assessments by the Corporation are limited by: (1) The UREP of each institution, which is narrowly defined to exclude the allowance for loan losses; (2) the collateral requirement; and (3) the loanable funds criterion. UREP is computed after excluding the allowance for loan losses and thereby takes into consideration the risk inherent in the institution's loan portfolio. The collateral requirement insures that an assessment will not cause an institution to lose its access to the financial markets. The first two criteria are absolute limits, below which no assessment can occur. With regard to the third, if an institution has a negative level of adjusted loanable funds, the Corporation must make a case-by-case determination of the effect of an assessment on the institution's ability to make credit available on reasonable and competitive terms.

In responding to the comments, the Board is mindful of the general concepts that underlie this regulation. The statute contains numerous generalized criteria to be used by the agency in the promulgation of its regulations. The FCA determined that in order for the assessment process to work in an orderly manner, the agency was obligated to develop regulations that would reflect all of the subjective statutory considerations set forth by the Congress in the 1985 Amendments and use those as the basis for providing meaningful and objective criteria that could be readily used by the Capital Corporation.

The final regulations achieve this end by first setting forth several objective criteria that must be used by the Capital Corporation during the initial stages of the assessment process when institutions have greater levels of reserves. Secondly, the regulations provide that once all the institutions have reached the threshold of those objective criteria, further assessments by the Capital Corporation must be made on a case-by-case basis. In order to establish objective criteria, the FCA was required to make certain determinations regarding the ability of institutions to provide assistance. Using these determinations, which are embodied in the regulation, the Capital Corporation can determine the ability of certain institutions to provide assistance without further investigation. The objective criteria that form the framework of the regulation relate to (a) UREP, (b) adjusted loanable funds, and (c) collateral deficiency. The FCA Board reiterates its belief that these are effective mechanisms for determining the ability of institutions to provide assistance in accordance with the statutory requirements.

However, as discussed earlier, the comments reveal a significant degree of misunderstanding regarding the overall intent of the determinations underlying all of the objective criteria, and specifically as they relate to loanable funds. Accordingly, the FCA Board adopted proposed amendments to all of these provisions which will clarify the intent of the regulation. These amendments will make clear that the FCA Board is well aware that when an institution has to relinquish part of its reserves, its financial condition will be weaker as a result. However, the statutory responsibility of the FCA was to establish regulatory criteria for determining which institutions are in the best position to relinquish their reserves and to develop criteria for equitably distributing that burden of providing financial assistance consistent with the multiple purposes in the 1985 Amendments.

With regard to the comments relating to the efficacy of "loanable funds" as a viability criterion, the Board has reconfirmed its belief that this is a valid measure. The earnings capacity and financial viability of any financial institution are directly related to the amount of income-producing assets and interest-bearing debt the institution holds (the institution's loanable funds position), the rate of return or expense on these assets and obligations, and all other sources of income and expense. The loanable funds concept is a particularly important measure of viability and earnings capacity in System institutions, since interest earned on loans and other assets is virtually the System's sole source of income and interest paid on System debt obligations is its largest expense. System institutions with a negative level of loanable funds may have upward pressure on their loan rate if they seek to avoid sustaining operating losses. However, a negative adjusted loanable funds position does not mean the institution cannot continue to make credit available on reasonable and competitive terms.

Certain commenters misread the regulations when they claim that the section would force institutions to increase their loanable funds by an amount equal to the value of their nonearning assets while at the same time borrowing to have the funds available to purchase Corporation obligations increased by the same amount. First, "loanable funds" is not a balance sheet item. It is merely a derived computation that is used to measure earnings capacity. Loanable funds are adjusted to reflect the fact that System institutions can sell their nonperforming loans and acquired property to the Capital Corporation. These are the assets that earn no income but on which interest expense must be paid.

If an institution sells its nonperforming assets to the Capital Corporation, it will increase its loanable funds, reduce its interest expenses and thereby strengthen and improve its financial viability and earning capacity. An institution that has loans that it could sell, could reduce its interest expenses, and be in a better position to provide assistance than an institution which has the same financial reserves but does not have a means available for reducing its interest expenses. The regulations take this into account by providing for an adjustment to loanable funds by 80 percent of the value of the institution's nonearning assets that are eligible for sale. This adjustment is limited by the requirement that those imputed sales and losses on those sales

cannot have the imputed effect of reducing an institution's UREP below the level of Zone C. What must be reemphasised here is that these are all nonbalance sheet activities; they do not actually occur. They are made because they reflect an institution's ability to improve its earnings position if it wants to and prevents institutions from sheltering their resources and shifting the financial assistance burden to other institutions that are less well off.

As discussed earlier, in response to the comments on the definitions section, the FCA Board adopted a proposed amendment that will conform this provision with the requirements of GAAP and thus eliminate the necessity for the 20-percent writedown on assets. While the Board believes the current provision is supportable, the new definition will provide a more accurate means for computing the adjustments.

As one of the commenters correctly noted, the current regulation provides that the Capital Corporation can obtain funds from institutions, on a case-by-case basis, taking into consideration all of the regulatory criteria, even if their adjusted loanable funds are less than zero. In response to the comments on this point, and based on operations of the System during the last year, the FCA Board has adopted a proposed amendment to this section that would prohibit the Capital Corporation from assessing any institution below the point where it had zero adjusted loanable funds. With this amendment the regulations will ensure that no institution will ever be assessed beyond the point where it has positive URE, positive adjusted loanable funds, and adequate collateral to support its obligations. The Board adopted this amendment based on its determination that loanable funds is an effective criterion, that can be objectively applied, to measure the earnings capacity and financial viability of an institution. Even though an institution with negative adjusted loanable funds can continue to provide credit on competitive terms, this amendment will enable those institutions to continue operating without having to provide assistance to other institutions.

Section 611.1142(h)(6)(iii) The Collateral Criterion

The 1985 Amendments provide that the assessment regulations promulgated by the FCA should be designed to ensure that each bank continues to have access to funds in the public financial markets (12 U.S.C. 2216f(a)(15)(B)(ii)(11). This statutory provision applies only to banks, not associations. This section of the regulations incorporates this requirement by prohibiting the Corporation from making an assessment or requiring a purchase of obligations if such action would prevent a contributing bank from collateralizing its debt.

This regulatory provision satisfies the statutory criteria for the following reasons. Section 4.3 of the Act (12 U.S.C. 2154) requires each bank to collateralize fully that portion of long term Systemwide consolidated obligations on which it is primarily liable. Collateral can consist of loans, U.S. obligations, cash, or other readily marketable securities approved by the FCA. The collateral requirement in section 4.3 of the Act is the only statutory condition that would preclude a System bank from either participating in a Systemwide bond issue or, with the approval of the FCA, from attempting to issue bonds in its own name. This regulatory provision, which prohibits the Corporation from assessing an institution below the point where it is able to collateralize its obligations, together with § 611.1142(h)(7), which provides for the periodic review and redistribution of Capital Corporation obligations, ensures that each bank will continue to have access to the public financial markets to issue new bonds and notes to refund its maturing debt obligations.

The Texas and Springfield commenters suggest that the regulation needs to clarify whether Capital Corporation obligations will be considered eligible collateral for purposes of section 4.3 of the Act. They do not object to the use of this regulatory determination in theory, but state that it will provide no meaningful limit on assessments if the obligations a bank receives from the Capital Corporation are eligible to satisfy the bank's collateral requirements. This same comment was made by the response of the seven Senators.

The issue raised by these commenters relates to the requirements of section 4.3(c) of the Act and 12 CFR Part 615, Subpart B. Those statutory and regulatory provisions set forth the collateral requirements for the issuance of obligations by System institutions. 12 CFR 615.5050 requires each bank to have on hand at the time of the issuance of long-term obligations, assets consisting of notes and other obligations representing loans made under the authority of the Act, notes of other System banks representing secured intra-System loans, readily marketable securities approved by the FCA, or cash, in a aggregate value equal to the amount of the long-term obligations. The "readily marketable securities" are the eligible investments of System institutions as set forth in 12 CFR 615.5140. Those investments include a range of debt instruments which are characterized by high liquidity and safety. By their terms, both of these regulations would not include as either eligible investments, or eligible collateral, equity obligations held by an institution, including equity interest in the Capital Corporation. With regard to the Capital Corporation's debt instruments, the regulation does not include those instruments among the list of eligible instruments. Therefore, the only circumstance under which the issue raised by these commenters would arise, would be if the FCA amended the regulation or issued an administrative approval in accordance with 12 CFR 615.5140(a)(15).

The FCA Board does not believe there is any basis for including the Capital Corporation debt obligations as eligible investments under 12 CFR 615.5140, and thus such obligations would not be eligible collateral for purposes of the collateral requirements set forth in 12 CFR 615.5050. This exclusion of these obligations is necessary to prevent the double counting of collateral that would otherwise occur. The FCA Board agrees with these commenters that if the Capital Corporation's obligations were determined to be eligible collateral, this would render meaningless the collateral limitation contained in these assessment regulations. For the reason stated above, it is not necessary to amend the regulation to exclude the Capital Corporation obligations from being considered as collateral since the existing regulations preclude such consideration.

Several commenters discussed the implications of this provision on Systemwide funding efforts. The CBC stated that access to the public debt markets is not assured simply because an institution has excess collateral. The CBC suggested that the System, as a whole, could have excess collateral and still experience substantial problems in selling its instruments in public debt markets if it experienced a significant reduction in its available capital and reserves. In a similar comment, the Columbia District banks stated that this section does not appear to take into consideration the fact that the System obtains funds on the basis of the System's balance sheet as a whole, and not on the basis of each individual institution's balance sheet. A group of cooperatives suggested that this section be deleted since it does not address the impact of assessments on the ability of a bank to obtain funds in local markets.

These commenters misinterpret the scope and effect of this assessment criterion but their underlying concern is valid and actually forms one of the underlying premises of this regulation. The focus is on Systemwide debt issues, not individual obligations, since all of the banks' funding is done through the issuance of Systemwide obligations, which offer the most economical source of funds available to them. This criterion provides that as long as a bank has sufficient collateral to join in a Systemwide debt issue, that bank will be able to have the same access to the money markets as the rest of the System. These comments reinforce the underlying premise of this section, that investors in System securities are influenced by the balance sheet of the entire System, not of any individual bank. Thus, as long as an individual bank can satisfy the collateral requirement it will be able to obtain funds as long as the System can continue to obtain funds.

The ability of the System to continue selling its securities is based on its historic market performance, its financial condition, and the implied guarantee that the Federal Government will do what is necessary to maintain a viable System. Congress has reserved unto itself, following FCA certification and Department of the Treasury action, the final decision as to when the System will need Federal assistance. The responsibility of the FCA in promulgating this regulation is to ensure that the self-help directives contained in the 1985 Amendments have been implemented fully as a condition precedent to the provision of Federal assistance, if it proves necessary.

Section 611.1142(h)(7) Redistribution of Outstanding Obligations Held by Contributing Institutions

This section authorizes the Corporation to annually redistribute outstanding obligations held by contributing institutions to ensure that no institution is required to hold more than its proportionate share of such obligations based on its capital and URE.

The Texas and Springfield commenters stated that any such redistribution should ensure that the institution has a continued ability to offer credit on reasonable and competitive terms. The FCCA stated that it was unclear whether this section required the Capital Corporation to make periodic redistributions or merely provided the Capital Corporation with the authority to make such redistributions. The FCCA stated that such redistributions should be discretionary, not mandatory. The FCCA also stated that such redistributions could involve numerous tax, accounting, and legal questions that should be addressed before this authority is implemented. This same comment was made by the CBC. Finally, the FCCA stated that redistribution actions should be based on all of the criteria used in the assessment process, not just the relative levels of capital and URE.

This provision is designed to address significant problems that could occur as the assessment process proceeds. Some of these potential problems are outlined in great detail in the comments for the Texas and Springfield institutions and their accounting firm. All of those comments are addressed in greater detail later in this section, but one of their principal concerns is that all assessments take into consideration projections of up to 5 years on the future economic environment in which the contributing institutions will be operating. These commenters believe that no assessments should be made unless it can be shown that, over that period of time, the institution will continue to remain viable and competitive.

The FCA Board shares the concern raised by these commenters. However, the Board recognizes that long range macro and micro economic projections are very inexact, and cannot be efficiently used to either expand or limit the funding activities of the Capital Corporation at a time when known amounts of financial resources are needed to assist institutions that would have to cease operations in the absence of such assistance. The Capital Corporation is not permitted to make projections that the agricultural lending economy in an area will improve over the next 5 years and therefore the System institutions in that area will be able to provide more assistance today than they would be required to provide on the basis of their current financial condition. For the same reasons it cannot reduce current assessments because of projected declines in a given area.

However, the regulation does address this concern. Paragraph (h)(7) provides that as the relative financial condition of contributing institutions changes over time, the Capital Corporation may redistribute the outstanding obligations between institutions as warranted by those changes. This provision will achieve the very purpose sought by the commenters but will do so on the basis of actual changes in condition, not on projections of future condition. The Board also notes that this concept is consistent with longstanding statutory and regulatory provisions which require each FICB to periodically redistribute its outstanding stock held by production credit associations (PCAs) to maintain an equitable distribution. (See 12 U.S.C. 2073(g)).

While the current regulation does achieve the desired result, the Board agrees with the FCCA that it is unduly restrictive by its reliance on only capital levels and URE as the basis of redistributions. Accordingly, the Board has adopted a proposed amendment that will expand the criteria that must be taken into consideration. Additionally, the proposed amendment will make the evaluations and redistributions mandatory, rather than discretionary.

The proposed amendment will require the Capital Corporation to evaluate, on an annual basis, the distribution of ownership of its outstanding equity and debt obligations to determine whether the cost of providing assistance to other institutions is borne equitably by all institutions that are able to provide assistance. In making those yearly evaluations, the Corporation is required to consider all of the funding criteria contained in the regulation, i.e., interest rates, loanable funds, collateral, zones, etc. Following that evaluation the Corporation is required to repurchase, retire or redistribute its outstanding obligations among the System institutions to such extent as is necessary to ensure that no institution is required to hold more than its proportionate share of such obligations, as determined on the basis of the criteria contained in the regulation. In taking such action, the Capital Corporation should also consider the relevant tax implications of such transactions.

The Board believes that this provision in the existing regulation, and the proposed amendment to this provision, is one of the critical elements of the regulation that will prevent the occurrence of the unforeseen consequences of future events that were of such concern to many commenters. This retrospective adjustment mechanism achieves all the results sought by those commenters while, at the same time, avoiding the uncertainties that would be encountered by relying on projections.

The Board also adopted a proposed amendment that requires the Capital Corporation to make the same evaluation and adjustment not later than 60 days after the effective date of this amendment. This provision will ensure that after these amendments are final, if any prior assessment would not

have been made under the amended regulations, or if the passage of time has caused changes in the financial condition of institutions to such an extent that they are bearing greater than their proportionate share of the burden of providing assistance, the Capital Corporation will adjust the ownership of its outstanding obligations to correct that problem.

Finally, the proposed amendment also contains another provision which expands on a requirement contained in those Capital Corporation organization regulations at 12 CFR 611.1142(h)(i)(5). In addition to the annual evaluations and redistribution, if, at any time, the capital stock of a contributing institution is impaired, or it has insufficient collateral to support a new or existing debt obligation, or it has negative adjusted loanable funds, the Corporation is required to retire such amounts of its obligations held by that institution as are necessary to enable the institution to cure the impairment, collateralize the debt or have positive adjusted loanable funds.

Section 611.1142(m) Confidentiality of Information

This section requires that any information or documents prepared by, or adopted by, the FCA as official agency documents shall be held in strict confidence and shall not be disclosed to any person without the written consent of the FCA.

The Texas and Springfield commenters suggest that this section may be overly restrictive in that it appears to prevent shareholders from obtaining information about zone classifications and financial condition reports.

The FCA Board does not believe there is any validity to this concern. This regulation does not, in any way, alter the obligation of each institution to provide clear and complete financial information to its shareholders in accordance with the disclosure requirements of 12 CFR Part 620. The FCA Board reaffirms its strong commitment to the principles of disclosure and the obligation of each institution to comply fully with these regulatory requirements.

This regulation is consistent with other existing regulatory provisions governing the confidentiality of, and procedures for the release of, agency documents, particularly those involving examination and condition reports of System institutions. The procedures for the release of such information under the Freedom of Information Act are set forth in 12 CFR Part 602, Subpart A. The release of confidential information in litigation in which the FCA is not a party is governed by Subpart C of 12 CFR Part 602.

Specific Recommended Amendments

In addition to the comments discussed above, the Springfield and Texas commenters provided the agency with four specific recommended amendments which were supported by a very detailed and comprehensive analysis prepared by an accounting firm. The comments and analysis prepared by these two Districts, were contained in a submission of approximately 500 pages. Following a detailed analysis of the regulations the Springfield and Texas commenters stated that they were willing to provide their "fair" share to support their sister Farm Credit districts and that if the regulations were amended to incorporate their amendments, the Springfield and Texas institutions would be able to maintain positive URE, avoid impairment of member stock, maintain their capital above the minimum standards in the proposed capital adequacy regulations, and their interest rates would "more likely remain reasonable and competitive." Additionally, the Springfield and Texas commenters stated that, "[a]bove all, such changes would ensure that the regulations would be implemented in a manner consistent with the specific language and intent of the 1985 Act."

The Board acknowledges the extensive efforts put forth by these institutions and believes there is a critical need for a clear understanding of the issues discussed by these commenters and the recommendations they made. Because of the interrelationship between these recommendations and between the various portions of the regulations the Board determined that a comprehensive and unified discussion of these recommended amendments would facilitate a clearer understanding of the issues raised.

The Springfield and Texas recommendations were based on special study which they commissioned from Touche Ross, a public accounting and consulting firm. In performing its analysis, Touche Ross stated that it relied on data, and their interpretation, provided by the senior staff of the Springfield and Texas banks. The Touche Ross report states that, other than through discussions with bank senior staff, Touche Ross neither verified the data provided nor collected or used data provided by sources other than the Springfield and Texas banks.

Recommendation 1: The regulation must prohibit the Capital Corporation from assessing a System institution or requiring it to purchase Capital Corporation obligations if such an action would cause an institution to have a negative level of loanable funds now or in the future.

Touche Ross concluded that under the current regulation the purchase of Capital Corporation obligations, based on a 5-year projection, could cause certain institutions to have a negative level of loanable funds.

Touche Ross stated this must be avoided because "negative loanable funds means that institutions cannot extend additional committed loans. This is especially damaging in the farm industry because of the seasonal needs of farmers. Inability to serve the seasonal needs of farmers temporarily renders an institution nonviable."

The Board agrees that loanable funds is a useful measure for determining the earnings capacity and viability of a financial institution, but disagrees that a negative loanable funds balance automatically precludes a System institution from extending credit to farmers. For example, at yearend 1986, 35 out of 153 System banks and PCAs had negative adjusted loanable funds balances. These institutions were still able to extend credit to their borrowers. The data also shows that a financial institution can have a loanable funds balance that is substantially negative and still generate a positive net interest margin.

While this data supports the current regulation, which would permit an institution with negative adjusted loanable funds to be assessed on a case-by-case basis, the Board determined that the regulations should afford an additional measure of protection for contributing institutions. Accordingly, the FCA Board has proposed an amendment to this section that would prohibit an institution from being assessed when its adjusted loanable funds are negative. (See discussion regarding § 611.1142(h)(6)(ii)).

The primary focus of this and the other Springfield and Texas recommendations is that the regulatory limits should be structured in a manner that would require the Capital Corporation to limit its assessments by, not only the current financial condition of the institution, but also by its projected condition over a 5-year period. Touche Ross does not say that assessments will cause negative loanable funds, negative URE, or other bad effects for the Springfield and Texas institutions in the short term. Rather, they assert, on the basis of 5 years of projected operations, that these results

will occur in the future. As discussed in detail in response to Recommendation 4, Touche Ross reached these conclusions on the basis of an erroneous belief that the regulation contains a provision that would require the Springfield and Texas institutions to raise their interest rates after they made contributions to the Capital Corporation. This assumption is in error. If that assumption is removed from the Touche Ross analysis, it would dramatically alter the Touche Ross projections. (See discussion of Recommendation 4).

However, the underlying concern regarding future operation is valid and is addressed in both the current regulation and the proposed amendments. As discussed above with reference to § 611.1142(b)(7), the current regulation achieves the result sought by this recommendation through the provision for periodic redistributions of outstanding Capital Corporation obligations to reflect changes in the financial condition of contributing institutions. The Board believes this is a much more effective and efficient way of achieving the purposes of the 1985 Amendments while providing for the uncertainties that may arise from future events.

Note.—The Touche Ross analysis and this recommendation relate only to loanable funds and do not include any discussion of the impact of the "adjustment" to loanable funds provided for in the regulation. In a separate part of their comments the Springfield and Texas banks did raise concerns regarding the adjustment, and their concerns are addressed in the discussions on §§ 611.1142(h)(1) and (h)(6)(ii).

Recommendation 2: The regulations must ensure that System institutions are not required to purchase Capital Corporation obligations to such an extent that they are left with a negative level of unallocated retained earnings.

Touche Ross stated that assessments and purchases under the regulation may cause institutions to have negative URE and impaired member stock. Touche Ross projects that this could occur after an assessment weakened an institution and it was subsequently subjected to high operating losses. As discussed above, this projection is based on the assumption that the regulations would require these institutions to raise their interest rates. (Also see discussion on recommendation 4).

The concern raised by Touche Ross is based on theoretical projections that do not take into consideration the safeguards in the regulations. The regulations prohibit the Capital Corporation from making an assessment or requiring purchases that would cause the impairment of an institution. In addition, to ensure that the resources of the institution are sufficient to protect against known risks in its portfolio, the regulations exclude from the computation of the institution's URE, the resources placed in the institution's allowance for loan losses. Finally, in order to provide for future events that could cause deterioration in the institution's portfolio the regulations contain two provisions that will protect the institution. 12 CFR 611.1142(i)(5) allows the Capital Corporation to redeem any nonvoting stock or other equities held by an institution that is impaired. The Capital Corporation may retire such obligations to the extent necessary to unimpair the stock of the institution up to the full amount of the Corporation's obligations owned. If the full retirement of obligations proves inadequate to restore member-invested stock to par, the institution would be eligible to receive financial assistance from the Corporation in accordance with that regulation. Second, the Capital Corporation is able to redistribute outstanding obligations annually to ensure that the cost of holding these obligations continues to be fairly distributed and based on each institution's relative financial strength and ability to pay.

These last two provisions have been expanded further in the proposed amendments to §§ 611.1142(h) (7) and (8), discussed earlier. The proposed amendments will require the Capital Corporation to retire its outstanding obligations that are owned by an institution that has impaired stock. Second, the proposed amendment will require an annual review of the financial condition of institutions that own Capital Corporation obligations and will require retirements or redistributions of such obligations between those institutions based on all of the criteria contained in § 611.1142(h)(6). This provision will provide the ongoing safeguard that will resolve the concern raised by this recommended amendment.

Recommendation 3: The regulation should restrict the Capital Corporation's use of collected funds. Any funds obtained by the Capital Corporation through the collection of loans or sales of properties should also be returned to contributing System institutions on a pro rata basis.

Touche Ross stated that the Capital Corporation should be able to use assessed funds only to purchase seriously deficient problem loans or foreclosed collateral, or to avoid stock impairment in weakened institutions. The Board is in complete agreement with this observation and notes that the Capital Corporation regulations published on March 13, 1986 (51 FR 8665) contain those same limitations on the Capital Corporation's activities.

12 CFR 611.1142(i) contains a detailed list of criteria that must be met by an institution seeking financial assistance, including a requirement that the institution's stock is impaired or will be impaired within 90 days. The Capital Corporation is prohibited from providing direct financial assistance to an impaired institution in excess of the amount required to restore its member-invested stock to par, without the prior approval of the FCA (12 CFR 611.1142(i)(3)). In providing direct financial assistance, the Capital Corporation is also required to consider numerous other factors relating to the economic and financial condition of the institution requesting assistance and the entire System generally.

The Capital Corporation regulations offers additional protections for contributing institutions. The Capital Corporation must require recipients of financial assistance, as a condition precedent to receipt of such assistance, to make such modifications in their operations as are necessary to enable the institutions to make a sound financial recovery (12 CFR 611.1142(i)(4)). In addition, recipients of assistance are subject to repayment requirements established by the Capital Corporation.

The FCA Board believes the restrictions embodied in 12 CFR 611.1142 provide substantial protection for, and assurances to, contributors that the funds obtained by the Capital Corporation will be wisely utilized and that assessments and purchases of obligations will be the minimum amount needed for the Capital Corporation to carry out its obligations under the 1985 Amendments. These existing safeguards go well beyond the Springfield and Texas recommendation. The Board also notes that none of these protections are present with respect to financial assistance provided under loss-sharing or capital preservation agreements.

Consistent with this recommendation, the Capital Corporation is only authorized to purchase nonaccrual loans and acquired properties from System institutions. Such purchases must be at the fair market value of the asset as defined under GAAP. The Capital Corporation is authorized at 12 CFR 611.1141(c)(3)(iii) to retire obligations issued to purchase eligible loans and acquired properties as such assets are sold. When obligations are retired using proceeds from the sale of assets, such retirement must be on a pro rata basis to

the holders of the obligations. The decision to either retire obligations or reinvest proceeds from the sale of foreclosed loans and acquired properties in additional purchases of eligible assets will depend on a range of considerations that must be weighed by the Capital Corporation but will depend, in large part, on the then existing requests for financial assistance from other institutions.

Recommendation 4: The regulation of interest rates for individual Farm Credit banks should be eliminated. The regulations should be amended to enable banks to maintain market-driven interest rates.

Touche Ross objected to provisions of the assessment regulation at 12 CFR 611.1142(h)(6)(i) which, according to its interpretation, require banks and associations to increase lending rates to pay assessments to the Capital Corporation. Specifically, Touche Ross indicates that the assessment regulation *requires* banks and associations classified in Zone C to charge loan rates no lower than the average loan rate charged by similar System institutions. Based on this interpretation of the regulation, Touche Ross prepared an analysis of the projected consequences that would be experienced by the institutions in the Springfield and Texas Districts.

In its analysis, Touche Ross estimates that the Springfield and Texas banks would be required to increase their loan rates by as much as 264 basis points. Based on information apparently provided to Touche Ross by the Springfield and Texas banks, Touche Ross projects that interest rate increases of that magnitude would result in a 39.2-percent decline in loan volume in the Springfield District and a 45.2-percent decline in loan volume in the Texas District. Their analysis further provides that this "borrower flight" would, in turn, require further increases in interest rates in order to cover operating expenses, increase risk exposure, and cause borrower stock impairment. Ultimately, they project that these actions would result in the inability of the Springfield and Texas Districts to meet FCA's minimum capital standards and the eventual impairment of those institutions.

This entire analysis, and virtually all of the adverse financial effects that Touche Ross believes would be caused by the assessment regulation, are a direct result of the assumption that 12 CFR 611.1142(h)(6)(i) requires banks and associations to increase their loan interest rates to the average level charged by other like System institutions. Accordingly, the Springfield and Texas Districts recommend that this section of the regulation be eliminated and that banks and associations be allowed to charge market-driven interest rates.

This section in the regulation has been seriously misinterpreted. The FCA's sole purpose in this section was to provide criteria by which the Capital Corporation could determine which System institutions had the capacity to absorb losses resulting from assessments and to require the Capital Corporation to carefully analyze the effect that assessments would have on the institutions' financial condition and interest rates. Under the regulations it was determined that if a Zone C institution was charging above average interest rates, any assessments from that institution could only be made after a case-by-case determination of the effect on its interest rates. It is clearly *not* the intent of the regulation that any institution be required to increase its loan rate to provide funds to the Capital Corporation. There is no provision in the regulation containing such a requirement and the preamble to the final regulation clearly indicates the FCA's understanding that institutions subject to assessment will have the resources to absorb those losses without raising their interest rates (51 FR 21333). Moreover, this interpretation is, in fact, contrary to actions taken by the FCA relative to the establishment of interest rates subsequent to promulgation of the assessment regulation.

Between June 1986 and the enactment of the 1986 Amendments, which deleted the FCA's interest rate approval authority from the Act, the FCA authorized substantial interest rate reductions in order to allow banks and associations to charge competitive loan rates. For example, Springfield and Texas FLBs and FICBs were authorized to reduce their rates between 100 and 148 basis points after the regulation's effective date. Since enactment of the 1986 Amendments, System institutions have had complete discretion in their rate setting, subject only to the requirements of the Act and safety and soundness concerns. (See 12 CFR 624.102, 51 FR 46587).

Touche Ross also cites provisions in the proposed capital adequacy regulations which, if adopted, would require banks to maintain their interest spreads at the higher of their July 23, 1986 level or the last 3-year average (Proposed 12 CFR 615.5230(c) at 51 FR 26402). Touche Ross stated this provision would require banks and associations in the Springfield and Texas Districts to increase their borrowers' loan rates. These regulations were published in proposed form and the FCA is still in the process of reviewing the comments and analyzing the regulations in light of the 1986 Amendments, particularly the elimination of the FCA's interest rate approval authority. Those regulations and the comments thereon will be addressed in the near future.

Even though the FCA believes most comments relative to the effect of the regulation on the establishment of interest rates have not been based on a sound interpretation of the regulations, in light of the comments, the FCA Board has adopted proposed amendments that will eliminate any possibility of misinterpretation. In addition, as discussed with regard to § 611.1142(h)(6)(i), the Board adopted a proposed amendment which eliminates any reference to intra-System interest rate comparisons. Taken together, it will be absolutely clear that the regulations do not require institutions to increase their interest rates to provide financial assistance to the Capital Corporation.

Appendix I to 611.1142(h)

Appendix I contains the zone classifications and related levels of URE that are set forth as Table 1 of the proposed capital adequacy regulations. It is used by the Corporation in applying this regulation.

Seven Senators, responding collectively, stated that the zone classifications reflect an inconsistent treatment of PCAs and that the supplementary material did not explain how these figures were derived. They suggest that FCA should "explain the rationale for these classifications and accept comments on the reasons for these zone determinations."

A California PCA stated that stockholders are treated unequally in these tables. The PCA explained that since the regulations set Zone C for PCAs at 2.3 percent of assets and districtwide PCAs at 4.8 percent the regulatory zones are discriminatory since they permit the Capital Corporation to assess more of the URE from smaller associations than they do from districtwide PCAs.

A group of cooperatives expressed the view that the regulations do not provide for an equitable sharing of the burden of financing the Corporation because a disproportionate share of the burden will fall upon the BCs. They state that if this disparity is retained the problem can be cured if other provisions in the regulations are amended to provide for assessments from one type of institution, i.e., BC, to be used only to assist the same type of institution.

The Board disagrees with the contention that the zones discriminate against small PCAs. The regulation allows a districtwide PCA to have a higher percentage of URE at the bottom of Zone C because of the risk concentration within such a district. The ability of the FICB to absorb the detrimental impact of a nonperforming, insolvent, or liquidating PCA is largely dependent on the size of the PCA obligation to the bank in relation to the bank's financial resources. Where all or substantially all of the resources within a district are concentrated in a districtwide PCA, the failure of that PCA would almost certainly result in the failure of the bank. This is usually not the case in the event of failure of an average PCA. To compensate for this concentration of risk exposure, the proposed capital adequacy regulations had to require large PCAs to maintain a higher amount of URE and, conversely, the assessment regulations had to provide that those PCAs could not be assessed to the same extent as other PCAs. Similarly, since BCs have historically operated profitably with substantially lower URE levels, the proposed capital adequacy regulations impose lower capital requirements on BCs than on other institutions and, conversely, permit their reserves to be drawn down below the levels of other institutions that have higher capital requirements.

The basis for the zone structure used in these regulations and the proposed capital adequacy regulations is derived from the 1985 Amendments. Those amendments eliminated the debt-to-capital ratios that had previously controlled the capital levels of System institutions. In place of these limitations, Congress required the FCA to establish minimum capital levels for System institutions (12 U.S.C. 2154(a)). To do so, the FCA developed a zone structure for the proposed capital adequacy regulations (51 FR 26402). The purpose of the zone structure is to differentiate between System institutions based on their relative capital strengths. Each institution is classified in one of four regulatory zones (A, B, C, and D), based on the institution's level of URE. Institutions classified in Zone A have strong URE levels. Institutions in the other zones have progressively lesser capital positions. The zone structure used for capital adequacy is also used in these regulations.

"Total capital" is an accepted measure of the financial strength of any financial institution. In a System institution, "total capital" consists of borrower stock and retained earnings, both allocated and unallocated. The 1985 Amendments, however, exclude borrower stock and equities allocated to borrowers other than associations from the capital that is available to the Capital Corporation to provide financial assistance to other institutions. The FCA's zone structure adopts the same approach. The zone structure is based on the URE of System institutions. URE is nearly synonymous with "available capital and reserves" as defined in the 1985 Amendments, except that URE also excludes each institution's allowance for loan losses. The allowance for loan losses is an institution's most important protection against loan losses because it is based on an estimate, made in accordance with GAAP, of the potential losses in the institution's loan portfolio. By excluding the allowance for loan losses, the assessment regulations significantly reduced the level of "available capital and reserves" that would otherwise be available to the Capital Corporation. The only remaining "available capital" is URE, which is then converted into a UREP by dividing the URE by the total assets of the institution.

The FCA used several different analytical approaches in the development of the zone levels. First, based on data provided by the System, the FCA analyzed the average levels of capital in general, and URE in particular, for each type of System institution for the years 1979–1985. Since a simple average would not provide an adequate measure of each institution's actual performance over the 7-year period, the FCA performed a statistical analysis of capital and URE for each bank in the System and for the PCAs and FLBs on a districtwide basis (i.e., a composite of all associations within a particular district). Since the resulting distribution from this analysis failed to show the degree of dispersion among PCAs that the FCA anticipated based on its knowledge of individual PCAs, five districts that had both strong and weak PCAs were selected for further testing. Data collected from the analysis of the dispersion, distributions, and statistics of the individual PCAs in the five districts varied substantially from the initial data aggregated by districts. Hence, further expansion of the PCA financial information was accomplished by including data from the remaining seven System districts. This information was extracted and compiled and the resulting statistics and distributions were assembled for use in formulating PCA zone boundaries. The staff also considered a 3-year projection prepared by the System with respect to capital positions of System institutions. The statistical and distribution information compiled during this analysis process was then used to establish alternative zone thresholds, which were used by the Board in establishing the zone boundaries in the regulations.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations, is being amended as follows:

PART 611—ORGANIZATION

Subpart J—Farm Credit System Capital Corporation

1. The authority citation for Part 611, Subpart J, continues to read as follows:

Authority: Secs. 4.28A–4.28L, 5.17, Pub. L. 99–205, 99 Stat. 1678.

2. Section 611.1142 is amended by revising paragraph (h) to read as follows:

* * * * *

§ 611.1142 General corporate powers.

* * * * *

(h) *Funding.* This paragraph establishes criteria and limitations under which the Corporation may assess System institutions to pay the Corporation's operating expenses, except interest expense; and require System institutions to purchase the Corporation's capital stock and debt obligations collectively termed "obligations," which are issued to enable the Corporation to provide direct financial assistance to System institutions experiencing financial difficulties and to purchase eligible loans and acquired property from System institutions.

(1) For purposes of this paragraph, the following definitions shall apply:

(i) "Adjusted loanable funds" means loanable funds adjusted to take into consideration the ability of an institution to sell eligible loans and acquired property to the Corporation. The adjustment shall be computed on the basis of the fair market value of such assets as defined in § 611.1142(1)(4).

(ii) "Allowances for losses" means the allowance for losses on loans; allowance for losses on investments in paid-in surplus—PCA; allowance for losses on loans in process of foreclosure, judgments, etc.; allowance for losses on acquired property; and any other valuation account established and

maintained in accordance with Farm Credit Administration instructions or approval.

(iii) "Available capital and reserves" shall have the same meaning as "unallocated retained earnings" for Federal land banks, Federal land bank associations, production credit associations, and banks for cooperatives. For Federal intermediate credit banks, "available capital and reserves" means "unallocated retained earnings" increased by legal reserve—PCAs less impairment.

(iv) "Generally accepted accounting principles" has the same meaning as that term as defined in § 621.2(a) of this chapter.

(v) "Loanable funds" means interest-accruing assets ("loans" as defined in § 621.2(a)(13) of this chapter minus "nonaccrual loans" as defined in § 621.2(a)(15) of this chapter, plus eligible investment securities as defined in § 615.5140 of this chapter, plus other interest-accruing assets) minus interest-bearing obligations (Consolidated Bonds, Consolidated Systemwide Bonds, Farm Credit Investment Bonds, Consolidated Systemwide Notes, funds held accounts, notes payable, and other interest-bearing liabilities).

(vi) "Total assets" means the total assets of an institution as determined in accordance with the Farm Credit Administration instructions for the preparation of reports of financial condition and performance. For banks for cooperatives, total assets shall be increased by participation loans sold by a bank for cooperatives to the Central Bank for Cooperatives and reduced by its investment in the Central Bank for Cooperatives.

(vii) "Unallocated retained earnings" means the undistributed earnings of an institution that have not been allocated to the institution's members or patrons. The unallocated retained earnings for each type of institution are contained in the following accounts:

(A) For Federal land banks:

(*1*) Legal reserve, reduced by impairment;

(*2*) Surplus reserve; and

(*3*) Earned surplus.

(B) For Federal land bank associations:

(*1*) Legal reserve, reduced by impairment;

(*2*) Surplus reserve; and

(*3*) Earned surplus.

(C) For Federal intermediate credit banks:

(*1*) Surplus—unallocated;

(*2*) Surplus—reserved, reduced by impairment;

(*3*) Undistributed earnings; and

(*4*) Reserve for contingencies—unallocated.

(D) For production credit associations:

(*1*) Surplus reserved;

(*2*) Undistributed earnings;

(*3*) Earnings reserved for stock dividends; and

(*4*) Earnings reserved for patronage distributions.

(E) For banks for cooperatives:

(*1*) Unallocated surplus;

(*2*) Surplus reserved; and

(*3*) Undistributed earnings.

(iii) "Unallocated retained earnings percentage" means the relationship between the unallocated retained earnings of an institution and its total assets reflected as a percentage. The percentage is calculated by dividing unallocated retained earnings by total assets.

(2) *Notice of assessment and issuance of obligations.*

(i) The Corporation shall provide a written notification of any assessment or requirement to purchase the Corporation's obligations to the chief executive officer of each institution providing funds. The notification shall include the amount and purpose of the transaction, accounting and funds transfer instructions, and any other information the Corporation determines is necessary to complete the transaction(s). Except as otherwise provided for in paragraph (h)(2), all System institutions shall pay assessments or purchase obligations within 10 days of the date of the notification and in the manner prescribed by the Corporation.

(ii) Not later than 30 days after the effective date of this paragraph (h), the Corporation shall establish procedures that will permit an institution to request the Corporation to reconsider its notice of assessment or required purchase of obligations on the grounds that such notice is not in accordance with the provisions of paragraph (h). Such procedures shall provide an institution with the opportunity to request an extension of the period in which it must respond to a notice and shall contain provisions under which an institution can delay paying an assessment or purchasing obligations pending a final decision of the Corporation.

(3) *Assessment for operating expenses.* The Corporation shall assess System institutions in accordance with this paragraph to cover the Corporation's operating expenses, except interest expense, at such times and under such circumstances as the Corporation determines are appropriate. For purposes of this paragraph, operating expenses shall mean all expenses incurred in the routine operation of the institution, including salaries, benefits, cost of space occupied, and all other business expenses included in an operating budget approved by the Corporation board of directors. Operating expenses shall not include payments of direct financial assistance made to eligible System institutions by the Corporation.

(4) *Purchase of Corporation obligations.* The Corporation shall require System institutions in accordance with this paragraph to purchase the Corporation's obligations which are issued to obtain funds to provide direct financial assistance to eligible System institutions, to acquire eligible loans and loan-related assets, or to pay interest expense on debt obligations assumed by the Corporation in purchasing eligible loans and loan-related assets from System institutions. The Corporation shall utilize transactions which minimize the impact on the institutions providing funds, taking into consideration relevant economic, financial, and tax implications.

(5) *Adjustments of capital zones and unallocated retained earnings percentage.* Assessments and requirements to purchase the Corporation's obligations are based in part on the zone classification of an institution as provided for in Appendix I to this regulation subject to the adjustments made in accordance with this paragraph. The FCA may adjust the zone classification or unallocated retained earnings of an institution for purposes of this paragraph based on the following criteria:

(i) The amount of the allowance for loan losses or other valuation of an institution exceeds the amount that is required in accordance with generally accepted accounting principles. The excess amount in the allowance shall be considered unallocated retained earnings for purposes of determining assessments and requirements to purchase the Corporation's obligations.

(ii) An institution has diverted unallocated retained earnings in violation of a Farm Credit Administration regulation or capital directive.

(iii) An institution has material unrecognized gains that would, if

realized, impact the computation of the unallocated retained earnings of the institution. Such instances include but are not limited to unrecognized gains on appreciated assets, and the fair market value of unrecorded assets such as mineral rights.

(6) *Funding criteria.* To the extent necessary to fund its purchase of assets from System institutions and to enable the Corporation to extend direct financial assistance to eligible institutions, the Corporation shall, in accordance with the provisions of paragraph (h), assess or require System institutions to purchase obligations.

(i) In equitably distributing the burden of such assessments as they are made from time to time, the Corporation shall require institutions which, in accordance with paragraph (h)(5) of this section, are classified in Zones A and B, to provide funds to the Corporation, prior to making assessments of or requiring the purchase of obligations by institutions classified in Zone C.

(ii) The Corporation shall not assess or require purchases of obligations of any institution classified in Zone D except when:

(A) There are no institutions classified above Zone D;

(B) The Corporation needs additional financial resources to provide assistance to eligible institutions; and

(C) The Farm Credit Administration has not certified that the System is in need of Federal financial assistance and the Secretary of the Treasury has not purchased any obligations of the Capital Corporation in accordance with section 4.28J of the Act (12 U.S.C. 2216i).

(iii) In making assessment or requiring purchases of institutions classified in Zones A through D the Corporation shall take into consideration the criteria contained in paragraph (h)(6)(iii).

(A) The Corporation shall consider the effect that obtaining funds will have on the institution's loan rate. For purposes of this paragraph (h)(6)(iii)(A), institutions classified in Zones A, B, and C have sufficient resources to pay assessments and purchase obligations and absorb such expenses without raising their interest rates, taking into consideration the needs of other institutions and the objectives of the 1985 Amendments.

(B) The Corporation shall ensure that the earnings capacity, loanable funds, and overall financial viability of an institution providing funds to the Corporation are not reduced by such action below the level necessary to enable the institution to provide credit to eligible borrowers on reasonable and competitive terms. For purposes of this paragraph (h)(6)(iii)(B), institutions which have a positive level of adjusted loanable funds have sufficient resources to pay such assessments or make such purchases. The Corporation shall not assess or require purchases from an institution that has negative adjusted loanable funds.

(C) The Corporation shall not assess or require purchases of obligations from an institution if such action would cause the institution to lose its ability to obtain funds in public financial markets and to satisfy its individual liability on obligations. Because System institutions can obtain funds through the sale of systemwide/consolidated obligations, which are sold on the basis of the financial condition of the System as a whole, any assessment or required purchase of obligations does not affect the ability of an institution to obtain funds and satisfy its obligations if the institution is able to satisfy the collateral requirements contained in section 4.3 of the Act and participate in systemwide/consolidated issues.

(7) The Corporation shall, not later than 60 days after the effective date of these amendments and thereafter on an annual basis, evaluate the ownership of its outstanding equity and debt obligations to determine whether the cost of providing assistance to other institutions is borne equitably by all institutions that are able to provide assistance. Each such evaluation shall be based on the criteria contained in paragraph (h)(6) of this section. Not later than 60 days after each such evaluation, the Corporation shall repurchase, retire or redistribute its outstanding obligations among System institutions, as necessary, to ensure that no institution is required to hold more than its proportionate share of such obligations as determined on the basis of the criteria contained in paragraph (h)(6) of this section, taking into consideration the relevant tax implications of such transactions.

(8) In addition to the requirements of paragraph (h)(7) of this section, if the capital stock of an institution is impaired, or an institution has insufficient collateral to support a new or existing debt obligation, or an institution has negative adjusted loanable funds, the Corporation shall retire such amounts of its obligations held by such institution as are necessary to enable the institution to cure the impairment, collateralize the debt or have positive adjusted loanable funds.

* * * * *

William A. Sanders, Jr.,

Secretary, Farm Credit Administration Board.

[FR Doc. 87-9180 Filed 4-23-87; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ASW-14]

Proposed Amendment of Transition Area; Watonga, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the transition area at Watonga, OK. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Watonga Airport, Watonga, OK. This action is necessary since there is a new SIAP being developed that will utilize the proposed Watonga nondirectional radio beacon (NDB).

DATE: Comments must be received on or before May 25, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-14, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

An informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Robert P. Wheeler, Airspace and Procedures Branch, ASW-534, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, 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. 87–ASW–14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. 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.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the existing 700-foot transition area at Watonga, OK. This action is necessary since there is a new NDB Rwy 17 SIAP being developed that will utilize the proposed Watonga NDB. This amendment will consist of a 6-mile wide addition extending approximately 3 miles north from the edge of the present transition area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Watonga, OK [Amended]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Watonga Airport (latitude 35°51'46" N., longitude 98°25'13" W.), and within 3 miles each side of the 008° bearing from the Watonga NDB (latitude 35°51'44" N., longitude 98°25'30" W.), extending from the 6.5-mile radius area to 10 miles north of the airport.

Issued in Fort Worth, TX, on April 9, 1987.

Larry L. Craig,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87–9247 Filed 4–23–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 70467–7067]

Foreign Trade Statistics

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: It is proposed to amend the Foreign Trade Statistics Regulations to raise the present exemption for filing Shipper's Export Declarations (except for shipments requiring a validated export license) from $1000 to $1500. The exemption for shipments through the U.S. Postal Service will remain at $500.

DATE: Comments should be submitted on or before June 23, 1987.

ADDRESS: Send comments to the Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Don L. Adams, Chief, Foreign Trade Division, Bureau of the Census, (301) 763–5342.

SUPPLEMENTARY INFORMTION: The proposal to raise the minimum value requirement for the filing of Shipper's Export Declarations from the present level of $1001 to a new level of $1501, if implemented, is expected to reduce the number of required Shipper's Export Declarations by almost one million documents per year. The proposed increase in the value limit is expected to increase the share of exempted shipments from about 1.5 percent of the overall value of exports to 2.0 percent. While there will be some loss of statistical detail at the more detailed levels (i.e., commodity by country, commodity by country by district, etc.), the benefits accruing to both the public and the Census Bureau by the reduction in the number of Shipper's Export Declarations required to be filed and processed outweigh the anticipated loss in statistical detail. Raising the value exemption for filing Shipper's Export Declarations to $1500 is a change that relieves documentation burden.

This is not a major role in accordance with the criteria set forth in Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. Pursuant to the provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), the General Counsel of the Department of Commerce certified to the Small Business Administration that this amendment will not have a significant economic effect on a substantial number of small entities because it raises the exemption level, thereby reducing the reporting requirements of smaller entities. The collection of this information has been approved by the Office of Management and Budget under control numbers 0607–0001, 0607–0018, 0607–0150, and 0607–0152. Moreover, the amendment imposes no additional burden on the public, thus satisfying the requirements of the Paperwork Reduction Act of 1980.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Reporting and recordkeeping requirements.

To effect this change, it is proposed to amend the Foreign Trade Statistics Regulations (15 CFR Part 30) as set forth below.

PART 30—[AMENDED]

1. The authority citation for 15 CFR Part 30 continues to reads as follows:

Authority: Secs. 30.1 to 30.95 issued under R.S. 161; (5 U.S.C. 301); Reorganization Plan No. 5 of 1950, 15 FR 3174, 64 Stat. 1263; Department of Commerce Order No. 85, June 21, 1962. 27 FR 6397. Interpret or apply 76 Stat. 951.77A Stat. (13 U.S.C. 301–307; 19 U.S.C. 1202, 1484 (e)) unless otherwise noted.

2. Section 30.55(h) is amended by changing "$1000" wherever it appears in this section to "$1500," so that as revised, § 30.55(h) reads as follows:

§ 30.55 Miscellaneous exemptions.

* * * * *

(h) Shipments (except shipments requiring a validated export license and excluding shipments through the U.S. Postal Service) between the United States and Puerto Rico, to the Virgin Islands of the United States, and to all countries except countries prohibited by the Export Administration Regulations of the Office of Export Administration (15 CFR Parts 368–399) [8] where the value of the commodities classified under a single Schedule B number and shipped on the same exporting carrier from one exporter to one importer is $1500 or under:

Provided, however, that this exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to compile statistics on $1500-and-under shipments.

* * * * *

John G. Keane,

Director, Bureau of the Census.

January 21, 1987.

I Concur:

Francis A. Keating III,

Assistant Secretary, Department of the Treasury.

February 27, 1987.

[FR Doc. 87–9318 Filed 4–23–87; 8:45 am]

BILLING CODE 3510-7-M

FEDERAL TRADE COMMISSION

16 CFR Part 703

Rule on Informal Dispute Settlement Procedures

AGENCY: Federal Trade Commission.

ACTION: Notice of advisory committee meetings.

SUMMARY: This notice announces the dates, times, and location of future meetings of the Rule 703 Advisory Committee. Fifteen days' notice of advisory committee meetings is required under the Federal Advisory Committee Act.

DATES: The Rule 703 Advisory Committee is scheduled to meet on the following dates: May 5, 1987 at 10:00 a.m.; May 6, 1987 at 9:30 a.m.; June 16, 1987 at 10:00 a.m.; and June 17, 1987 at 9:30 a.m. All of these meetings will be open to the public. The June 16–17 meetings are additional meetings not previously scheduled. The May meetings remain as previously announced on March 24, 1987 (52 FR 9314).

ADDRESS: All meetings will be held at the Conservation Foundation, 1255 23rd Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT:

Chairpersons:

John A.S. McGlennon, ERM-McGlennon Associates, 283 Franklin Street, Boston, MA 02110, (617) 357–4443

Gail Bingham, Conservation Foundation, 1255 23rd Street, NW., Washington, DC 20037, (202) 293–4800

FTC Staff:

Gary M. Laden, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580, (202) 326–3118.

SUPPLEMENTARY INFORMATION: On August 20, 1986, the Commission published a notice (51 FR 29666) announcing the formation of an advisory committee to develop proposed revisions to the Rule on Informal Dispute Settlement Procedures ("Rule 703"), 16 CFR Part 703. The Federal Advisory Committee Act, 5 U.S.C. App. I 1–15, and its implementation regulations require that advisory committee meetings be open to the public and that they be announced in the **Federal Register** at least fifteen days in advance. Accordingly, the Commission is publishing this notice of future meetings of the Rule 703 Advisory Committee. The dates, times, and location of the scheduled meetings appear above.

The meetings announced above constitute the full remaining schedule of the Rule 703 Advisory Committee. In its previous notices concerning the committee, the Commission stated that the committee would have eight months after its organizational meeting to complete negotiations. Thus, no meetings previously were scheduled beyond May 1987. However, at its March 4 meeting, the advisory committee discussed its intent to schedule two additional meetings in June, in order to complete its work. The charter establishing the committee permits some flexibility in scheduling negotiation meetings. Since the Rule 703 Advisory Committee seeks to extend its negotiations to June, 1987, the Commission has agreed to participate in negotiations on June 16–17, 1987.

The remaining meetings will principally be devoted to discussion of progress reports and recommendations from subcommittees that were formed at the committee's October 22, 1986 meeting. Each subcommittee has been delegated a number of particular issues for detailed discussion. (Lists of the individuals participating on each subcommittee and the issues within each subcommittee's purview are available from the chairpersons or the FTC staff.) The subcommittees are to develop consensus recommendations on each issue and report back to the full committee. Subcommittee recommendations must be approved by consensus of the full committee.

Because of the inherently fluid nature of the negotiation process, it is not possible for the committee to develop more specific agendas for the announced meetings at this time. The public is encouraged, however, to contact the chairpersons or FTC staff as each meeting approaches for further information on the specific matters likely to be brought up.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87–9319 Filed 4–23–87; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 229

[Release No. 33–6711; 34–24356; File No. S7–14–87]

Concept Release on Management's Discussion and Analysis of Financial Condition and Operations

AGENCY: Securities and Exchange Commission.

ACTION: Advance notice of possible Commission action and request for public comment.

SUMMARY: The Commission is seeking comment on issues relating to the Management's Discussion and Analysis ("MD&A") of financial condition and operations. In particular, the

Commission is seeking comment concerning the adequacy of current rules and the costs and benefits of suggested revisions made by certain accounting firms. The Commission will review comments received in response to this release to determine whether future rulemaking is appropriate.

DATE: Comments should be received by June 23, 1987.

ADDRESS: Comment letters should refer to File S7–14–87 and be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Brian J. Lane (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance or Laurel Bond Mitchell (202) 272–2130, Office of the Chief Accountant.

SUPPLEMENTARY INFORMATION: In this concept release, the Commission requests comment concerning Management's Discussion and Analysis. This requirement is the subject of recommendations from members of the accounting profession calling for a more specific approach to requiring disclosure of business risks and uncertainties, as well as additional board of director scrutiny and independent auditor association with these disclosures.

I. Background and Overview

Management's Discussion and Analysis is required by Item 303 of Regulation S–K.[1] This Item calls for a discussion of liquidity, capital resources, results of operations, and "other information that the registrant believes is necessary to an understanding of its financial condition, changes in financial condition and results of operations." [2] Pursuant to this Item, registrants are required to disclose presently known material changes, trends, and uncertainties that the registrant reasonably expects will have a material impact on future sales, revenues, or income from continuing operations.[3] Additionally, they are encouraged, but not required, to supply other "forward-looking information".[4]

A. Historical Development of MD&A

The origins of MD&A date to 1968 when the Guides for Preparation and Filing of Registration Statements were adopted.[5] These guides, which reflected the policies and practices of the Commission's Division of Corporation Finance, called for a summary of earnings. This included a discussion of unusual conditions that affected the appropriateness of the earnings presentation and footnotes indicating adverse changes in operating results subsequent to the latest period included in the earnings summary.

In 1974, the Commission amended Guide 22, which covered the summary of earnings for Securities Act registration statements, and adopted an identical Guide 1 for filings under the Securities Exchange Act, which covered the summary of operations.[6] In addition to the summary required prior to 1974, the amended Guides called for a full narrative explanation of the summary to enable investors to appraise the quality of earnings or operations. A separate discussion and analysis of the summary was required, including explanations of "(1) material changes from period to period in the amounts of the items of revenues and expenses, and (2) changes in accounting principles or practices or in the method of their application that have a material effect on net income as reported." [7] As Guide 22 stated, this discussion was intended "to enable investors to compare periodic results of operations and to assess the source and probability of recurrence of earnings (losses)." [8]

To give guidance as to what was material, a percentage test was adopted. Registrants were required to discuss items of revenue or expense that changed more than 10% from the prior period or changed more than 2% of the average net income or loss for the most recent three years presented. However, disclosure also was required if an item did not meet the applicable percentage test but was necessary to an understanding of the summary. Conversely, where a registrant believed that a particular item was unnecessary to an understanding of the summary, the Division considered petitions for exemptions where the percentage test was met.

As part of the new Form 10–K project,[9] in 1980 the Commission revisited the requirements of MD&A because it believed that the guides were not fulfilling their objectives, their focus was too narrow, and the percentage tests were being applied mechanistically without regard to materiality or relevance.[10] As a result, the Commission made numerous changes. The changes, in part, reflected the Commission's concerns about the economic climate of the time. High interest rates and inflation were significant problems and the revised MD&A was designed to foster disclosure of trends and uncertainties arising from these and other factors.

Specifically, the Commission adopted MD&A as a separate requirement and (1) changed the focus from the summary of operations to the financial statements as a whole; (2) required a discussion of three financial aspects—liquidity, capital resources, and results of operations; (3) within each of these, required disclosure of favorable or unfavorable trends and identification of certain material events or uncertainties; (4) required disclosure about the effects of inflation and changing prices; (5) deleted the percentage tests of the guides; and (6) encouraged, but did not specifically require, forwardlooking statements.

These changes made the rules far more comprehensive. Nonetheless, the rules remained intentionally general in nature. The Commission believed that a flexible approach would elicit more meaningful disclosure and avoid boilerplate discussions which a more specific approach could foster. Further, the Commission reasoned that, because each registrant is unique, no one checklist could be fashioned to cover all registrants comprehensively.

One year after adopting the new MD&A requirements, the Commission published a release giving examples of MD&A disclosure by several registrants, without expressing a view as to the quality of each example.[11] The release stated that the staff of the Division of Corporation Finance, with the assistance of the Office of the Chief Accountant, would continue to monitor MD&A responses and, if necessary, would provide additional guidance in a subsequent release.

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[1] 17 CFR 229.303.

[2] 17 CFR 229.303(a).

[3] 17 CFR 229.303(a)(3)(ii).

[4] 17 CFR 229.303(a) Instruction 7; *see also* 17 CFR 230.175; 17 CFR 240.3b–6; Securities Act Release 33 6084 (June 25, 1979) [44 FR 33810] (safe harbor rules for projections).

[5] Securities Act Release 33–4936 (December 9, 1968) [33 FR 18617].

[6] Securities Act Release 33–5520 (August 14, 1974) [39 FR 31894].

[7] *Id.*, Guide 22(b).

[8] *Id.*

[9] Securities Act Release 33–6231 (September 2, 1980) [45 FR 63630].

[10] *Id.*

[11] Securities Act Release 33–6349 (September 28, 1981).

II. The Purpose of MD&A and Current Requirements

The Commission has long recognized the need for a narrative explanation of the financial statements, because a numerical presentation and brief accompanying footnotes alone may be insufficient for an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance. MD&A is intended to give the investor an opportunity to look at the company through the eyes of management by providing both a short and long-term analysis of the business of the company. The Item asks management to discuss the dynamics of the business and to analyze the financials.

As the Commission stated more than ten years ago, it is important that investors understand the extent to which accounting changes and changes in business activity "have affected the comparability of year-to-year data and [they] should be in a position to assess the source and probability of recurrence of net income (or loss)." [12] Material facts that must be disclosed elsewhere in the filing also must be analyzed in the MD&A section if they have had or may have a favorable or unfavorable effect upon the amount of net income, the earnings trend, or the financial condition of the company and its prospects.

A wide range of corporate events and changes may warrant MD&A disclosure. The examples provided by the Commission in 1974 are still useful illustrations:

> While it is not feasible to specify all subjects which should be covered in the discussion and analysis of the summary, the following are examples which registrants should consider in making disclosure:
>
> 1. Material changes in product mix or in the relative profitability of lines of business;
> 2. Material changes in advertising, research, development, product introduction or other discretionary costs;
> 3. The acquisition or disposition of a material asset other than in the ordinary course of business;
> 4. Material and unusual charges or gains, including credits or charges associated with discontinuation of operations;
> 5. Material changes in assumptions underlying deferred costs and the plan for amortization of such costs;
> 6. Material changes in assumed investment return and in actuarial assumptions used to calculate contributions to pension funds; and
> 7. The closing of a material facility or material interruption of business or completion of a material contract.[13]

[12] Securities Act Release 33-5520 (August 14, 1974) [39 FR 31894].

[13] *Id.*, Guide 22(d).

Perhaps the most misunderstood aspect of MD&A is its relationship to statements of a prospective nature. MD&A requires disclosure of "known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way." [14] Additionally, the Item calls for a description of any known material trends in the registrant's capital resources and any expected changes in the mix or cost of such resources.[15] Elsewhere, the Item requires disclosure of known trends or uncertainties that are reasonably expected to have a material impact on net sales, revenues, or income from continuing operations.[16] The Instructions add that MD&A "shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition." [17]

Conversely, Instruction 7 of Item 303(a) states that registrants are encouraged, but not required, to supply "forward-looking" information. The Instruction was not intended to detract from the requirements noted above but instead to make clear that "forward-looking information" (as that term is used in the Instruction) should be distinguished from presently known data that is reasonably expected to have a material impact on future results.

Both required disclosure regarding the future impact of presently known trends, events or uncertainties and optional forward-looking information may involve some prediction or projection. The distinction between the two rests with the nature of the prediction required. Required disclosure is based on currently known trends, events, and uncertainties that are reasonably expected to have material effects, such as: A reduction in the registrant's product prices; erosion in the registrant's market share; changes in insurance coverage; or likely non-renewal of a material contract. In contrast, optional forward-looking disclosure involves anticipating a future trend or event or anticipating a less predictable impact of a known event, trend, or uncertainty.

III. Proposals From the Accounting Profession

It has been over six years since the MD&A rules were adopted and concerns are again being raised about the adequacy of MD&A requirements. In particular, members of the accounting profession have made recommendations to amend MD&A. While the Commission has not concluded that any change in MD&A requirements is necessary, it is soliciting comment on these recommendations and other possible changes in the MD&A requirements.

In 1986, Coopers & Lybrand submitted to the Commission's Office of the Chief Accountant a proposal calling for increased MD&A disclosure of risks and recommending auditor association with MD&A disclosure ("Coopers Proposal"). Shortly thereafter, the managing partners of seven major accounting firms issued a white paper entitled "The Future Relevance, Reliability, and Credibility of Financial Information: Recommendations to the AICPA Board of Directors" ("7 Firms Recommendations").[18] The 7 Firms Recommendations similarly call for increased disclosure of risks and audit coverage of MD&A.

A. Coopers Proposal

The Coopers Proposal would require (1) a more focused disclosure of business risks; (2) review and approval of these disclosures by the registrant's board of directors; and (3) a determination as to the reasonableness of these disclosures by independent auditors. This proposal would restructure Item 303 into three substantive parts: analysis of historical financial information; assessment of risk factors, future financial condition, and results of operations; and management's representations.

The historical section would call for year-to-year comparisons of financial information. The Coopers Proposal would require discussion of unusual or infrequent events that materially affect the amount of reported income and discussion of significant components of revenues or expenses that are necessary to an understanding of the results of operations. If there are material changes in net sales or revenues, the registrant would be required to explain the extent to which these changes are attributable to sales prices, amount of goods or services sold, or to the introduction or discontinuance of products or services. Additionally, Coopers would require an impact analysis of inflation on net sales and revenues.

[14] 17 CFR 229.303(a)(1).

[15] 17 CFR 229.303(a)(2)(ii).

[16] 17 CFR 229.303(a)(3)(ii).

[17] 17 CFR 229.303(a) Instruction 3.

[18] The 7 Firms are: Arthur Andersen & Co.; Arthur Young; Coopers; Deloitte Haskins & Sells; Ernst & Whinney; Peat, Marwick, Mitchell & Co.; and Touche Ross & Co. Price Waterhouse has its own proposal which does not address MD&A specifically.

The second section would cover information for one year in the future, with information beyond one year encouraged.

Information would be required with respect to known trends, events and uncertainties concerning the following categories: liquidity, capital resources, results of operations, principal products, legal proceedings, and key personnel. Coopers specifically would require disclosure relating to: restrictions that may limit dividend payments; competitive position; new products; sources and cost of raw material; sources and cost of labor; technological obsolescence; customer dependence; pending legislation; and socio-economic factors such as political unrest and foreign exchange rates.

The third section relates to management's representations. Management would be required to indicate specifically whether future operating results are expected to vary from historical patterns and disclose any significant declines in revenues, stockholders' equity, or working capital that are anticipated.

B. 7 Firms Recommendations

With respect to MD&A, the 7 Firms Recommendations are not as specific as the Coopers Proposal.[19] The 7 Firms would require increased financial statement disclosures of risks and uncertainties and audit coverage of MD&A. As to risks, the proposal would require that risk disclosures required in registration statements pursuant to the Securities Act of 1933 be adapted for disclosure in annual financial statements filed under the Securities Exchange Act of 1934. This risk disclosure section would be audited and be separate from the MD&A. The 7 Firms state that the current MD&A requirements are helpful but have two weaknesses: "[T]he requirement is stated too generally to result in meaningful disclosure and management's discussion and analysis is not subject to audit coverage." [20]

[19] The 7 Firms made eight recommendations: (1) Improve disclosure of risks and uncertainties, (2) audit the risk disclosure, (3) require membership in the SEC Practice Section of the American Institute of Certified Public Accountants ("AICPA"), (4) extend SEC jurisdiction to any companies with a public interest, (5) enhance the AICPA's Auditing Standards Board's capacity to develop auditing standards, (6) enhance public perception of the independence and objectivity of auditors, (7) enhance public confidence in the Special Investigations Committee of the SEC Practice Section of the AICPA, and (8) eliminate opinion shopping.

[20] 7 Firms Recommendations at 4.

C. Comparison of the Proposals to Current Requirements

Much of what Coopers recommends is required specifically by current rules. Coopers recognizes that fact, but states that the information "is not drawn together in one location and discussed in a focused manner." [21] The most significant structural change in MD&A proposed by Coopers is the shift in emphasis to a discussion of risk factors similar to that required in a prospectus pursuant to Item 503(c) of Regulation S-K.[22] The 7 Firms Recommendations call for similar disclosure, but would require a separate risk factor section, rather than incorporating it into MD&A.

Coopers advocates another change from the present rules in requiring, rather than encouraging, forward-looking information in 15 areas; current rules require information in many of these areas as listed.

Proposed disclosure item	Present rule provision[1]
1. Year-to-year comparisons.	17 CFR 229.101(b).
2. Unusual events that affect income.	17 CFR 229.303(a)(3)(i).
3. Analysis and discussion of significant changes in net sales or revenues.	17 CFR 229.303(a)(3)(iii).
4. Inflation impact analysis.	17 CFR 229.303(a)(3)(iv).
5. Analysis of significant changes in major balance sheet accounts.	
6. Risk factor assessment for one year for: [2]	
(a) Liquidity	17 CFR 229.303(a)(1).
(i) Possible dividend restrictions.	17 CFR 229.201(c).
(b) Capital resources.	17 CFR 229.303(a)(2).
(c) Results of operations.	17 CFR 229.303(a)(3).
(d) Principal products.	17 CFR 229.101(c)(1)(i).
(i) Competitive position.	17 CFR 229.101(c)(1)(x).
(ii) New products	17 CFR 229.101(c)(1)(ii).
(iii) Sources fo raw material.	17 CFR 229.101(c)(1)(iii).
(iv) Labor	17 CFR 229.101(a)(2)(4).
	17 CFR 229.101(c)(1)(xiii).[3]
(v) Technological obsolescence.	17 CFR 229.101(c).[4] (generally)
(vi) Customer dependence.	17 CFR 229.101(c)(1)(vii)
(vii) Pending legislation.	17 CFR 229.303(a)[5] (generally).
(viii) Socio-economic factors.	17 CFR 229.101(d)(2).[6]
	17 CFR 229.303(a); Instruction 11.
(e) Legal proceedings.	17 CFR 229.103.
(f) Key personnel	17 CFR 229.401.[7]
7. Management statement on whether future results are expected to vary from historical patterns.	17 CFR 229.303(a) Instruction 3.
8. Management statement on whether declines in revenue, shareholders equity, or working capital are expected.	17 CFR 229.101(a)(3).[8]
9. Management's going concern statement.	Certification of Financial Statements, 17 CFR 211, Subpart A.[9]

[21] Coopers Proposal at 3.

[22] 17 CFR 229.503(c). Item 503(c) applies only to high risk or speculative offerings.

[1] In addition to specific provisions, disclosure of some of the proposed items may be required pursuant to general materiality principles such as 15 U.S.C. 78j; 15 U.S.C. 77q; 17 CFR 230.408; 17 CFR 240.12b-20.

[2] Coopers would require risk assessment for one year subsequent to the last financials in the areas under point six above. The current rules are more broadly written and do not focus on risk assessment.

[3] Item 101(a)(4) requires disclosure of anticipated material changes in number of employees in the various departments while 101(c)(1)(xiii) requires disclosure of the number of employees in general.

[4] The current rules do not require expressly that technological obsolescence be disclosed, but it is required generally by provisions such as 101(c)(1) (i), (ii) and (x).

[5] Pending legislation is not required specifically in the current rules; however, MD&A requires disclosure of material uncertainties affecting liquidity, capital resources, or operations. Thus, if pending legislation is reasonably likely to have a material impact upon one or more of these, it must be disclosed under Item 303. *See, e.g.*, FR-26 Securities Act Release 33-6671 (October 23, 1986) [51 FR 39652] (disclosure of future effects of the new tax code).

[6] Item 101(d)(2) concerns risks to foreign operations. Cooper's Proposal mentioned political unrest or extreme inflation in a foreign country as examples of socio-economic risks. Thus, 101(d)(2) may be relevant. Item 303(a) Instruction 11 concerns foreign registrants and policies of their home country that could affect operations.

[7] Item 401 requires disclosure concerning directors, executive officers, promoters, and control persons. Coopers would require disclosure of dependence on key personnel.

[8] This requirement applies to sales or income only.

[9] Section 607.02 of the Codification of Financial Reporting Policies, containing the substance of FR-16 Securities Act Release 33-6512 (February 15, 1984) [49 FR 6707], states that a filing containing an accountant's report that is qualified as a result of questions about the entity's continued existence must contain appropriate disclosure of the registrant's difficulties and viable plans for continued operations.

Current practice does not require MD&A to be audited. The 7 Firms call for audit coverage and Coopers would have independent auditors directly associated with the disclosure to assess the reasonableness of management's analysis by requiring the auditor to review the disclosures and modify the standard auditors' report if he is in disagreement with the information disclosed.

Although there is no current requirement that any of the MD&A disclosure be audited or covered by the auditors' opinion, the auditor is expected to have subjected the disclosures to some degree of review and evaluation. In 1975, Statement on Auditing Standard No. 8 (AU Section 550) was issued by the Auditing Standards Board. The Statement addresses the auditor's responsibility with respect to "Other Information in Documents Containing Audited Financial Statements." The standard indicates that while the auditor is not obligated to perform any procedures to corroborate information outside of the financial statements identified in the audit report, he should read the other information included in the document containing his report to determine whether such information or its manner of presentation is consistent with the financial statements on which his opinion has been expressed. The standard goes on to suggest the steps the auditor may consider if he becomes aware of a material inconsistency or misstatement.[23]

IV. Request for Comment

To assist the Commission in its determination as to the need for any revision of current MD&A requirements, commentators are asked to comment on the costs and benefits of the Coopers Proposal and 7 Firms Recommendations.[24] Other comments concerning the costs and benefits of specific revisions of MD&A generally are encouraged.

Commentators are requested to address specifically the following issues:

1. Are the present MD&A disclosure requirements attaining the Commission's objectives?

2. Should the MD&A be changed to become more of a risk analysis?

3. Should MD&A be audited or be subject to limited review procedures by independent accountants?[25] Does the expertise of auditors enable them to assess the judgments made by management in determining the content of its MD&A disclosure?

4. Would an audit of non-historical information change the nature of the information reported and, if so, how?

5. Would more specific MD&A requirements result in improved disclosure? If so, what specific new disclosure requirements would result in improved disclosure?

6. Pursuant to current MD&A requirements, is sufficient forward-looking information being disclosed? If not, are there feasible ways to elicit more forward-looking disclosure?

7. Should all related disclosure of risks be included in MD&A?

8. Should annual financial statements be accompanied by a risk disclosure section similar to that required in a prospectus?

9. Should MD&A be required for offerings registered on Form S-18?[26] Should it be required only in S-18 offerings where there is a two or three year operating history?

10. What impact, if any, would adoption of the proposals have on the incidence of litigation concerning the adequacy of disclosure?

11. How will the proposed revisions to MD&A alter the allocation of liability among auditors, board members, registrants, and others, in the event of litigation over the accuracy or adequacy of the MD&A disclosed?

12. What are the costs and benefits of the accounting profession proposals? Are there other cost-effective alternatives?

[23] Much of the information disclosed in the MD&A relates to matters that the auditor normally considers during the audit of the financial statements. For example, analytical review procedures and the auditor's review of contingent liabilities, changes in accounting principles, accounting estimates and the entity's status as a going concern may all provide information relevant to MD&A. Therefore, the auditor generally should be in a position to assess the accuracy and completeness of MD&A disclosures.

[24] Copies of the two proposals will be placed in the public file to assist commentators.

[25] On February 14, 1987, the Auditing Standards Board issued an Exposure Draft of a Proposed Statement on Standards for Attestation Engagements entitled "Examinaiton of Management's Discussion and Analysis." The Exposure Draft, if adopted, would establish performance and reporting guidance when an entity voluntarily engages an auditor to attest to representations in MD&A.

[26] 17 CFR 239.28.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-9280 Filed 4-23-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

[FL Reg 210-7]

National Defense; Regulations Affecting Military Reservations; Controlling Access to Main Cantonment Area, Fort Lewis Military Reservation, Fort Lewis, WA; Prohibiting Certain Forms of Conduct Upon Fort Lewis Military Reservation

AGENCY: Department of the Army DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Army proposes adding subpart G to 32 CFR Part 552 to set forth additional regulations governing entry to and conduct upon the Fort Lewis Military Reservation, Fort Lewis, Washington. Fort Lewis has been declared a closed post, and it is intended that these regulations will give notice to the members of the public of the rules governing entry to the Main Cantonment Area of the Fort Lewis Military Reservation, Fort Lewis, Washington, and of certain conduct prohibited upon the Fort Lewis Military Reservation.

DATE: Comments must be received in writing on or before May 26, 1987.

ADDRESSES: Send written comments to: Office of the Staff Judge Advocate, I Corps and Fort Lewis, AFZH-JAA (ATTN: CPT McDaniel), Fort Lewis, WA 98433-5000. A copy of the proposed regulations, the appropriate map, and any written comments received will be available for public inspection during normal office hours in the Civil Law Division of the Office of the Staff Judge Advocate, I Corps and Fort Lewis, Room 10, Building 1033, Fort Lewis, Washington.

FOR FURTHER INFORMATION CONTACT: Captain John B. McDaniel, Civil Law Division, Office of the Staff Judge Advocate, I Corps and Fort Lewis, Fort Lewis, Washington 98433-5000; telephone (206) 967-6153.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Commanding General, Headquarters, I Corps and Fort Lewis, Fort Lewis, Washington, proposes adopting regulations in furtherance of the security

of Fort Lewis as a closed post which set forth entry regulations and access controls for the Main Cantonment Area and prohibit certain forms of conduct anywhere upon the Fort Lewis Military Reservation. The Main Cantonment Area of the Fort Lewis Military Reservation includes, but is not limited to, Government housing areas, schools, medical facilities, troop billets, the installation command and control functions, Gray Army Air Field, and Madigan Army Medical Center. To improve the security of essential installation operations and functions, it has become necessary to limit unimpeded access to the Main Cantonment Area to those persons with prior approved permission to enter, and to prohibit entry of the general public except through established access control points. Accordingly, these regulations limit access to the Main Cantonment Area of the Fort Lewis Military Reservation to persons with prior approval who enter through established access control points pursuant to these regulations. Entry into the Main Cantonment Area at any other point, by any person, is strictly prohibited. Additionally, certain forms of conduct that have a significant potential for interference with orderly accomplishment of the installation's mission are prohibited unless prior approval of the Installation Commander or his designated representative has been obtained.

Executive Order 12291

It has been determined that this document is not a major rule not require a regulatory analysis under Executive Order 12291 because the rule is administrative and has no economic effect on the public.

Regulatory Flexibility Act

The Department has also determined that this document will not have a significant effect in a substantial number of small entities and does not require a flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 32 CFR Part 552

Military reservations, Consumer protection, Federal buildings and facilities, and Real property acquisition.

For the reasons set out in the preamble, Title 32, Chapter V, Part 552 of the Code of Federal Regulations is proposed to be amended as follows:

PART 552—REGULATIONS AFFECTING MILITARY RESERVATIONS

1. The authority citation for Part 552 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 3012, 15 U.S.C. 1601, 18 U.S.C. 1382, 31 U.S.C. 71, 40 U.S.C. 258a,. 41 U.S.C. 14, and 50 U.S.C. 797.

2. Subpart H, consisting of §§ 552.105 through 552.111 is added to read as follows:

Subpart H—Regulation Controlling the Access to the Fort Lewis Main Cantonment Area and Prohibiting Certain Conduct Upon Fort Lewis Military Reservation

Sec.

Subpart H—Regulation Controlling the Access to the Fort Lewis Main Cantonment Area and Prohibiting Certain Conduct Upon Fort Lewis Military Reservation

§ 552.105 Purpose.

(a) This regulation establishes procedures governing access control requirements for the Main Cantonment Area, Fort Lewis, Washington, and prohibits certain forms of conduct upon the Fort Lewis Military Reservation.

(b) These procedures and requirements have been established in conjunction with other efforts to improve the physical security of the Fort Lewis Military Reservation. It is essential that entrance to, and exit from, the installation be made only at controlled access points, and that certain forms of conduct be restricted.

(c) This regulation governs all access to the Main Cantonment Area of the Fort Lewis Military Reservation, including, but not limited to, all housing areas, Gray Army Air Field, and Madigan Army Medical Center. It further prohibits all persons from engaging in certain forms of conduct anywhere on the Fort Lewis Military Reservation.

§ 552.106 Applicability.

This regulation is applicable to all persons, both military and civilian, who enter the Fort Lewis Military Reservation.

§ 552.107 References.

(a) AR 190–5, Motor Vehicle Traffic Supervision

(b) AR 190–52, Countering Terrorism and Other Major Disruptions on Military Reservations

(c) AR 210–7, Commercial Solicitation on Army Installation

(d) AR 210–10, Installations, Administration

(e) I Corps and Fort Lewis Installation Security and Closure Plan

§ 552.108 General.

(a) *Access controls.* (1) Fort Lewis is a closed post. Access to the installation is limited to persons with prior approved permission to enter.

(2) Public access into the Main Cantonment Area of Fort Lewis is controlled through a series of static security posts manned by sentries empowered to grant or deny access to persons and material. The "Main Cantonment Area" is that area of the Fort Lewis Military Reservation shown on the overprinted 1:50,000 Fort Lewis Special Map (DMA Stock No. V791SFTLEWIS) excluding those areas designated thereon as Impact Areas, lettered Close-In Training Areas (CTAs), or numbered Training Areas (TAs). A full sized map is located at the Fort Lewis Area Access Office, Building T–6127. As defined, the Main Cantonment Area includes, but is not necessarily limited to, those areas of the installation containing Government housing areas, schools, medical facilities, troop billets, the installation command and control facilities, Gray Army Air Field, Madigan Army Medical Center, and certain recreational sites controlled by the Director of Personnel and Community Activities (DPCA).

(3) Entry of the general public into the Main Cantonment Area at any location other than through established manned access control points is strictly prohibited. For the purposes of this regulation, entry includes the entrance of the person, or the insertion of any part of his body, or the introduction of any unauthorized material.

(b) *Trespassers.* Persons entering or remaining upon the Main Cantonment Area of the Fort Lewis Military Reservation in violation of this regulation are trespassing on a closed federal reservation and are subject to citation by the military police. Trespassers may be barred from subsequent access to the installation and will be subject to the provisions of this regulation. A person violates this regulation when he enters or remains upon the Main Cantonment Area when he is not licensed, invited, or otherwise authorized to so enter or remain. All such persons are trespassers for the purpose of this regulation.

(c) *Prohibited activities.* Department of Defense policy permits commanders to prohibit any expressive activity which could interfere with or prevent the orderly accomplishment of the installation's mission, or which presents a clear danger to the loyalty, discipline or morale of their soldiers. Therefore, unless the prior approval of the installation commander or his designated representative has been obtained, no person while on the Fort Lewis Military Reservation shall:

(1) Engage in protests, public speeches, sit-ins, or demonstrations promoting a political point of view;

(2) Engage in partisan political campaigning or electioneering;

(3) Display or distribute commercial advertising or solicit business;

(4) Interrupt or disturb a military formation, ceremony, class or other activity;

(5) Obstruct movement on any street, sidewalk, or pathway without prior authority;

(6) Utter to any person abusive, insulting, profane, indecent or otherwise provocative language that by its very utterance tends to incite an immediate breach of the peace;

(7) Distribute or post publications, including pamphlets, newspapers, magazines, handbills, flyers, leaflets, or other printed material, except through regularly established and approved distribution outlets;

(8) Circulate petitions or engage in picketing or similar demonstrations for any purpose;

(9) Disobey a proper request or order by DoD police, military police, or other competent authority to disperse or to leave the installation.

(d) *Failure to comply.* Any person who enters or remains upon the Main Cantonment Area of Fort Lewis Military Reservation when he is not licensed, invited or otherwise authorized by the terms of this regulation or who enters or remains upon the Fort Lewis Military Reservation for a purpose of engaging in any activity prohibited by this regulation is in violation of the provisions of the regulation. Violators of this regulation may be subjected to administrative action or criminal punishment under the Uniform Code of Military Justice (UCMJ), Title 18 U.S.C. 1382, or Title 50 U.S.C. 797, as appropriate to each individual's status. Maximum punishment under Title 18 U.S.C. 1382 is a fine of not more than $500 or imprisonment for not more than six months, or both. Maximum punishment under 50 U.S.C. 797 is a fine of $5,000 or imprisonment for not more than one year, or both. Administrative action may include suspension of access privileges, or permanent expulsion from the Fort Lewis Military Reservation.

§ 552.109 Routine security controls.

(a) *Unimpeded access.* Military vehicles, emergency vehicles, mail delivery vehicles, privately owned motor vehicles registered in accordance with Fort Lewis Supplement 1 to Army Regulation 190–5, and pedestrians in possession of current active duty, retired, dependent, or DoD civilian identification cards are authorized unimpeded access to Fort Lewis during periods of routine installation operations unless prohibited or restricted by action of the Installation Commander.

(b) *Visitor access.* All visitors to the installation will report to the visitor's information center where the visitor's name, vehicle license number, purpose and duration of visit will be recorded prior to granting access. Visitor's passes for visitors to Madigan Army Medical Center and the Logistics Center/Civilian Personnel Office will be issued at the Madigan and Logistics Center gates respectively.

(c) *Visitor's passes.* Visitor's passes, HFL Form 1138, valid for a period not to exceed 24 hours unless otherwise noted below, may be issued only when one or more of the following criteria is met.

(1) Personnel in possession of proper orders directing temporary duty at Fort Lewis may be issued a visitor's pass for periods not to exceed 13 days. Personnel ordered to temporary duty at Fort Lewis for periods in excess of 13 days but less than 90 days will be required to obtain a temporary vehicle registration.

(2) Persons visiting Fort Lewis military personnel or their family members may be issued visitor's passes for periods up to and including 13 days when personally requested by the military sponsor.

(3) Moving vans and commercial delivery vehicles will be issued visitor's passes after the operator displays a bill of lading or other official documentation demonstrating a legitimate need to enter Fort Lewis.

(4) Contract vehicles not qualifying for installation vehicle registration pursuant to Fort Lewis Supplement 1 to Army Regulation 190–5 will be issued a visitor's pass as provided in (c) above, after the purpose of the visit has been verified by the Contracting Officer's Representative, or the Contractor when the former is not available.

(5) Prior to issuing a visitor's pass to unsponsored personnel who desire to visit unit areas, club facilities and other recreational facilities, security personnel will telephonically contact the person to be visited. If the person to be visited cannot be contacted to verify the visit, the visitor will be denied entry. Unsponsored personnel desiring to visit the Fort Lewis Museum may be issued a visitor's pass valid until museum closing time on day of issue, provided security personnel telephonically contact the museum and verify the hours of public operation that day prior to issuing the visitor's pass.

(6) Soldiers, dependent family members, and Department of the Army employees who sponsor visitors to the installation remain responsible for the conduct of their guests on Fort Lewis for the duration of the visit.

(d) *Heightened security controls.* Access control measures implemented during periods of enhanced security will be in accordance with Army Regulation 190–52 and the I Corps and Fort Lewis Installation Security and Closure Plan. During periods of heightened security controls, sponsors may be required to personally report to the Visitor's Information Center to accept responsibility for the visitor.

§ 552.110 Requests for exception.

The installation commander or his deputy may grant exceptions to the prohibitions contained in § 552.108(c) of this part. An application for exception shall be submitted to the installation Public Affairs Liaison Officer at least seven days prior to the date of the requested activity. The application must be in writing, and must specify the particular activity proposed, the names of the persons and organizations sponsoring the activity, the number of participants, and the time, date and specific place or places the requester proposes the activity occur. In addition, the application shall be signed by the requester or by a representative of the requesting organization, if any, and contain an address and local telephone number where the requester or representative can be reached in the event further information is needed.

§ 552.111 Severability.

If a provision of this Regulation is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality or validity of every other provision of this Regulation shall not be affected thereby.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 87–9101 Filed 4–23–87; 8:45 am]

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PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 902

Freedom of Information Reform Act of 1986; Fee Schedule and Guidelines for Waivers or Reductions of Fees

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Proposed Rule with request for comments.

SUMMARY: The Freedom of Information Reform Act of 1986 (Pub. L. 99–570) requires the Pennsylvania Avenue Development Corporation (the "Corporation") to promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests and establishing procedures and guidelines for determining when such fees should be waived or reduced. The schedule substantially conforms to the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget in 52 FR 10012 (March 27, 1987).

DATE: Comments must be received on or before May 26, 1987.

ADDRESS: Written comments should be submitted to Janet Bruner, Attorney, Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue NW., Washington, DC. 20004–1703.

FOR FURTHER INFORMATION CONTACT: Janet Bruner, Attorney, Pennsylvania Avenue Development Corporation, 202/724–9088.

SUPPLEMENTARY INFORMATION: By April 25, 1987, agencies are required to promulgated regulations to carry out the provisions of the Freedom of Information Reform Act of 1986 in conformance with the guidelines promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget. A final rule will be issued after consideration of comments received.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, et seq.), I hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule does not constitute a "major rule" under Executive Order 12291.

List of Subjects in 36 CFR Part 902

Freedom of information.

For the reasons set out in the preamble, 36 CFR Part 902 is proposed to be amended as follows:

PART 902—FREEDOM OF INFORMATION ACT

1. The authority citation for 36 CFR Part 902 is proposed to be revised to read as follows:

Authority: 5 U.S.C. 552; 52 FR 10012–10019 (March 27, 1987).

2. Section 902–80(b) of Chapter IX of Title 36 of the Code of Federal Regulations is proposed to be revised to read as folows:

§ 902.80 General

* * * * *

(b) A fee shall not be charged for time spent in resolving legal or policy issues.

3. Section 902.81 of the Code of Federal Regulations is proposed to be revised to read as follows:

§ 902.81 Payment of fees

The fees prescribed in this Part may be paid in cash or by check, draft, or postal money order made payable to the Pennsylvania Avenue Development Corporation.

4. Section 902.82 of Chapter IX of Title 36 of the Code of Federal Regulations is proposed to be revised to read as follows:

§ 902.82 Fee schedule.

(a) *Definitions.* For purposes of this section:

(1) A "commercial use request" is a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will determine the use to which the requester will put the records sought. Where the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Corporation will seek additional clarification before assigning the request to a specific category.

(2) "Direct costs" means those expenditures the Corporation actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) records to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(3) "Duplication" means the process of making a copy of a record necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(5) "Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis, within the meaning of paragraph (a)(1) of this section and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Corporation may also look to the past publication record of a requester in making this determination.

(7) "Review" means the process of examining records located in response to a request that is for a commercial use (see paragraph (a)(1) of this section) to determine whether any portion of any

record located is permitted to be withheld. It also includes processing any records for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. A line-by-line search will not be conducted when merely duplicating an entire record would be the less expensive and quicker method of complying with the request. "Search" does not include "review" of material to determine whether the material is exempt from disclosure (see paragraph (a)(7) of this section). Searchers may be done manually or by computer using existing programming.

(b) The following provisions shall apply with respect to services rendered to the public in processing requests for disclosure of the Corporation's records under this Part:

(1) *Fee for duplication of records:* $0.25 per page. When the Corporation estimates that duplication charges are likely to exceed $25.00, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. The Corporation will offer the requester the opportunity to confer with the Corporation's staff in order to reformulate the request to meet the requester's needs at a lower cost.

(2) *Search and review fees:* (i) Searches for records by clerical personnel: $7.00 per hour, including the time spent searching for and copying any records.

(ii) Search for and review of records by professional and supervisory personnel: $11.50 per hour spent searching for any record or reviewing any record to determine whether it may disclosed, including time spent in copying any record.

(iii) Except for requests seeking records for a commerical use, the Corporation will provide the first 100 pages of duplication and the first two hours of search time without charge. The word "pages" means paper copies of a standard size, either 8½" by 11" or 11" by 14".

(3) *Duplication of architectural drawings, maps, and similar materials:* (per copy) $10.00

(4) *Reproduction of 35 mm slides:* (per copy) $1.00.

(5) *Reproduction of enlarged, black and white photographs:* (per copy) $10.00.

(6) *Reproduction of enlarged, color photographs:* (per copy) $17.00.

(7) *Certification and validation fee:* $1.75 for each certification or validation of a copy of any record.

(8) *Categories of FOIA requesters and fees to be charged:*

(i) *Commerical use requesters.* When the Corporation receives a request for records for commercial use, it will assess charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought.

(ii) *Educational and non-commercial scientific institution requesters.* The Corporation shall provide copies of records to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the record are not sought for a commercial use but are sought in furtherance of scholarly (if the requester is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(iii) *Requsters who are representatives of the news media.* The Corporation shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the fist 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in the definition of "representative of the news media" in paragraph (a)(6) of this section, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(iv) *All other requesters.* The Corporation will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsvie to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requests from record subjects for records about themselves filed in the Corporation's systems of records will be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

(9) *Interest:* In the event a requester fails to remit payment of fees charged for processing a request under this Part within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date at the rate prescribed in Section 3717 of Title 31, United States Code, and will accrue from the date of the billing.

(10) *Unsuccessful searches:* Except as provided in paragraph (b)(8)(iv) of this section, the cost of searching for a requested record shall be charged even if the search fails to locate such record or it is determined that the record is exempt from disclosure.

(11) *Aggregating requests:* A requester must not file multiple requests at the same time, each seeking portions of a record or records, solely in order to avoid payment of fees. When the Corporation reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation may aggregate any such requests and charge accordingly.

(12) *Advance payments:* The Corporation will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request unless:

(i) The Corporation estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250; or

(ii) If a requester has previously failed to make timely payments (i.e., within 30 days of billing date) of fees charged under this Part, the requester may be required to pay the full amount owed plus any applicable interest accrued thereon or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Corporation begins to process a new request or a pending request from that requester.

(iii) With regard to any request coming within paragraphs (b)(12)(i) and (ii) of this section, the administrative time limits set forth in §§ 902.60, 902.61, and 902.62 of this Part will begin to run only after the Corporation has received the requisite fee payments.

(iv) *Non-payment:* In the event of nonpayment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365), including disclosure to consumer credit reporting agencies and referral to collection agencies, where appropriate, may be utilized to obtain payment.

5. Section 902.83 of Chapter IX of Title 36 of the Code of Federal Regulations is proposed to be revised to read as follows:

§ 902.83 Waiver or reduction of fees.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where:

(a) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or

(b) The costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

M. J. Brodie,

Executive Director.

[FR Doc. 87-9290 Filed 4-23-87; 8:45 am]

BILLING CODE 7630-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1250 and 1258

Freedom of Information Act Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Freedom of Information Reform Act (Pub. L. 99-570) as it relates to requests for NARA administrative records. This proposal would not affect requests by the public for records created by other Federal agencies and transferred to the custody of the Archivist of the United States.

This proposed rule also makes a minor unrelated change to the NARA fee schedule published in 36 CFR Part 1258 to remove the copyflow process as a published reproduction service. Copy flow reproductions (paper copies made from microfilm) are processed by contractors whose prices are subject to change at any time. In accordance with 36 CFR 1258.12(i), NARA will quote the price in effect at the time a copyflow reproduction is requested.

DATE: Comments must be received on or before May 26, 1987.

ADDRESS: Comments should be sent to Director, Program Policy and Evaluation Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202-523-3214 (FTS 523-3214).

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act was enacted by Congress and signed into law by the President on October 25, 1986. The Reform Act establishes categories of requesters and defines the types of fees applicable to each category, revises criteria for evaluation of fee waiver and fee reduction requests, sets minimum limits of service below which no costs to the requester may be charged, and sets a higher limit before prepayment is required. It also amends exemption (b)(7) governing investigative information compiled for law enforcemnt purposes. The Reform Act also requires the Office of Management and Budget (OMB) to issue guidelines to serve as the basis for agency implementing regulations.

Currently, NARA has two sets of regulations for FOIA requests; one covering public requests for NARA administrative records and another covering requests from the public for the records of other Federal agencies that have been transferred to a Federal Records Center or accessioned into the National Archives of the United States. A single fee schedule has governed release of both types of records. This proposed rule, following the OBM guidelines, implements the Reform Act as it applies to requests from the public for NARA administrative records by establishing a new fee schedule for requests for NARA administrative records.

The proposed rule does not affect FOIA procedures as set fourth in 36 CFR 1254.30 for requests for records created by other Federal agencies and transferred to the custody of the Archivist of the United States. This proposed rule also leaves unaltered the fee schedule for accessioned records set forth in 36 CFR Part 1258. The fee schedule for accessioned records is exempt from the Reform Act under 5 U.S.C. 552(a)(4)(A)(vi) which gives preference to other statutes that provide for setting the level of fees. 44 U.S.C. 2116(c) prescribes procedures for setting fees for reproduction of materials transferred to the Archivisit's custody.

Following is a section-by-section sumary of the major provisions of this proposed rule.

Section 1250.12 is modified to inform requesters that sufficient information must be included in their initial FOIA requst for NARA to make a category-of-requester determination.

Part 1250 has been reorganized to improve the readability of the regulation. Subpart C has been modified to remove §§ 1250.38 through 1250.46 relating to fees, and Subparts D through F have been redesignated as Subparts E through G. A new Subpart D, Fees, is established to incorporate new procedures for fees for FOIA requests under the Reform Act.

Section 1250.37 contains definitions of key phrases used throughout Subpart D. Search fees and the activities that incur search fees are set forth in § 1250.38. Review fees are defined and set forth in § 1250.39. Reproduction fees are set in § 1250.40. Other fees that may be applicable to a request are set forth in § 1250.41. The fees applicable to different categories of requesters are set forth in § 1250.42. The conditions requiring prepayment of fees are set forth in § 1250.43. Procedures for requesting and the basis for granting a waiver or reduction in fees are set forth in § 1250.44. Redesignated § 1250.45 explains payment procedures.

Section 1250.58 in the redesignated Subpart E is revised to provide new procedures for appealing NARA's decision on the determination of the requester's fee category, and to clarify the procedures for appealing the denial of a fee reduction or waiver request.

Section 1250.70 in the redesignated Subpart F is revised to incorporate, verbatim from the Reform Act, changes in exemption (b)(7), records or information compiled for law enforcement purposes.

Section 1258.2 is revised to add a reference to the separate fee schedule in § 1250.40 for reproduction of NARA administrative records in response to FOIA requests. As explained in the Summary, § 1258.12(c)(3) is removed to delete reference to the copyflow process.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1250

Freedom of information.

For the reasons set forth in the preamble, NARA proposes to amend Chapter XII of Title 36 as follows:

PART 1250—PUBLIC AVAILABILITY OF NARA ADMINISTRATIVE RECORDS AND INFORMATIONAL MATERIALS

1. The authority citation for Part 1250 continues to read as follows:

Authority: 44 U.S.C. 2104(a); 5 U.S.C. 552.

2. Section 1250.12 is revised to read as follows:

§ 1250.12 Availability of records.

NARA administrative records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. Requesters should address their requests to the office designated in § 1250.54. The person making the request need not have a particular interest in the subject matter, nor provide justification for the request except to the extent necessary to determine the requester's category for fee assessment purposes as explained in § 1250.42. The FOIA requirement that records be available to the public refers only to records in existence when the request is submitted. The Act does not require an agency to compile or create information or records in response to a FOIA request.

§§ 1250.38 through 1250.46 [Removed].

3. In Subpart C, §§ 1250.38 through 1250.46 are removed and § 1250.30 is revised to read as follows:

§ 1250.30 General.

NARA makes available for public inspection and copying the materials described in paragraph (a)(2) of the FOIA (5 U.S.C. 552(a)(2)), which are listed in § 1250.32, and an Index of those materials as described in § 1250.34, at the National Archives Building located at 7th and Pennsylvania Avenue, NW., Washington, DC. Copying services are available at fees specified in § 1250.40.

Subparts D Through F—[Redesignated as Subparts E Through G]

4. Subparts D through F, consisting of §§ 1250.50 through 1250.80, are redesignated as Subparts E through G. The respective section numbers in each subpart are unchanged.

5. A new Subpart D—Fees, consisting of §§ 1250.37 through 1250.46, is added to read as follows:

Subpart D—Fees

Sec.

§ 1250.37 Definitions.

"Commercial-use requester" means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

"Educational-institution request" means a request from a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs of scholarly research. The request must serve the scholarly research goals of the institution or school rather than the individual goals of the requester. A request from a student in furtherance of the completion of a course of instruction does not qualify as an educational institution request.

"Freelance-journalist" means an individual who qualifies as a representative of the news media because the individual can demonstrate a solid basis for expecting publication through a news organization, even though not actually in its employ. A publication contract would be the clearest proof of a solid basis, but the individual's past publication history may also be considered in demonstrating this solid basis.

"News media representative" means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public.

"Non-commercial scientific institution" means an institution that is not operated on a basis that furthers the commercial, trade, or profit interests of any person or organization, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

"Other requesters" means any individual who is not a commercial-use requester, a representative of the news media, a freelance-journalist, or one associated with an educational or noncommercial scientific institution whose research activities conform to the definition above. This term does not include requests from records subjects for records about themselves filed NARA's systems of records; such requests are handled in accordance with 36 CFR Part 1202.

§ 1250.38 Search fees.

(a) The search fee is $10 per hour or fraction thereof when clerical/administrative staff manually search for records responsive to a request, and $18 per hour or fraction thereof when NARA must use professional staff to manually search for the requested records because clerical/administrative staff would be unable to locate them. The search fee for computerized searches is the wage (plus 16 percent fringe benefits) of the computer operator per hour or fraction thereof plus the actual computer operating costs.

(b) NARA may charge for search time spent in trying to locate NARA records which are responsive to the request regardless of whether or not any responsive records are identified. NARA will not engage in line-by-line search when merely duplicating an entire document is feasible and would prove to be a less expensive and quicker method of complying with the request.

(c) When the search includes nonpersonnel expenditures to locate and identify requested information (e.g., transport or travel costs, etc.), the applicable fee is the direct cost to NARA.

(d) NARA will charge for the aggregate of all time spent in searching for documents responsive to a series of requests when NARA reasonably believes a requester of group of requesters is dividing a request into a series of requests to evade assessment of applicable fees.

§ 1250.39 Review fees.

(a) NARA will not charge review fees for time spent resolving general legal or policy issues regarding the application of exemptions.

(b) The reveiw fee is $24 per hour or fraction thereof, for time spent in activities set forth in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(c) NARA will charge only commercial-use requesters review fees.

(d) NARA may charge for the time spent engaged in the following activities to determine "review time" subject to review fees:

(1) Time spent examining all documents that are responsive to a request to determine whether any portion of any document is exempt from mandatory disclosure regardless of whether any information is ultimately withheld.

(2) Time spent excising information and otherwise preparing records for release (except preparing the copies that will be made available to the requester).

(3) The aggregate of all time spent in reviewing documents to determine

whether any portion of any document is permitted to be withheld when NARA reasonably believes that a requester or group of requesters is dividing a request into a series of requests to evade the assessment of applicable fees.

(d) A fee of $.20 per page will be charged for making working copies of pages from which information must be excised.

§ 1250.40 Reproduction fees.

(a) *Electrostatic reproductions*—(1) *Prepared by NARA staff.* Paper reproductions of NARA paper records made by NARA staff will be furnished for $.20 a page.

(2) *Self-service.* At NARA facilities with self-service electrostatic copiers, requesters may make reproductions of released documents for $.10 a page.

(b) *Reproductions from electromagnetic media.* Direct costs to NARA for staff time for programming, computer operations, and printouts or magnetic tape to reproduce the requested data will be charged requesters.

(c) *Other media.* The cost for reproduction of records from or to other media will be provided upon request. NARA will charge the direct costs to NARA of providing the reproduction.

§ 1250.41 Other fees.

(a) *Mailing costs.* Actual postage and shipping costs will be charged when the requester asks for special methods such as express mail.

(b) *Certification.* A fee of $2.00 will be charged for each certification.

(c) *Interest.* Interest charges on unpaid fees will be charged beginning on the 31st day after billing at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

§ 1250.42 Fees applicable to categories of requesters.

(a) *NARA policy.*

(1) NARA will assess fees on the basis of the category of the requester as defined in § 1250.37. The initial request should include sufficient information for NARA to determine the category of the requester. If NARA has reasonable cause to question whether a requester should be assigned to a category that is claimed, NARA will seek clarification from the requester before assigning a requester to a specific category and before beginning to process the request. If a requester disagrees with a NARA category-of-requester determination, this determination may be appealed, following the procedures set forth in § 1250.56.

(2) NARA will not assess fees otherwise chargeable if the aggregate of all applicable fees is less than $10.

(3) If NARA estimates that total applicable search and reproduction charges are likely to exceed $25, NARA will notify the requester of the estimated amount of fees, unless the requester has indicated in advance a wilingness to pay fees as high as those anticipated. The requester will be offered the opportunity to confer with a NARA official with the object of reformulating the request to meet the requester's need at a lower cost.

(4) For those requests eligible for 2 hours free search time, NARA may begin charging for computerized search time once the cost of the search (including the operator time and the cost of operating the computer to process the request) equals the equivalent dollar amount of two hours of a manual search by a clerical/administrative employee.

(b) *Commercial-use requesters.* Commercial-use requesters, as defined in § 1250.37, who make requests for reasonably described records will be assessed the following fees:

(1) Search fees as set forth in § 1250.38;

(2) Review fees as set forth in § 1250.39;

(3) Reproduction fees as set forth in § 1250.40; and

(4) Other fees as set forth in § 1250.41, as applicable.

(c) *Educational and non-commercial scientific institution requesters.* When NARA receives a request from a qualified educational institution or a non-commercial scientific institution requester, as defined in § 1250.37, for reasonably described records, NARA will assess:

(1) Reproduction costs as set forth in § 1250.40, except the first 100 pages or their equivalent will be provided free; and

(2) Other costs as set forth in § 1250.41, if applicable. NARA will not charge search or review fees.

(d) *Requesters who are qualified representatives of the news media or qualified freelance-journalists.* When NARA receives a request from a qualified representative of the news media or freelance-journalist, as defined in § 1250.37, for reasonably described records, NARA will assess reproduction fees as set forth in § 1250.40, except the first 100 pages or their equivalent will be provided free. NARA will not charge search or review fees.

(e) *Requests from other requesters.* When NARA receives a request from an individual defined as "other requesters" in § 1250.37 for reasonably described records, NARA will assess:

(1) Search fees as set forth in § 1250.38, for any search time in excess of two hours of manual search or its computerized search equivalent;

(2) Reproduction fees as set forth in § 1250.40, as applicable, except the first 100 pages or their equivalent will be provided free; and

(3) Other fees as set forth in § 1250.41, if applicable.

§ 1250.43 Prepayment of fees.

(a) NARA may require prepayment of all fees when:

(1) Applicable fees are likely to exceed $250, and

(i) The requester has no history of payment;

(ii) After notifying a requester who has a history of prompt payment of FOIA fees of the estimated fees, NARA does not receive satisfactory assurances of full payment; or

(2) A requester has previously failed to pay a fee and interest charges within 30 days of the date of billing.

(b) The amount of the prepayment will be the anticipated fees for the current request, and, if applicable, any previously assessed fees and any interest which have not been received by NARA.

§ 1250.44 Waiver or reduction of fees.

(a) Any request for waiver or reduction of a fee shall be included in the initial letter requesting access to NARA records under § 1250.54. The waiver or reduction request should explain how release of the requested information is likely to benefit the public by contributing significantly to the public understanding of the operations or activities of the government, and why the information is not primarily in the commercial interest of the requester.

(b) Documents shall be furnished without a fee or at a reduced fee if NARA determines that the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(c) If NARA denies a request for a waiver or reduction of a fee, the requester may appeal this denial, following the procedures set forth in § 1250.58.

§ 1250.45 Form of payment.

Requesters shall pay fees by check or money order payable to: "National Archives and Records Administration" and addressed to the official named by NARA in its correspondence.

§ 1250.46 Payment collection.

As provided for in the Debt Collection Act of 1982 (Pub. L. 97–365), NARA may employ collection agencies and may disclose information concerning nonpayment of fees to consumer reporting agencies when fees have not been paid within 31 days of billing.

§ 1250. 50 [Amended]

6. Section 1250.50 is amended by removing in paragraph (a) the words "Subpart E" and inserting in their place the words "Subpart F."

7. Section 1250.58(c) is revised to read as follows:

§ 1250.58 Appeal within NARA.

* * * * *

(c) The requester shall appeal in writing and include a brief statement of the reasons why NARA should release the records, or in the case of a requester category determination, why the requester should be considered to be a member of a different category, or, if an appeal from a denial of a fee reduction or waiver request, how disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of government and is not a request primarily intended to benefit the commercial, trade, or profit interests of the requester. The appeal letter shall include the words "Freedom of Information Appeal" on both the face of the appeal letter and the envelope, and the requester shall enclose with the appeal letter a copy of the initial request and denial. NARA has 20 workdays after receipt of an appeal to make a determination with respect to the appeal. The 20-workday time limit begins when the Deputy Archivist receives the appeal.

* * * * *

8. Section 1250.70(a)(7) is revised to read as follows:

§ 1250.70 Categories of records exempt from disclosure under the FOIA.

(a) * * *

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

PART 1258—FEES

9. The authority citation for Part 1258 continues to read:

Authority: 44 U.S.C. 2116(c).

10. Section 1258.2(c)(7) is revised to read as follows:

§ 1258.2 Applicability.

* * * * *

(c) * * *

(7) Reproductions of NARA administrative records made in response to FOIA requests under Part 1250 of this chapter. Fees for such reproduction are found in § 1250.40 of this chapter.

§ 1258.12 [Amended]

11. Section 1258.12 is amended by removing in paragraph (c)(3) the words "From negative (copyflow), per foot . . . $0.55."

Dated: April 20, 1987.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 87–9408 Filed 4–23–87; 8:45 am]

BILLING CODE 7515–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 87–67; FCC 87–96]

Common Carrier Services; Developing a Policy for the Distribution of United States International Carrier Circuits Among Available Facilities During the Post-1988 Period

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The NPRM initiates a rulemaking proceeding to develop policy for the distribution of U.S. international carrier circuits among available facilities during the post-1988 period. The Commission tentatively concludes that it should consider development of its post-1988 circuit distribution policy on a worldwide basis rather than continue to develop such policies on a region-by-region basis. The Commission also tentatively concludes that the exemption from circuit distribution guidelines for all North Atlantic and Pacific Ocean region circuits used by all U.S. carriers to provide all services, except for those circuits used by the American Telephone and Telegraph Company (AT&T) for the provision of international message telephone service (IMTS) and 800 service-overseas, which the Commission adopted in 1985, should be continued and extended to all regions of the world. The Commission reaches no tentative conclusions regarding the post-1988 distribution policy to be applied to AT&T's IMTS and 800 service-overseas circuits but, rather, requests comments on three options for a policy for the distribution of such circuits. The Commission also invites interested persons to submit additonal circuit distribution policy options they may wish considered, sets forth the facts it will consider in analyzing the various policy options and requests information from AT&T and the Communications Satellite Corporation (Comsat) necessary to conduct such analyses.

DATES: Comments should be filed on or before June 1, 1987 and Reply comments on or before June 16, 1987. AT&T and Comsat shall file the information requested by the Commission within 30 days from the date of release of the NPRM.

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

FOR FURTHER INFORMATION CONTACT: Robert E. Gosse (202) 632–7834.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM, CC Docket No. 87–67, FCC 87–96, Adopted March 19, 1987, and released April 10, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

This NPRM initiates a rulemaking proceeding to develop policy for the distibution of U.S. international carrier circuits among available facilities during the post-1988 period. The Commission tentatively concludes that it should consider development of its post-1988 circuit distribution policy on a worldwide basis rather than continue to develop such policies on a region-by-region basis. The Commission also tentatively concludes that the exemption from circuit distribution guidelines for all North Atlantic and Pacific Ocean region circuits used by all U.S. carriers to provide all services, except for those circuits used by the American Telephone and Telegraph Company (AT&T) for the provision of international message telephone service (IMTS) and 800 service-overseas, which the Commission adopted in 1985, should be continued and extended to all regions of the world. The Commission reaches no tentative conclusions regarding the post-1988 distribution policy to be applied to AT&T's IMTS and 800 service-overseas circuits, but, rather, requests comments on three options for a policy for the distribution of such circuits.

Under the first policy option, the Commission would remove itself from decisions regarding the distribution of all circuits, including AT&T's IMTS and 800 service-overseas circuits, at year-end 1988.

The second policy option is one which would continue the process of phasing in increased flexibility for AT&T in its circuit distribution decisions and, concomitantly, phasing out Commission involvement in those decisions. Under this option, the percentage of IMTS and 800 service-overseas circuits which AT&T would be free to place on either cable or satellite facilities would be increased annually until AT&T has the flexibility to place 100 percent of such circuits on either transmission medium. The NPRM requests comments on variations of this option which would result in AT&T achieving 100 percent flexibility after, one, three, five, seven, ten and twelve years. AT&T would not be prohibited from deloading either cable or satellite facilities in order to achieve the annual circuit distribution flexibility permitted by this policy option.

The third policy option would phase out Commission involvement in circuit distribution decisions over a period related to the period of time during which INTELSAT will use space segment in which its investment is currently committed or "sunk". Under this option, AT&T would be free to distribute its growth IMTS and 800 service-overseas circuits as it and its correspondents see fit after year-end 1988. AT&T would also be permitted to linearly decrease the IMTS and 800 service-overseas satellite circuits it is using at year-end 1988 over the period of time during which INTELSAT is using space segment in which its investment is currently "sunk". Comments are requsted on an example which assumes a 10 year period of INTELSAT use of "sunk" space segment investment and during which AT&T would be permitted to remove 10 percent of its year-end 1988 IMTS and 800 service-overseas satellite circuits during each of the 10 years. Interested persons are also invited to suggest other periods of time which they may believe are more closely related to the period during which INTELSAT will be using space segment in which its investment is currently sunk.

The NPRM also invites submission of any other circuit distribution policy alternatives for the post-1988 period interested persons may wish considered, sets forth the factors the Commission will consider in analyzing the various post-1988 circuit distribution policy options and requests the information from AT&T and Comsat necessary to perform such analyses.

This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231 for rules governing permissible *ex parte* contacts.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. In addition, the Regulatory Flexibility Act does not apply to this proceeding because that Act excludes from its application all proceedings such as this that involve "a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or to valuations, costs or accounting practices relating to such rates, wages, structures, prices, appliances, services, or allowances." *See* 5 U.S.C. 601(2).

The information collection request contained in the NPRM is not subject to the clearance procedures of section 3507 of the Paperwork Reduction Act of 1980, 20 U.S.C. 1221–23, since less than ten persons are required to respond.

Ordering Clauses

Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 201–205, 214, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 214, and 403 (1976), that a rulemaking proceeding is hereby instituted concerning the above-described issues.

It is further ordered that the American Telephone and Telegraph Company, Communications Satellite Corporation, FTC Communications, Inc., ITT World Communications, Inc., MCI International, Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation, U.S. Sprint Communications Company, Western Union International, Inc., and The Western Union Telegraph Company are made parties to the rulemaking initiated herein.

It is further ordered that the American Telephone and Telegraph Company and the Communications Satellite Corporation shall file the information required in Appendix 1 of this Notice by 30 days from the date of release of this Notice.

It is further ordered that the entities named as parties herein shall, and other interested parties may, file comments and reply comments on or before the dates specified in the Preamble. In accordance with the provisions of § 1.419 of our Rules, an original and five copies of all statements, briefs, comments, or reply comments shall be filed with the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. All such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, DC offices. All relevant and timely comments will be considered by this Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration ideas and information not contained in the comments, provided that such information or a writing indicating its nature and/or source is placed in the public file, or is otherwise publicly available, and provided that the Commission's reliance on such information is noted in the Report and Order.

It is further ordered that the Chief, Common Carrier Bureau is hereby delegated authority to modify, defer, or delete the requirements for information set forth in this rulemaking proceedings as required to assure adequate review of the issues.

Willaim J. Tricarico,

Secretary.

[FR Doc. 87–9165 Filed 4–23–87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1071 and 1072

[Ex Parte No. 467]

Exemption of Water Carrier Operations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under the exemption provisions of 49 U.S.C. 10544, the Commission proposes to amend 49 CFR Part 1071 and remove 49 CFR Part 1072 to exempt from regulation: water carrier transportation by small craft; water carrier transportation of passengers between places in the United States through foreign ports; water contract carrier leasing of vessels to private water carriers; and water carrier transportation of property owned by a person owning substantially all of the voting stock of the carrier. In addition, we solicit requests to exempt water contract carrier transportation that is noncompetitive with that provided by common carriers because of the inherent nature of the commodities, their need for special equipment, or their shipment in bulk. Continued regulation of these water carrier operations appears to be unnecessary under the statute and not required by the National Transportation Policy. The Commission also proposes to update Part 1071 to reflect the recodification of the Interstate Commerce Act.

DATE: Comments must be submitted by May 26, 1987.

ADDRESS: An original and 10 copies of comments referring to Ex Parte No. 467, should be sent to Case Control Branch, Office of the Secretary, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Harold Johnson (202) 275–7971

or

Mark S. Shaffer (202) 275–7292

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. Copies of the decision are available from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, (202) 275–7428.

Initial Regulatory Flexibility Analysis

We preliminarily conclude that the proposed action will not have a significant economic impact on a substantial number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Parts 1071 and 1072

Maritime carriers.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons concurred with a separate expression.

Noreta R. McGee,

Secretary.

Proposed Rule

1. Part 1071 is revised to read as follows:

PART 1071—EXEMPTION OF WATER CARRIER OPERATIONS

Sec.

Authority: 49 U.S.C. 10101, 10321, and 10544, and 5 U.S.C. 553.

§ 1071.1 Vessel leasing.

Contract carriers by water engaged in leasing or chartering vessels to a person not a carrier providing transportation or service subject to the jurisdication of the Interstate Commerce Commission for use in transporting its own property are exempted from the requirements of Chapter 105, Subchapter III, of Title 49, Subtitle IV, U.S. Code.

§ 1071.2 Towage of floating objects.[1]

Transportation by contract carriers of empty vessels to and from shipyards, floating objects such as derricks, dredges, tanks, caissons, pontoons, and other floating objects, other than logs and pilings in rafts, of varying shapes, sizes, and drafts which are not designed or used for the carrying of passengers and property, is hereby exempted from the requirements of Chapter 105, Subchapter III, of Title 49, Subtitle IV, U.S. Code.

§ 1071.3 Passenger transportation through foreign ports.

Water carriers engaged in transportation of passengers between places in the United States through a foreign port are exempted from the jurisdiction of the Interstate Commerce Commission under Chapter 105, Subchapter III, of Title 49, Subtitle IV, U.S. Code.

§ 1071.4 Transportation of property of a person owning substantially all of the carrier's voting stock.

Water carriers transporting only the property of a person owning 80 percent or more of the voting stock of the carrier are exempt from the jurisdiction of the Interstate Commerce Commission under Chapter 105, Subchapter III, of Title 49, Subtitle IV, U.S. Code.

PART 1072—[REMOVED]

2. Part 1072 is removed.

[FR Doc. 87–9317 Filed 4–23–87; 8:45 am]

BILLING CODE 7035–01–M

[1] The changes incorporated here are editorial. Parties are invited to suggest additional noncompetitive contract carrier exemptions, which may be added to the existing rule if warranted by comments submitted in this proceeding.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Polystichum aleuticum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Polystichum aleuticum* (Aleutian shield-fern), a perennial known from only two locations in the Aleutian Islands, Alaska, as an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. This species is endangered due to its extreme rarity, collecting for scientific and educational purposes, the threat of grazing and trampling by introduced ungulates, and loss of habitat from wind erosion and soil movement. This proposed rule, if made final, will provide protection and recovery provisions afforded by the Act to *Polystichum aleuticum*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by June 23, 1987. Public hearing requests must be received by June 8, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Division Chief, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Amaral (see **ADDRESSES** section) at 907/786–3435 or FTS 786–3435).

SUPPLEMENTARY INFORMATION:

Background

Polystichum aleuticum (family Polypodiaceae) is a small, tufted fern, about 150 millimeters (6 inches) tall, and arises from a stout, dark brown rhizome with brown scales and numerous chestnut-brown remains of frond bases (Murray 1980). The small, simply-pinnate fronds (leaves) with spiny-toothed pinnae (segments) and distinctive chestnut-brown stipe bases readily distinguish *P. aleuticum* from all other ferns in the Aleutian Islands (Lipkin 1985).

Until recently, *P. aleuticum* was known only from the original collection made by Eyerdam in 1932, who reported its location as Atka Island in the Aleutians (Hulten 1936). Based on Eyerdam's collections, Christensen published a description of the species in 1938. In 1975, D.K. Smith discovered a second population of 15 plants on Mt. Reed, Adak Island, about 160 km (100 miles) west of Atka.

This species is known only from these two locations in the Andreanof Island group of the Aleutian Islands, Alaska. It is a very well-marked and extremely narrow endemic without close relatives in North America or northern Asia (Wagner 1979). Its presence in only the Andreanof Island group which formed a single, large island during maximum glaciation, suggests it may be a relict species that survived on a nunatak or refugium (Lipkin 1985). It apparently has not expanded its range. Smith (1985) describes *P. aleuticum* as among the most restricted and rarest ferns of North America.

On Adak Island, *P. aleuticum* was found in a north-facing rock outcrop below the summit of the 590 meter (1,936 foot) Mt. Reed. The site consists of treeless, alpine talus slopes that are vegetated with low-growing herbs and prostrate shrubs. No information is available on the location or the status of the Atka population collected by Eyerdam in 1932 other than his annotation, "very rare" (Lipkin 1985). Efforts by Friedman (1984) and Lipkin (1985) to relocate the Atka population were unsuccessful. Despite intensive searching by R. Lipkin and S. Talbot (1986), no plants were seen on Adak in 1984 and 1985, respectively. However, both authors encountered difficult survey conditions and reported that the site was probably overlooked. The habitat remains, and the populations are assumed to be extant. Grazing by introduced caribou, depletion by collecting, and habitat instability are possible reasons for its apparent rarity.

Federal Government actions on this species began with Section 12 of the Endangered Species Act of 1973 (Act), 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 Smithsonian Institution report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3)(A) of the Act), and of its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Polystichum aleuticum* was included in the Smithsonian petition and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing 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); *Polystichum aleuticum* was included in that notice and in the Service's updated plant notice of September 27, 1985 (50 FR 39526).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Polystichum aleuticum* C. Chr. (Aleutian shield-fern) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Mt. Reed site on Adak Island lies within the Adak Naval Air Station and the Alaska Maritime National Wildlife Refuge (NWR). No present or anticipated development is likely to alter this site or similar alpine habitats on Adak Island. Mt. Reed is accessible to hunters and hikers, but the current level of use apparently does not pose a threat (Lipkin 1985). Atka Island is partially in private ownership (Atxam Native Corporation) and partially public land administered by the Service as a NWR. Proper protection and management plans are needed for all sites containing populations of the fern so that it is not inadvertently disturbed or destroyed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for commercial or recreational purposes has not been a documented factor in the decline of this species. However, taking for scientific and educational purposes has reduced the population, and, given its extreme rarity, overcollecting could pose a further threat in the future.

C. *Disease or predation.* Caribou were introduced to Adak Island in 1958, and 250–400 animals now occur on the island. Caribou are present in the Mt. Reed (Adak) location and may have impacted *P. aleuticum* by grazing and trampling. C.F. Zeillemaker, Refuge Manager on Adak, reports that reindeer, introduced to Atka Island in 1914, have overgrazed the west end of that island. The exact location of the *Polystichum* on Atka has not been confirmed, however, Service personnel are researching collection records of deceased botanists, who originally located the plant on Atka.

D. *The inadequacy of existing regulatory mechanisms.* The State of Alaska does not have specific legislation or regulations to protect endangered or threatened plant species, although a list of rare State plants exists. All plants occurring on NWRs are protected from collecting (50 CFR 27.51); therefore, *P. aleuticum* occurring within the Alaska Maritime NWR is protected by this prohibition, to the extent it is enforceable. The Act would enhance existing protection through section 7 (interagency cooperation), and Section 9, which further prohibits removal from Federal lands and reduction to possession, and restricts interstate commercial activity.

E. *Other natural or manmade factors affecting its continued existence.* The Mt. Reed population is of critically small size and its alpine environment is somewhat unstable due to solifluction (soil movement) and wind erosion (Lipkin 1985). The fern's diminutive size, small gene pool, and localized distribution add to its susceptibility to inadvertent destruction.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Polystichum aleuticum* as endangered. Endangered status is appropriate due to its extreme rarity and vulnerability to extirpation, and the threat from grazing. Critical habitat is not being determined 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 any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The Adak population of *Polystichum aleuticum* is sufficiently restricted that unauthorized collecting or vandalism could significantly affect its survival. Publication of critical habitat descriptions and maps in the Federal Register would increase the likelihood of such activities. The population of *P. aleuticum* on Adak is located on a National Wildlife Refuge and refuge personnel have been advised of the presence of the fern and possible management needs. Villagers in Atka are aware that the plant was found there. No other public notification benefits would accrue from designating critical habitat. Therefore, there is no net benefit in designation of critical habitat for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages additional survey work and conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition (should *P. aleuticum* occur on private land on Atka) and cooperation with the State of Alaska. The Act also requires that recovery activities be carried out for all listed species. Such actions can be 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 confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or to result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Both Adak and Atka Islands are within the Aleutian Islands Unit of the Alaska Maritime NWR. However, certain lands on Atka have been selected and conveyed to the Atxam Native Corporation under the Alaska Native Claims Settlement Act of 1971. The northern half of Adak Island (including Mt. Reed), though still within the Refuge, is a U.S. Naval Reservation within which the Navy has development rights that can be exercised if compatible with Refuge resources. Immediate measures to protect *P. aleuticum* may entail intensive surveys to define current range, fencing to exclude introduced ungulates, and cultivation to ensure survival and to allow for reintroduction back into its historical habitats.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62 and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the Jurisdiction of the United States to import or export an endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits will ever be sought or issued since the species is quite small in size and is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Polystichum aleuticum;*

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on *Polystichum aleuticum* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503 (907/786–3435).

National Environmental Policy Act

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

Literature Cited

Christensen, C. 1938. On *Polystichum aleuticum* C. Chr., a new North American species. American Fern Journal 28:111–112.

Friedman, B.F. 1984. Pp. 3.4–4.328 *in* Feasibility study data collection program for the proposed hydroelectric project at Atka, Alaska. Northern Technical Services, Inc. and Van Gulik and Associates, Inc. Final report prepared for Alaska Power Authority.

Hulten, E. 1936. New or notable species from Alaska. Contributions to the flora of Alaska I. Svensk Botanisk Tidskrift 30:515–528.

Lipkin, R. 1985. Status report on *Polystichum aleuticum* C. Chr. Status report submitted to the U.S. Fish and Wildlife Service, Anchorage, Alaska. 21 pp. and appendices.

Murray, D.F. 1980. Threatened and Endangered Plants of Alaska. U.S. Forest Service and Bureau of Land Management. Fairbanks, Alaska. 59 pp.

Smith, D. 1985. *Polystichum aleuticum* from Adak Island, Alaska, a second locality for the species. American Fern Journal vol. 75, no. 2.

Talbot, S. 1986. A search for *Polystichum aleuticum* (Polypodiaceae) on Adak Island, Alaska: Status report supplement, U.S. Fish and Wildlife Service. Anchorage, Alaska. 21 pp.

Wagner, D. 1979. Systematics of *Polystichum* in western North America north of Mexico. Pteridologia 1:1–64.

Author

The primary author of this proposed rule is Mr. Michael Amaral, Endangered Species Division, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503 (907/786–3435).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.12(h) by adding the following entries in alphabetical order to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	* * *	*	*	*		
Polypodiaceae—Fern family:						
Polystichum aleuticum	Aleutian Shield-fern	U.S.A. (AK)	E		NA	NA
*	* * *	*	*	*		

Dated: March 24, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–9033 Filed 4–23–87; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 52, No. 79
Friday, April 24, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Alabama Electric Cooperative, Inc.; Environmental Impact Statement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and REA Environmental Policies and Procedures 7 CFR Part 1794, has made a Finding of No Significant Impact with respect to an anticipated request for financial assistance by Alabama Electric Cooperative, Inc., (AEC) of Andalusia, Alabama. The financial assistance is for a project that consists of the development of a compressed air energy storage (CAES) plant consisting of two 50 MW units and related facilities in Washington County, Alabama, just south of McIntosh. The proposed CAES plant would be the first of its type installed in the United States.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment, the Siting Study, Alternative Evaluation and Environmental Analysis may be reviewed in the office of Mr. Frank W. Bennett, Director, Southeast Area-Electric, Rural Electrification Administration, U.S. Department of Agriculture, South Agriculture Building, Washington, DC 20250, or at the office of Alabama Electric Cooperative, Inc., Mr. Charles R. Lowman, P.O. Box 550, Andalusia, Alabama 36420.

SUPPLEMENTARY INFORMATION: REA anticipates a request from AEC for financial assistance which would result in the construction of the CAES plant and related facilities. REA has reviewed the Siting Study, Alternative Evaluation, and Environmental Analysis, and has determined that the reports represent an accurate assessment of the need and environmental impact of the proposed project. The project includes two 50 MW combustion turbines, two air storage caverns in the McIntosh salt dome, a 115 kV substation, the construction of 3.8 miles of new 115 kV transmission line, and the upgrading of a 46 kV transmission line to 115 kV. The two CAES units will be housed in a metal building approximately 300 feet (ft.) by 40 ft. by 40 ft. high. Two exhaust stacks, approximately 100 ft. high, will be located outside the building along with cooling towers and other facilities related to combustion turbine operation and air storage and retrieval. Initially AEC will construct a single 50 MW unit and one cavern. The second unit and cavern will be constructed 1–2 years after the first unit.

Based upon review of the environmental documents and the scoping meetings, REA prepared an Environmental Assessment concerning the proposed project and its potential impacts. REA concluded that the proposed approval of financial assistance for the project construction would not be a major Federal action significantly affecting the quality of the human environment. REA's Environmental Assessment considers potential impacts of the proposed plant construction on prime farmlands, wetlands, floodplains, cultural resources, Federally listed threatened and endangered species, those species proposed for listing or their critical habitat, air quality, water quality, ambient noise levels, and aesthetics. The no action alternative, various alternative proposals for meeting AEC's capacity needs, alternative technologies, various geologic formations, and an alternative site to the one preferred were considered.

REA determined that the proposed project is an acceptable alternative because it effectively meets AEC's needs with minimum adverse impacts to the environment.

REA has independently evaluated the 100 MW CAES plant and related facilities, and has concluded that approval of financial assistance for AEC's construction of the project would not constitute a major Federal action significantly affecting the quality of the human environment.

Dated: April 20, 1987.

Harold V. Hunter,

Administrator.

[FR Doc. 87-9335 Filed 4-23-87; 8:45 am]
BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1988 Dress Rehearsal Census—Advance Post Office Check Reconciliation.

Form number: Agency—DX—109A; OMB—NA.

Type of request: New collection.

Burden: 48,600 respondents; 1,620 reporting hours.

Needs and uses: The Census Bureau will implement and evaluate various methods for address list compilation and improvement to be used in the 1990 Decennial Census. This will require respondents to provide information about their mailing address, and in some cases location description and/or householder name for addresses classified as duplicate and undeliverable by the U.S. Postal Service.

Affected public: Individuals or households.

Frequency: One time.

Respondent's obligation: Mandatory.

OMB desk officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: April 16, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-9263 Filed 4-23-87; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-588-702]

Initiation of Antidumping Duty Investigation; Certain Stainless Steel Butt-Weld Pipe Fittings From Japan

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 certain stainless steel butt-weld pipe fittings from Japan 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 May 17, 1987, and we will make ours on or before September 9, 1987.

EFFECTIVE DATE: April 24, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On April 2, 1987, we received a petition filed in proper form by the Flowline Corporation, on behalf of the U.S. industry producing certain stainless steel butt-weld pipe fittings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleges that imports of certain stainless steel butt-weld pipe fittings from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioner's estimate of United States price was based on statements by its customers that also purchase fittings from the Japanese. Petitioner substracted estimated duties, foreign inland freight, ocean freight, marine insurance, and brokerage from these prices.

Petitioner was unable to furnish information on foreign sales or costs; therefore, petitioner based the foreign market value on U.S. producer's costs adjusted for differences in the Japanese market as constructed value.

Based on a comparison of United States prices and foreign market value, petitioner alleges dumping margins ranging from 37.2 percent to 139 percent.

Petitioner also alleges that "critical circumstances" exist with respect to imports of certain stainless steel butt-weld pipe fittings from Japan.

After analysis of petitioner's allegation and supporting data, we conclude that a formal investigation is warranted.

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 certain stainless steel butt-weld pipe fittings from Japan 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 certain stainless steel butt-weld pipe fittings from Japan 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 September 9, 1987.

Scope of Investigation

The product covered by this investigation is stainless steel butt-weld pipe and tube fittings under 14 inches (inside diameter), currently provided for under item number 610.8948 of *Tariff Schedules of the United States Annotated* (TSUSA).

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 also 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 an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 17, 1987, whether there is a reasonable indication that imports of certain stainless steel butt-weld pipe fittings from Japan 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,

Deptuty Assistant Secretary for Import Administration.

April 21, 1987.

[FR Doc. 87-9305 Filed 4-23-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-601]

Malleable Cast Iron Pipe Fittings From Thailand; Preliminary Negative Determination of Critical Circumstances

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that "critical circumstances" do not exist with respect to imports of mallable cast iron pipe fittings from Thailand. We have notified the U.S. International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: April 24, 1987.

FOR FURTHER INFORMATION CONTACT: James Riggs (202-377-4929), Office of Investigations, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Case History

On February 13, 1987, we published a preliminary determination of sales at less than fair value with respect to the subject merchandise (52 FR 4637). On March 19, 1987, petitioner alleged that "critical circumstances" exist with respect to imports of malleable cast iron pipe fittings from Thailand.

Critical Circumstances

In determining whether critical circumstances exist, section 733(e)(1) of

the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(e)) requires that we examine whether:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was spelling the merchandise which is the subject of the investigation at less than fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of recent import statistics, we find that there is no reasonable basis to believe imports of the subject merchandise from Thailand have been massive over a short period. Accordingly, we do not have to consider whether section 733(e)(1)(A) of the Act applies in this case.

For the reasons described above, we have preliminarily determined that "critical circumstances" do not exist with respect to malleable cast iron pipe fittings from Thailand.

Scope of Investigation

The products covered by this investigation are malleable cast iron pipe fittings, advanced in condition by operations or processes subsequent to the casting process other than with grooves, or not advanced, or cast iron other than alloy cast iron currently classified under the *Tariff Schedules of the United States Annotated* (TSUSA) items 610.7000 and 610.7400.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

April 20, 1987.

[FR Doc. 87-9304 Filed 4-23-87; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on Wednesday, May 20, 1987, at 10:30 a.m., Herbert C. Hoover Building, Room H4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets and retailing of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room H6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Alfreda Burton (202) 377-5761.

Dated: April 21, 1987.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-9306 Filed 4-23-87; 8:45 am]

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on Tuesday, May 12, 1987, at 1:30 p.m., Herbert C. Hoover Building, Room H4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise officials of the Department on problems and conditions in the textile and apparel industry.)

General Session: 1:30 p.m. Review of import trends, report on conditions in the domestic market, and other business.

Executive Session: 2:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp., p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility, Room H6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Alfreda Burton, (202) 377-5761.

Dated: April 21, 1987.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-9307 Filed 4-23-87; 8:45 am]

BILLING CODE 3510-DR-M

Review of Commercial Activities

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of review.

SUMMARY: The Department of Commerce announces that it carries out an activity, in addition to activities previously published in the **Federal Register** (Vol. 51, No. 25, page 4642 dated February 6, 1986), which provides a product or service which could be obtained from a commercial source ("commercial activities"). The International Trade Administration is reviewing this activity during fiscal year 1987 to determine which elements of that activity, if any, should be performed by commercial sources under Government contract instead of being performed "in house" by Government personnel using Government facilities.

The international Trade Administration, Office of Trade Adjustment Assistance, provides servicing and monitoring of loans made under the Trade Act of 1974 after October 1, 1981. This activity is located in Washington, DC. There are currently 5 full time equivalent positions assigned to perform this activity. The start date for the full A-76 review was January 1, 1986, and projected end date is October 15, 1987.

This notice is not an invitation for sealed bids or a request for proposals.

FOR FURTHER INFORMATION CONTACT: Joan Fidler, International Trade Administration, U.S. Department of

Commerce, Herbert C. Hoover Bldg., Room H–4102, 14th St. and Constitution Avenue NW., Washington, DC 20230. (202) 377–3265.

SUPPLEMENTARY INFORMATION: This notice is issued under the authority of 31 U.S.C. 501 et seq.; the Office of Federal Procurement Policy Act Amendments of 1979 (41 U.S.C. 401 et seq.); Office of Management and Budget (OMB) Circular No. A–76, Performance of Commercial Activities (Revised); and the Department of Commerce, Departmental Administrative Order (DAO) No. 201–41, "Performance of Commercial Activities".

Dated: April 21, 1987

Joan M. McEntee,

Deputy Assistant Secretary for Trade Development.

[FR Doc. 87–9333 Filed 4–23–87; 8:45 am]

BILLING CODE 3510-DR-M

[Docket No. 4655-01 et al]

Actions Affecting Export Privileges; Jan Olov Borglund et al.

Decision and Order

In the Matter of Jan Olov Borglund, Leif Martensson, and Gunnar Wedell (Docket Nos. 4655–1, 4655–2, 4655–3); Respondents.

On March 17, 1987, the Administrative Law Judge (ALJ) issued his Recommended Decision and Order in the Matter of Jan Olov Borglund, Leif Martensson and Gunnar Wedell, which was referred to me for final action pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) and § 388.8(a) of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1986)).

Having reviewed the record and based on the facts addressed in this case, I hereby adopt the ALJ's Recommended Decision and Order, dated March 17, 1987, with respect to Sections titled, Preliminary Statement, Summary of Charges,[1] Background and Facts,[2] Findings, Discussion Respecting Respondent Wedell, and Findings Relating to Respondent Wedell. All of the above Sections accurately reflect the record, including the transcript of the April 29, 1986 hearing and the additional evidentiary and post-hearing submissions by the parties.

For the reasons stated below, however, I do not adopt the ALJ's Discussion of Sanctions and Order Sections, pages 26 through 31 of his Recommended Decision and Order, dated, March 17, 1987. Therefore, based upon the record and facts addressed in this case, I hereby *modify* the ALJ's Recommended Decision and Order as follows:

Respondent Jan Olov Borglund

The Department and Respondent Borglund entered into a Consent Agreement on October 31, 1986 whereby Borglund agreed to pay a civil penalty of $2,000 to the Department within 30 days of service of an appropriate Order upon Borglund. In addition, Borglund agreed to a one-year denial of export privileges, as well as suspension of such denial for one year, subject to the conditions specified in the Consent Agreement. The Department and Borgludn further agreed that the period of denial would be waived at the end of that period of suspension, provided Borglund had not committed further violations of the Act, Regulations or Final Order.

While the ALJ recommended approval of the Consent Agreement, he altered the terms of such agreement by extending the agreed-upon deadline of 30 days for payment of the civil fine. It is this Office's position that it is only appropriate for the ALJ or Assistant Secretary to approve or disapprove a Consent Agreement submitted by the parties. EAR section 388.17 clearly requires that a modification of a Consent Agreement be agreed to in writing by the parties. Likewise, it was inappropriate for the ALJ to suggest alternate payment arrangements of such civil fines as the duty of collecting administrativly-imposed civil sanctions is vested with the Office of the Deputy Chief Counsel for Export Administration. Respondent Borglund should refer to the Instructions for Payment of Civil Penalty, attached to this Decision and Order.

In view of Respondent Borglund's position as On-Site Manager of Datasaab, as well as his level of involvement in the subject violations, I hereby approve the Consent Agreement entered into between the Department and Borglund on October 31, 1986. The Charging Letter, Consent Agreement and this Order shall be made available for public inspection.

Respondent Leif Martensson

The Department and Martensson entered into a Consent Agreement on October 31, 1986, whereby Martensson agreed to pay a civil penalty of $7,000 to the Department within 30 days of service of an appropriate order upon Martensson. In addition, Martensson agreed to a two-year denial of export privileges, as well as a suspension of such denial for two years. The Department and Martensson further agreed that the period of denial would be waived at the end of that period of suspension, provided Martensson had not committed further violations of the Act, Regulations or Final Order.

While the ALJ approved the Consent Agreement, he altered the terms of such agreement by descreasing the period of suspension to one year. The Consent Agreement clearly required a two-year period of suspension. In addition, the ALJ extended the agreed-upon dealine of 30 days for payment of the civil fine and offered to review any requests for alternate payment arrangements. The holding above with respect to these changes is incorporated herein.

In view of Respondent Martensson's position as Project Manager of Datasaab, and level of involvement in the subject violations, I hereby approve the Consent Agreement entered into between the Department and Martensson on October 31, 1986. The Charging Letter, Consent Agreement, and this Order shall be made available for public inspection.

Respondent Wedell

In his Recommended Decision and Order of March 17, 1987, the ALJ proposed the following sanctions against Responsent Wedell: (1) A civil penalty of $10,000, payable 90 days from the date of the Final Order; (2) a denial of export privileges for ten years from the date this Order becomes final; (3) a suspension of that denial for a one-year period from the date this Order becomes final; and (4) a waiver of the denial period at the end of one year, parovided Respondent Wedell had not committed further violations of the Act, regulations, or Final Order entered in this Proceeding.

In light of the level of responsibility afforded Respondent Wedell as General Manager of Datasaab Corporation at the time of the subject violations, as well as his level of culpability in Datassab Corporation's commission of the subject violations, I do not adopt the ALJ's recommended sanctions.

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[1] ALJ Recommended Decision and Order, footnote 2, page 4, should reflect that Respondent Wedell was the party whom the Department charged with 17 violations of the Export Administration Act, not Respondent Martensson as noted by the ALJ.

[2] The first full paragraph on Page 6 of the ALJ Recommended Decision and Order should stipulate that Stansaab Elecktronic, A.B. (predecessor of Datasaab Contracting A. B.) signed the subject contract with the USSR.

It is hereby ordered that:

1. A civil penalty of $17,000 is assessed against Respondent Gunnar Wedell. Payment of the civil penalty is due to the Department within 30 days of the service of this Order upon Respondent Wedell in accordance with the attached instructions.

2. All outstanding individual validated export licenses in which the Respondent or any related party appears of participates, in any manner or capacity, are hereby revoked, and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Resondent Wedell's privileges of participating, in any manner or capacity, in any special licensing procedures, including, but not limaited to, distribution licenses, are hereby revoked.

3. The respondent, his successors or assignees, officers, partners, representatives, agents, and employee hereby are denied all privileges of participating directly or indirectly, in any manner of capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part or to be exported, or that are otherwise subject to the Regulations for ten (10) years from the date of this Order.

Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other serving of such commodities or technical data. Such denial or export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which the respondent is now or herefter may be related by affiliation, ownership, control, position of responsibility, or other connection in athe conduct of export trade or related services. One business organization now known to be related to respondent Wedell in the conduct of trade or related services, and which is accordingly subject to the provisions of this order, is: Wedell Consulting AB, Dobelnsgatan 64, 113 52 Stockholm, Sweden.

V. No person, firm corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or whereby the respondent or any related party may obtain any benefit thereform or have any interest or participation therein, directly or indirectly: (a) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or particpiate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

VII. A copy of this Order shall be served upon the Respondent and published in the **Federal Register.**

This constitutes the final agency in this matter.

Dated: April 20, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

Decision

Appearance for Respondent:

Mr. Gunnar Wedell (pro se), Skyttevagen 63, S–181 46 Lindingo, Sweden

Jan Olov Borglund (pro se), Fargargardstorget 6, Stockholm, Sweden

Leif Martensson (pro se), Syrenvagen 5A, S–18340 Taby, Sweden

Appearance for Agency: Thomas C. Barbour, Esq., Office of Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H3845, Washington, DC 20230.

Preliminary Statement

These are three related administrative civil penalty and export denial enforcement proceedings initiated under the Export Administration Act (50 U.S.C. App. 2401–2420).

In separate charging letters directed to each of the above Respondents individually and dated July 25, 1984, they are charged with violating the terms of export license A266444 by allowing the export and installation in the Soviet Union of some 24 controlled primary circuit boards for a contracted Soviet computerized aircraft tracking system capable of primary radar surveillance. The charged activity occurred between September 1975 when the contract to furnish and install the equipment was executed and February 1981 when installation was completed. The regulations alleged to have been violated were 15 CFR 387.2 and 387.4 as to all three Respondents. In respondent Wedell's notice (which was amended or September 13, 1984, to expand the factual basis for the action) he was additionally charged with violating 15 CFR 387.5 and 387.10. The statutory basis for this notice was the International Emergency Economic Powers Act (50 U.S.C. App. 1701–1706) because the Export Administration Act had expired.

As is the usual Agency practice, the Respondents were not notified of specific proposed penalties, but rather were informed of the maximum sanctions that might be imposed including:

(1) Revocation of validated export licenses under § 388.3(a)(1);

(2) General denial of export privileges under § 388.3(a)(2);

(3) Exclusion from practice under § 388.3(a)(3); and

(4) The maximum civil penalty allowed by statute of $10,000 per civil violation as implemented by § 388.3(a)(4) of the regulations.

A consolidated hearing was held in Washington, DC on April 29, 1986, at which only Respondent Gunnar Wedell appeared.

Summary of Charges

The allegations are that Wedell, in his capacity as General Manager, Datasaab Contracting, A.B. (formerly Stansaab Elecktronik, A.B.) (Datasaab),[1] violated

[1] In January 1978, Stansaab Elecktronik A.B. was reorganized and merged with the Datasaab Computer Division of Saab Scania, forming Datasaab Contracting, A.B. *See,* United States Department of Commerce Requests for Admissions of Fact (hereinafter Admissions of Fact), dated March 27, 1986, Agency Exhibit (Ex.) O.

§§ 387.2, 387.4, 387.5 and 387.10 of the Export Administration Regulations (15 CFR Parts 368–399), issued pursuant to the Export Administration Act of 1979 (50 U.S.C. app. 2401–2420). The allegations are that Borglund, in his capacity as On-site Manager for Datasaab, violated §§ 387.2 and 387.4 of the Regulations. The allegations are that Martensson, in his capacity as Project Manager for Datasaab, violated §§ 387.2, 387.4 and 387.5 of the Regulations.[2] All three Respondents filed separate answers to the charges made by the Department and requested a hearing.

Background and Facts [3]

In the early 1970's the Union of Soviet Socialist Republics (USSR) decided to seek western assistance in developing an advanced radar tracking system for its airports in Moscow, Kiev, and Mineralnye Vody. In 1973, the USSR's Ministry of Civil Aviation (through a USSR foreign trade organization called V/O Elektronorgtekhnika) sought bids from western companies to design and build its proposed Terminal and En-Route Control Automated System (TERCAS). TERCAS as initially designed would have given the USSR a highly sophisticated system enabling it to track both civilian and military aircraft, a capability the USSR did not then possess. While many companies expressed interest in TERCAS, only three companies, Sperry Rand (United States), Thompson-CSF (France) and Stansaab Electronik (Sweden), were competitive in their bids for the proposed system.

During the negotiations, Sperry Rand had approached the United States Department of Commerce (DOC) to determine how sophisticated a system they could sell to the USSR because it would contain controlled parts [4] of United States origin. The DOC informed Sperry Rand that it could only authorize the export of parts designed for a version of TERCAS limited to the tracking of civilian aircraft for air safety purposes in light of United States national security concerns. (See 50 U.S.C. App. 2402(2)(A)). The system which DOC was willing to approve was one with a secondary surveillance radar only. A secondary surveillance radar system is a cooperative tracking system which requires a beacon transponder on the target aircraft. Cooperative beacon transponders are usually on civilian aircraft so as to allow them to be tracked. The primary radar system which the USSR was seeking can track non-cooperative targets—that is targets without a beacon transponder.

In the spring of 1974, the USSR invited various companies to make their presentation at a symposium held in Moscow for the USSR Academy of Science and Technology. Thereafter, Sperry Rand's proposal was rebuffed. Stansaab, however, was successful in negotiating a contract for a sophisticated TERCAS system which included primary radar digitizer capability.

In September of 1975, Datasaab Contracting A.B. (Datasaab) signed a contract with the USSR to build and deliver TERCAS which, because of its design, would have to include significant parts of United States origin. In order for these parts of United States origin to be exported to the USSR, a Validated Export License was required from DOC. [50 U.S.C. App. 2403(a)(1)]

Under its contract with the USSR, Datasaab was required to provide the USSR an air traffic control system which far exceeded the system that DOC had told Sperry Rand could be approved. This contract with the USSR was negotiated on behalf of Datasaab by its managing director, Respondent Wedell and its commercial director for marketing. During the negotiations period, Datasaab's president was warned by the chief of Datasaab's computer design and application department that the contract, as proposed and subsequently executed, exceeded the limitations imposed by DOC on licenses for technical commodities destined for the USSR, and would, therefore, not be approved by DOC.[5] Although he was in charge of all United States license applications, the chief of design was excluded from the preparation and negotiation of the TERCAS license submitted by Datasaab to DOC.

On March 29, 1976, representatives of Datasaab made a preliminary presentation to DOC in support of Datasaab's application for an export license for the United States parts required for TERCAS. A submission used during that presentation contained a proposed delivery schedule which stated that the first shipment requiring licensing was to be made in November 1976 and was to be a Programming Center. On May 19, 1976, the defendant Datasaab formally submitted license application No. 994041 to DOC. At that time, Datasaab officials knew it was highly unlikely that DOC would allow the export of parts of United States origin for a TERCAS system of the more sophisticated nature required by the Datasaab contract with the USSR. Datasaab officials were aware that DOC can, and does, impose restrictions upon the type of project which a corporation can build in a foreign country if the exporting of United States parts and equipment is involved.

Between late March 1976 and early June 1977, DOC officials met on several occasions with representatives of Datasaab's predecessor corporation. DOC officials repeatedly relayed to the Datasaab representatives serious national security concerns raised by components of the Department of Defense to the issuance of an export license to Datasaab. It was made clear to Datasaab's representatives that the United States was not prepared to give the USSR primary radar digitizer capability [6] and computerized tracking

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[2] I have little idea of what the specific charges are against Respondents Borglund and Martensson. Typically in these cases, Respondents are not informed of the specific acts or violations. Since they have entered into consent agreements and we know what the overall scheme was, my curiosity as to the specifics need not be ascertained with respect to them. Respondent Martensson asked that he be advised of the specifics of the charges, to which he has received as a response and an amended charging letter which appears to have satisfied him. I still do not comprehend the precise nature of the 17 charges against him. The amended charging letter does sufficiently allege at least three violations. Two false statements and the export without a license.

[3] This summation is, with minor editing, the evidentiary proffer of facts submitted to the U.S. District Court for the District of Columbia in the consent proceedings titled *United States* v. *Datasaab Contracting, A.B.*, Criminal No. 84–130 (DDC, April 27, 1984).

[4] The Department of Commerce maintains a Commodity Control List pursuant to the Export Administration Act and the regulations promulgated pursuant to it. That list included commodities that are controlled for national security reasons. *See* 50 U.S.C. App. 2404(c).

[5] Respondent Wedell in particular argues that the system provided was not substantially different from what the United States bidder proposed. He asserts that competitive jealousy or sour grapes by the United States was the principal cause of the negative attitude which developed, particulary with respect to the export licensing requirements. Respondent's arguments are simply wrong. This was sophisticated United States technology which no company, domestic or foreign was authorized to export. The year plus delay in the license processing may speak to the agencies bureaucratic processing and delay problem, but that too is a fact of life which he and his firm should have been aware of. Such delay may not serve to justify illegal exports.

[6] Radar digitizers are devices the convert radar information to a form usable by the computer and by the data link connecting the radar sites to the central control site. The primary radar digitizers transform the primary radar data (targets, altitude, time, speed, height, etc.) into a format (digital) usable by computers for processing and high speed transmission to the control centers. Such a system gives much greater radar surveillance capability that one with only secondary radar digitizers as was required by the license. The export and use of these particular pieces of advanced technology appear to be identified as the principal area of export technology violations.

via the primary channel.[7] Such a system would give the USSR a much more sophisticated air traffic control system with tracking capability against non-cooperative targets. In fact, on June 7, 1977, Datasaab's license application number 994041 was rejected by DOC for these very reasons.

On June 24, 1977, the director of DOC's Office of Export Administration advised Datasaab's representatives in writing of the following conditions required by the United States for the approval of a license: (1) The digitizers in TERCAS would have to be limited to those necessary for secondary surveillance radar data only—*e.g.:* primary radar digitizers and computerized tracking via the primary channel could not be included; (2) the systems could only be given manually operated automatic recovery [8] and reconfiguration systems; [9] (3) a programming center could be authorized only for temporary export; (4) training simulators had to be limited to a secondary surveillance radar system; (5) assistance could not be provided for interfacing of western radars and digitizers with Soviet radars; (6) all software design and development had to be done in the West by personnel insulated from Soviet personnel; (7) all software modifications had to be done by Western exporters; (8) hardware and software documentation and training had to be limited to the minimum required to operate and maintain the secondary surveillance radar system; (9) technology relating to computer netting, automatic detection and tracking information could not be given to the USSR; and (10) the terminal system exported to the USSR had to be inspected periodically to insure that the system was used for civilian purposes only.

On July 5, 1977, Datasaab submitted to DOC a revised export license application A 266444 which differed from the previously rejected application in that it limited the proposed TERCAS to secondary surveillance radar purposes.

On September 26, representatives of Datasaab and several United States agencies which had an interest in the export license application met at the United States Department of Defense to discuss the conditions under which Datasaab's revised license application could be granted. Many of the restrictions listed in the June 24 letter from DOC to Datasaab were discussed, including the fact that the programming center could only be exported to the USSR for a limited period. Indeed the center was to be returned to Sweden no later than July 1980. Datasaab, however, concealed to all United States participants at the meeting the fact that it had already sent on December 14, 1976, the programming center[10] and other equipment to the USSR, and that the USSR had already paid Datasaab eighty-five percent of the center's purchase price.[11]

On October 14, 1977, DOC informed Datasaab that its license application had been approved subject to (1) approval by NATO's Coordinating Committee on Export Controls (COCOM),[12] (2) acceptance by Datasaab of all restrictions imposed by DOC and (3) acceptance of the terms and conditions of the license by the USSR.

On November 2, 1977, Datasaab agreed in writing to every restriction required by DOC in its letter of June 24, 1977. Following COCOM's approval on November 8, DOC, on November 10, issued Datasaab export license A 266444. That license included all ten restrictions listed above.

In all, approximately $3,120,000 in parts and equipment originating in the United States and covered by the restrictions in export license A 266444 were exported by Datasaab to the USSR.[13]

Some time in late May 1977, prior to the rejection of Datasaab's first export license (application by DOC and after the meetings with DOC officials, Datasaab's management devised several alternative plans in case their exports license was either rejected or restricted by the United States. These plans resulted from Datasaab's full awareness of the United States' main objection to Datasaab's first license application.

The plan ultimately implemented by Datasaab and Respondents called for the removal, prior to shipment, of the twelve sets of critical primary circuit boards[14] for the primary circuit which gave TERCAS the highly sophisticated and advanced capabilities which the United States had strenuously objected to. These circuit boards were thereafter surreptitiously carried as handbaggage to the USSR labeled "test equipment." Datasaab officials began carrying these critical primary circuit boards to the USSR beginning on June 9, 1977. These trips continued even after November 2, 1977, when Datasaab's president gave written assurances to DOC that Datasaab would honor all license restrictions directed at limiting TERCAS to secondary surveillance radar capability.

The last set of critical primary circuit boards was handcarried to the USSR on or about December 15, 1978—over eleven months after the issuance of export license A 266444 which specifically restricted their exportation to the USSR. During that continuous period, and thereafter, these and other Datasaab officials supervised the installation of these circuit boards in the USSR fully aware that such action constituted a violation of the United States export license. The various representations that they were not sold, were test equipment and the like, rather reflects the knowledgeable and deliberate nature of the violation.

Findings

The evidence shows that Datasaab by, through and with the knowledge of these three Respondents (hereafter Datasaab) violated the restrictions imposed by export license A 266444 issued by the Department of Commerce by exporting to the USSR the following technology as well as parts and equipment made, or originating, in the United States:

(1) *The installation of primary radar digitizers in TERCAS.*

Datasaab provided the USSR at all three airports in Moscow, Kiev, and Mineralnye Vody, TERCAS systems with primary radar digitizers and computerized tracking via the primary channel. This made TERCAS substantially more advanced than the system anticipated by license A 266444 which was limited to secondary

[7] Thus allowing the primary radar information to be digitized and used by the computer to provide tracking information on aircraft without cooperative beacon transponders.

[8] A totally automatic recovery system allows complete switchover to a backup computer without manual intervention.

[9] In a manually-operated, automatic reconfiguration system (which the license permitted), a monitor-operator is required to select new coverage areas when a radar fails or when a priority of targets is required due to the saturation of an area by numerous targets.

[10] The programming center shipped on December 14, 1976 from Sweden to the USSR contained United States parts which had been accumulated by Datasaab under previously unrelated United States export licenses.

[11] Inasmuch as the programming center contained parts of United States origin, Datasaab's action was in violation of United States export controls. Had the United States known of these exports, Datasaab's license application would have been held in abeyance until a full investigation was completed.

[12] COCOM consists of all NATO countries with the exception of Iceland. It includes Japan.

[13] Respondent Wedell's contention that the value of the U.S. origin commodities did not require an export license is devoid of merit in quantity, terms of quality, costs and complexity; but mostly because the items are on the commodity control list, a license was required.

[14] The primary circuit boards give radar digitizers their primary capability. (See note 3, *supra.*)

surveillance radar only. The reports made pursuant to the requirements of the said license purposefully omitted mention of this activity in violation of the terms of the license.

(2) *The installation of automatic recovery and reconfiguration systems.*

Each airport equipped with TERCAS was to have two computers with one acting as backup to the other in case of failure. The backup computer constantly monitors the other computer. Under license A 266444, the backup computer could only be switched over manually in case of failure of the main computer.

The system provided automatically reconfigured the composite of information which the TERCAS operators would see on the radar screen. The license stipulated that this would be accomplished manually. These changes gave the USSR an air traffic control system with technology of substantial military application.

(3) *The permanent export to the USSR of a system programming center.*

Since TERCAS was a new concept that was being created for the USSR, the software programs did not previously exist. Therefore, Datasaab set up a programming center in Moscow to refine the programs, as well as for maintenance and training purposes. Datasaab did not return the programming center to Swenden by July 1980 as it had agreed. In fact, it is presently still in the USSR. Indeed, it had been exported by Datasaab to the USSR before the license had been approved.

(4) *The Respondents interfaced Soviet radar systems with western radar systems.*

Under export license A266444 Datasaab was not to provide assistance for interfacing western radars and digitizers to Soviet radar systems.

Each type of radar has its own characteristics and the type of information received at the radar site varies greatly. Datasaab was limited by export license A 266444 to using Italian-manufactured radars in TERCAS and these were not to be netted with the Soviet radars. Datasaab, however, netted the Italian and Soviet radars and gave the Soviets the additional technology necessary to net different types of Soviet radars. Additionally, Datasaab upgraded the Soviet radars to perform in the primary digitizer mode.

(5) *Datasaab provided the USSR with hardware and software documentation in excess of that required for operation and maintenance of a secondary (or limited civil aviation) radar system.*

Datasaab provided the USSR with extensive documentation including source code and the logic that went into the program in addition to the object code.[15] Datasaab also gave the USSR the source codes which are the instructions necessary for changing the programs developed for TERCAS and, as a result, gave them the logic behind the way the program was designed. This gave the USSR the ability to adapt TERCAS technology and software for military application as well.

Similarly, Datasaab, contrary to the license restrictions, transferred to the USSR documentation and technology to permit computer netting, digitizing of radar information, as well as automatic detecting and tracking.

Datasaab was also required to conduct all software design, development and modification in the West by personnel insulated from Soviet access. Datasaab, however, conducted some of this work in the USSR with Soviet access.

(6) *Datasaab provided the USSR a training simulator with capabilities in excess of that required for a secondary radar system.*

Pursuant to its export license, Datasaab was required to limit the capabilities of the training simulator provided the USSR for TERCAS to the level of a secondary radar, or surveillance, system.

The TERCAS simulator sold by Datasaab to the USSR had the capacity to simulate digitized primary radar data and, therefore, it exceeded the restrictions imposed by the license.

(7) *Datasaab failed to inspect the three USSR sites and did not withdraw its personnel from the USSR upon discovery of any violation.*

Datasaab failed to inspect the TERCAS sites, as required, to assure compliance with the restrictions imposed by the export license—that is to assure continued limited civilian-only use of TERCAS. The reason for that restriction was to insure that the USSR would neither modify the TERCAS system for military purposes nor use its parts and components for military purposes. Respondents and Datasaab did not make such inspections for a period exceeding one year and in order to cover up that fact falsified the visit report logs which it filed with DOC.

Moreover, Datasaab failed to withdraw its personnel from the USSR and terminate all exports of equipment, technology, maintenance and support as required by the license once it became award that TERCAS was operating in violation of the conditions of the license. To the contrary, Datasaab has turned over the USSR Civil Aviation Ministry the three operational TERCAS centers it had set up in Mineralyne Vody, Kiev and Moscow. These were turned over to the USSR in February 1979, November 1979, and November 1980 respectively.

Discussion Respecting Respondent Wedell

Respondent Wedell acknowledges that, as General Manager of Datasaab, he was ultimately responsible for the actions of Datasaab, with respect to the TERCAS contract from negotiation to execution. He presents three defenses to the charges.

In the first, Wedell argues that the Agency erred in not granting Datasaab's initial request for an export license, which would have authorized Datasaab to provide to the USSR the system which the Soviets had contracted for.

It is not the function of this enforcement adjudication to review licensing determinations in a case such as this. Prior to issuing the modified license there were extensive consultations with Datasaab and among various Federal agencies of interest. The applicant was simply not entitled to disregard the limitations without consequences.

His second argument is that he was advised by an official of the United States during a meeting held on September 26, 1977, that the United States had decided, after denying Datasaab's initial license application, that the entire TERCAS system, as contracted for with the USSR, could be licensed for export to the USSR. However, according to Wedell, that official advised Wedell that, since Datasaab had submitted a revised export license limiting the TERCAS system to secondary surveillance radar only, the Department of Commerce would grant the revised license. Datasaab could then file a second application for the upgrading of the system to meet the conditions of the contract between Datasaab and the USSR, which, Wedell alleges he was told, would be promptly approved by the United States.

This argument must also fail, for Mr. Wedell's testimonial assertion is devoid of support. It is of principal significance that no "second" license application was ever filed on behalf of Datasaab.

It is also contradicted by the individual involved who has submitted a sworn statement denying ever advising Wedell or any other Datasaab official that a "second" export license would be issued to take care of the restrictions contained in the license issued to Datasaab. Without a license for those

[15] Objects code are the instructions used by the computer to run the system. That is the only documentation normally given to a purchaser.

restricted components they couldn't be shipped.

Respondent's third assertion is that the Soviets became so distressed with the delay in delivery of the TERCAS system that they finally agreed to accept the system with the conditions and restrictions imposed by export license A266444. The evidence produced conclusively establishes that the Soviet customer got exactly what its contract with Datasaab called for—an air traffic control system which included all of the items and capabilities provided for in the contract including those which export license A 266444 specifically precluded Datasaab from providing to the Soviets.

The Department has charged Wedell with violating Section 387.5 of the Regulations by making false statements and concealing material facts concerning the capabilities of the Terminal Control Center at Mineralnye Vody on February 20, 1981 and October 21, 1981, during the course cf an official investigation. The special agent testified that Respondent told the Department on February 20, 1981, that Datasaab did not provide the USSR with the critical circuit boards which would allow TERCAS to operate in the primary mode. Further, the agent testified that Wedell told him on October 21, 1981, that he did not know if TERCAS could be operated in the primary mode.

It cannot be disputed that Datasaab provided the critical circuit boards to the USSR and that Wedell knew that those boards had been provided to the Soviet customer.

Findings Relating to Respondent Gunnar Wedell

From the evidence of record, I make the following findings of fact and conclusions of law with respect to this Respondent in addition and supplementary to those stated in the general portion of the decision.

1. From at least September 18, 1975 to June 30, 1981, Respondent Wedell was General Manager of the Swedish company Stansaab Electronik A.B. and its successor, Datasaab Contracting A.B. (Datasaab).

2. On September 18, 1975, Datasaab entered into a contract with V/O Electronorgtekhnika, a Union of Soviet Socialist Republics (USSR) foreign trade organization, to provide the USSR with an air traffic control system known as TERCAS (Terminal and En Route Control Automated System). V/O Electronorgtekhnika entered into the contract on behalf of the Soviet Civil Aviation Ministry and the Soviet National Airlines, Aeroflot.

3. Wedell actively participated in the negotiations of the TERCAS contract and signed that contract on behalf of Datasaab.

4. TERCAS included U.S.-origin parts and components which required export licensing authorization from the Department before TERCAS could be shipped to the USSR.

5. On November 10, 1977, following an application made on behalf of Datasaab, the Department issued export license A 266444 authorizing Datasaab to ship TERCAS to the USSR. Export license A 266444 included several conditions and restrictions including the following:

a. The extractors/digitizers in TERCAS would have to be limited to what was necessary for secondary surveillance radar data only (primary radar digitizers and computerized track via the primary channel could not be included);

b. A programming center was authorized only for temporary export to the USSR;

c. Datasaab would not provide assistance to the Soviet customer for the interfacing of western radar digitizers with Soviet radar;

d. Hardware and software documentation, as well as training, was to be limited to the minimum required to operate and maintain the secondary surveillance radar system;

e. Training simulators were to be limited in capability to a secondary surveillance radar system.

6. Respondent Wedell knew that export license A 266444 had been approved by the Department and he knew the conditions and restrictions which the Department made applicable to the license.

7. The air traffic control system Datasaab provided to the USSR in accordance with the TERCAS contract included the following capabilities and components:

a. Primary radar digitizers and computerized aircraft tracking via the primary radar channel;

b. A systems programming center which has remained in the USSR;

c. The interfacing of Soviet radar and extractors with western radar and extractors;

d. Hardware and software documentation in excess of that required for operation and maintenance of a secondary (or limited civil aviation) system; and

e. A training simulator with capabilities in excess of that required for a secondary radar system.

8. By providing to the USSR an air traffic control system having the above-described capabilities and components, contrary to the terms of the license, Respondent Wedell violated §§ 387.2, 387.4 and 387.10 of the Regulations, as alleged in the amended charging letter.

9. More specifically, by permitting the installation of the primary circuit boards in TERCAS, thereby providing to the USSR an air traffic control system which had primary radar extractors and computerized aircraft tracking via the primary radar channel, contrary to the conditions of export license A266444, Respondent violated §§ 387.2 and 387.4 of the Regulations.

10. On February 20, 1981, during the course of an official investigation by the Department, Wedell told the Department that Datasaab had not provided to the USSR the critical circuit boards which would allow TERCAS to operate in the primary mode, when, in truth and in fact as Wedell knew, Datasaab had provided those critical circuit boards to the USSR for inclusion in the TERCAS.

11. On October 21, 1981, during the course of an official investigation by the Department, Wedell told the Department that he did not know if TERCAS could be operated in the primary mode when, in truth and in fact, Wedell had personally observed the system operate in the primary mode.

12. By making false statements to and concealing material facts from the Department, Wedell violated § 387.5 of the Regulations, as alleged in the amended charging letter of September 13, 1984.

Discussion

Sanctions

The evidence adduced at the hearing and in the written submissions clearly establishes the accuracy of the facts recited above as well as the participation of these three Respondents in the enterprise. However, this case is unusual in that it was a one time, albeit deliberate, series of related acts rather than a pattern of diversions such as is reflected in most violations cases under this Act. I have also gathered the impression that these three have been chosen, not necessarily as scapegoats, but as examples, in a situation that is the result of what was a national attitude by their country, which has since changed. Appendix I, an article from the Wall Street Journal of January 15, 1987, is illuminating on the national attitude that created the environment which led these businessmen to the personal disasters which has resulted as well as how it has been resolved. It is also appropriate to note, that the corporate magnate in Sweden who apparently oversaw the policy of

disregarding U.S. Export controls was permitted to settle his accounts with a payment out of corporate coffers, without personal financial inconvenience or any restriction of export privileges. Justice requires an evenhandness in the imposition of sanctions. These Respondents, by virtue of loss of employment and impairment of their business relationship over the past 5 or so years have endured substantial losses which will not end with the disposition here. For these reasons I approve and would implement the consent agreements with Respondents Borglund and Martensson. With respect to Respondent Wedell, who was the chief executive officer of the corporation, I believe that a somewhat heavier penalty and denial is appropriate to reflect his higher degree of management responsibility. In light of present relations with Sweden; the participation in these proceedings by these Respondents; the unlikeliness of any reoccurrence, in combination with the time that has passed and the other actions referred to above with respect to the other larger, but better connected violator, I believe that it is appropriate to suspend the period of denial with provision for automatic remission as set forth in my Order. Agency counsel's request that Mr. Wedell, the only Respondent to come forward and stand in the dock, be denied export privileges without limitation of time and subjected to civil penalties of $17,000 (apparently based on the asserted 17 violations in the charging letter) is nothing less than draconian and, in my view, totally unrealistic. These three Respondents all did wrong. They acted together and with others. Their penalties should not be so disparate. While I deplore their misconduct, I see no point in garotting only Mr. Wedell.

It Is Therefore ordered:

I. The following civil penalties are assessed against the Respondents: Respondent Gunnar Wedell is assessed a civil penalty of $10,000; Respondent Lief Martensson is assessed a civil penalty of $7,000; and Respondent Jan Olov Borglund is assessed a civil penalty of $2,000. Payment of the civil penalty is due to the Department within 90 days of the service of this order upon the respective Respondent. In the event that any Respondent claims financial hardship, requires an extension or arrangement for periodic payments, the party may submit a request for such arrangement to the Administrative Law Judge with a showing of the financial basis for such request.

II. The Respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations for the following periods of time: as to Respondents Gunnar Wedell, a period of 10 years from the date this Order becomes final; as to Respondent Leif Martensson, a period of 2 years from the date this order becomes final, and as to Respondent Jan Olov Borglund, a period of 1 year from the date this Order becomes final.

III. The periods of denial set forth above are hereby suspended for 1 year from the date on which this order becomes final in accordance with § 388.16(c) of the regulations and will be remitted without further action at the end of that period provided as to each Respondent provided that he has committed no further violations of the Act, the regulations or the final order entered in this proceeding. During the 1-year suspension period Respondents may participate in transactions involving, the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and regulations. The provisions of Paragraph IV to VII of this Order are also suspended during the 1-year period.

IV. All outstanding validated export licenses in which any Respondent or related party appears or participates, in any manner or capacity, are hereby revoked, and shall be returned forthwith to the Office of Export Licensing for cancellation.

V. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application; (b) in preparing or filing any export license application or reexport authorization, to any document to be submitted therewith; (c) in obtaining or using any validated or general export license or other export control document; (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

VI. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services. One business organization now known to be related to Respondent Wedell in the conduct of trade or related services, and which is accordingly subject to the provisions of this order as it applies to Wedell, is Wedell Consulting AB, Dobelnsgatan 64, 113 52 Stockholm, Sweden.

VII. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the Respondent or any related party, or whereby the Respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the Respondent or any related party denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

VIII. This order shall become effective upon entry of the Secretary's action in this proceeding issued pursuant to 50 U.S.C. App. 2412.

Dated: March 17, 1987.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 87-9262 Filed 4-23-87; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Preparation of a Status Review on the Steller Sea Lion

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

ACTION: Notice of intent.

SUMMARY: The NMFS intends to prepare a Status Review on the Steller sea lion (*Eumetopias jubatus*) that will be available for public review and comment. The purpose of the Status Review is to consider the abundance and trends in the sea lion populations and to assess, if possible, the status of the species relative to its optimum sustainable population level, as defined in the Marine Mammal Protection Act of 1972, and to classifications under the Endangered Species Act of 1973.

DATES: The Status Review will be completed and available for public review no later than October 30, 1987.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 202–673–5351.

Dated: April 12, 1987.

William E. Evans,

Assistant Administrator for Fishery.

[FR Doc. 87–9324 Filed 4–23–87; 8:45 am]

BILLING CODE 3510–22–M

Issuance of Marine Mammals; Permit by National Marine Fisheries Service to Northwest and Alaska Fisheries Center (P77 #23)

On November 28, 1986, notice was published in the **Federal Register** (51 FR 43065) that an application had been filed by the Northwest and Alaska Fisheries Center, National Marine Mammal Laboratory, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington, 98115, for a permit to take northern sea lions (*Eumetopias jubatus*), harbor seals (*Phoca vitulina*), largha seals (*Phoca largha*), ringed seals (*Phoca hispida*), ribbon seals (*Phoca fasciata*), and bearded seals (*Erignathus barbatus*) for scientific research.

Notice is hereby given that on April 1, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW. Room 805, Washington D.C;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE.; BIN C15700 Seattle, Washington 98115.

Dated: April 7, 1987.

Dr. Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87–9325 Filed 4–23–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

April 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 27, 1987. For further information contact Janet Heinzen, International Trade Specialist (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota reopenings, please call (202) 377–3715.

Background

On May 28, 1986 and August 27, 1986, CITA directives were published in the **Federal Register** (51 FR 19249 and 51 FR 30526) which established import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the periods which began, in the case of Category 351, on May 2, 1986; and, in the case of Categories 334, 335, 336, 339, 340, 341, 641 and 648, on June 1, 1986; and extend through May 31, 1987. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, and at the request of the Government of Sri Lanka, the restraint limits for Categories 341, 641 and 648 are being increased by application of swing and carryforward. The limits for Categories 334, 339 and 351 are being reduced, respectively, to account for the swing applied to Categories 341, 641 and 648.

In addition, the restraint limits for Categories 335, 336 and 340 are being increased by application of carryforward, according to the terms of the bilateral textile agreement of May 10, 1983, as amended.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the previously established restraint limits for the foregoing categories.

A description of the textile categories in terms T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 556607, December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 20, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 202209.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives issued to you on May 22, 1986 and August 22, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the periods which began, in the case of Category 351, on May 2, 1986; and in the case of Categories 334, 335, 336, 339, 340, 341, 641 and 648, on June 1, 1986; and extend through May 31, 1987.

Effective on April 27, 1987, the directives of May 22, 1986 and August 22, 1986 are further amended to include the following adjusted limits to the previously establihsed restraint limits for cotton and man-made fiber textile products, under the terms of the bilateral agreement of May 10, 1983, as amended: [1]

[1] The provisions of the bilateral agreement provide, in part, that: (1) Specific limits may be

Continued

Category	Adjusted restraint limit [1]
334	188,019 doz.
335	155,153 doz.
336	75,506 doz.
339	360,534 doz.
340	558,266 doz.
341	538,554 doz.
351	109,961 doz.
641	588,286 doz.
648	200,090 doz.

[1] The limits have not been adjusted to account for any imports exported after May 1, 1986, in the case of Category 351; and after May 31, 1986, in the case Categories 334, 335, 336, 340, 341, 641, and 648.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-9301 Filed 4-23-87; 8:45 am]

BILLING CODE 3510-DR-M

Amending Export Licensing System for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China; Correction

April 20, 1987.

In the letter to the Commissioner of Customs published in the **Federal Register** on March 23, 1987 (52 FR 9205) the last sentence of the second paragraph should be as follows:

Shipments classified in these part categories and exported on and after March 24, 1987 not visaed in accordance with this directive will be denied entry.

In the enclosure to the letter, part designations for Categories 320-O and 359-O should read:

320-O All T.S.U.S.A. numbers in Category 320 except those in 320-P and 320-N, 320.—, 321.—, 322.—, 326.—, 327.—, 328.— (w/suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98).

359-O All T.S.U.S.A. numbers except those in 359-C, 359-I and 359-V (TSUSA numbers 381.0258, 381.0554, 381.0822, 381.3949, 381.5800, 381.5920, 381.6510, 384.0439, 384.0441, 384.0442, 384.0444, 384.0451, 384.0648, 384.0650, 384.0651, 384.0652, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.0928, 384.3449, 384.3450, 384.3451, 384.3452, 384.3453, 384.3454, 384.4300, 384.4421, 384.4422, 384.5162, 384.5163, 384.5167, 384.5169, 384.5172, 384.5222.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-9302 Filed 4-23-87; 8:45 am]

BILLING CODE 3510-DR-M

Amending Planned U.S. Textile and Apparel Category System for Introduction With the Harmonized System on January 1, 1988

April 20, 1987.

On Wednesday, March 4, 1987, a notice was published in the **Federal Register** (52 FR 6597) announcing planned U.S. Textile and Apparel Category System for Introduction with the Harmonized System on January 1, 1988. This notice amends that notice as follows:

New Category 623, cellulosic filament fabric, is renumbered 618.

New Category 624, non-cellulosic filament fabric, polyester, not over 5 oz., is renumbered 619.

New Category 625, non-cellulosic filament fabric, is renumbered 620.

New Category 628, spun/filament combinations, is deleted and superseded by the following:

New category	Fabric description	Current category
Staple/Filament Combinations:		
625	Poplin & broadcloth	614pt.
626	Printcloth	614pt.
627	Sheeting	614pt.
628	Twills & Sateens	614pt.
629	Other	614pt.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-9303 Filed 4-23-87; 8:45 am]

BILLING CODE 3510-DR-M

Continuing the Import Limit and Establishing Staged Entry for Man-Made Fiber Textile Products in Category 613-C Produced or Manufactured in Pakistan

April 22, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 27, 1987. For further information contact Ann Fields, International Trade Specialist (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Background

On July 9, 1986 a notice was published in the **Federal Register** (51 FR 24886) which announced that the United States Government would continue to control imports of lightweight, plainweave polyester/cotton fabric in Category 613-C, produced or maufactured in Pakistan and exported during the twelve-month period which began on April 27, 1986 and extended through April 26, 1987.

Inasmuch as the Governments of the United States and Pakistan have been unable to reach a mutually satisfactory solution on Category 613-C and to avoid further disruption of trade, the Committee for the Implementation of Textile Agreements, in accordance with paragrpah 8 of the 1986 Protocol of extension of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended by protocols on December 14, 1977, December 22, 1981 and July 31, 1986, has decided to extend the control period for the twelve-month period which begins on April 27, 1987 and extends through April 26, 1988 at a level of 14,892,869 square yards. Further, Category 613-C is subject to phased entry procedures for a five-month period for goods exported during the previous restraint period which began on April 27, 1986 and extended through April 26, 1987.

Accordingly, in the letter published below the Chairman of CITA directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of lightweight, plainweave polyester/cotton fabric in Category 613-C exported during the twelve-month period which begins on April 27, 1987 and extends through April 26, 1988, in excess of the designated level or restraint.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in further consultations with the Government of Pakistan, further notice will be published in the **Federal Register**.

exceeded by designated percentages, provided an equal amount in equivalent square yards is deducted from another specific limit; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable limit; and (3) administrative arrangements and adjustments may be made to resolve minor problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 22, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 27, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 613–C [1], produced or manufactured in Pakistan and exported during the twelve-month period which begins on April 27, 1987 and extends through April 26, 1988, in excess of 14,892,869 square yards.

In carrying out this directive, entry of goods in Category 613–C exported during the previous control period which began on April 27, 1986 and extended through April 26, 1987 shall be permitted entry for consumption, or withdrawal from warehouse for consumption, in the United States at a level of 2,978,574 square yards for each of the following thirty-day intervals:

Period

April 27–May 26, 1987
May 27–June 25, 1987
June 26–July 27, 1987
July 28–August 26, 1987
August 27–September 25, 1987

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175),

May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs excetion to the rule-making provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–9468 Filed 4–23–87; 9:52 am]

BILLING CODE 3510–OR–M

[1] In Category 613, only TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058 and 338.5059.

COMMODITY FUTURES TRADING COMMISSION

Membership of the Commission's Performance Review Board

AGENCY: Commodity Futures Trading Commission.

Action: Membership change of performance review board.

SUMMARY: In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act, notice is hereby given that the following employees will serve as members of the Commission's Performance Review Board.

Chairperson: Molly G. Bayley, Executive Director, Andrea M. Corcoran, Director, Division of Trading and Markets, Dennis Klejna, Director, Division of Enforcement, Marshall E. Hanbury, General Counsel, Donald L. Tendick, Deputy Executive Director, Paula A. Tosini, Chief Economist and Director, Division of Economic Analysis.

DATE: The action was effective February 15, 1987.

ADDRESS: The Commodity Futures Trading Commission, Office of Personnel, Room 202, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Roena B. Markley, Director, Office of Personnel, Commodity Futures Trading Commission at the address given above; telephone (FTS) (202) 254–3275.

SUPPLEMENTARY INFORMATION: This action changing the Board membership supersedes the previously published **Federal Register** notice in Vol. 49, No. 108, page 23102, June 4, 1984.

Issued in Washington, DC, on April 20, 1987.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 87–9310 Filed 4–23–87; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on National Aerospace Plane (NASP)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on the National Aerospace Plane (NASP) will meet in closed session on June 23–24, 1987 at the Defense Advanced Research Projects Agency, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the National Aerospace Plane (NASP) concept, technical basis, program content, and missions.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 21, 1987.

[FR Doc. 87–9351 Filed 4–23–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Naval Research 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 Naval Research Advisory Committee Panel on Affordability and Availability of New Technology will meet on May 18 and 19, 1987. The meeting will be held at the Pentagon, Room 5E673, Washington, DC. The meeting will commence at 8:30 A.M. and terminate at 5:00 P.M. on May 19, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to address the impact of the trend toward offshore procurement on the ability of U.S. industry to mobilize for production in time of national crisis. The agenda will include technical briefings and discussions related to better analytical approaches to the assessment of total

system costs, identification of methods to provide incentives for both the Navy and industry to provide new technology at a lower cost while assuring producibility in time of national crisis, and identification of the most promising areas for more effective procurement of advanced technologies at lower cost. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary 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 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: April 23, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87–9292 Filed 4–23–87; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research 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 Naval Research Advisory Committee Panel on the Role of Space Based Activities in Support of Naval Warfare will meet on May 18 and 19, 1987. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 A.M. and terminate at 5:30 P.M. on May 18; and commence at 8:30 A.M. and terminate at 3:30 P.M. on May 19, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to conduct a review of Soviet space activities related to naval operations, identify efforts of concern and provide suggestions for validating the utility of those efforts, prepare an independent warfare assessment of space based surveillance and targeting alternatives, and assess the potential for inexpensive reconstitution of wartime space assets. The agenda will include technical briefings and discussions related to Soviet space technology. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary 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 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: April 21, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87–9293 Filed 4–23–87; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research 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 Naval Research Advisory Committee Panel on Over the Horizon Targeting Capabilities will meet on May 19, 1987, at the Science Applications International Corporation, 1710 Goodridge Drive, McLean, Virginia. The meeting will commence at 8:30 A.M. and terminate at 4:30 P.M. on May 19, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to conduct a comprehensive review of existing and planned over the horizon targeting programs; determine current and projected over the horizon targeting and related command and control capabilities and limitations; and identify any problems and recommend solutions. The agenda will consist of an executive session to discuss over the horizon targeting capabilities, program tactics and operations, and begin preparation of a written report. These discussions will include classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary 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 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: April 21, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87–9294 Filed 4–23–87; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before May 26, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process

would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: April 21, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Educational Research and Development

Type of Review: New
Title: Field Test for the National Survey of Instructional Staff
Agency Form Number: G50–33P
Frequency: Once only
Affected Public: Individuals or households; non-profit institutions; small businesses or organizations
Reporting Burden: Responses: 744; Burden Hours: 781
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: This questionnaire will collect information from instructional staff at postsecondary education institutions. The Department will use this data to assess the supply of, and demand for instructional staff, and factors that affect the quality of instruction.

Office of Educational Research and Improvement

Type of Review: Revision
Title: 1987 Recent College Graduates Study (1985–86) College Graduates
Agency Form Number: ED 2385
Frequency: Annually
Affected Public: Individuals or households; non-profit institutions
Reporting Burden: Responses: 22,400; Burden Hours: 11,200
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: This survey will collect information from recent college graduates to determine their employment and labor force status. The Department will use the data collected to analyze the post degree employment and education experiences of persons who obtained a bachelor's or master's degree from an American college, with major emphasis on graduates who are qualified to teach at the elementary or secondary level.

Office of Educational Research and Development

Type of Review: Extension
Title: Final Financial Status and Performance Report for the Library Services for Indian Tribes and Hawaiian Natives Program
Agency Form Number: G50–11P
Frequency: Annually
Affected Public: Indian tribes and Hawaiian natives
Reporting Burden: Responses: 250; Burden Hours: 625
Recordkeeping Burden: Recordkeepers: 250; Burden Hours: 300.

Abstract: This report form will be used by eligible Indian tribes and Hawaiian native organizations to report on how funds were used under the Library Services for Indian Tribes and Hawaiian Natives Program. The Department uses the information collected to monitor performance of grantees.

Office of Postsecondary Education

Type of Review: Extension
Title: Assignment Form for the Perkins Loan Program
Agency Form Number: ED 553
Frequency: On occasion
Affected Public: Institutions of higher education; individuals or households
Reporting Burden: Responses: 120,000; Burden Hours: 60,000
Recordkeeping Burden: Recordkeepers: 3,000; Burden Hours: 1,500.

Abstract: This form is used by institutions of higher education that are participating in the Perkins Loan Program. The form collects pertinent information concerning defaulted loans being assigned to the Department for collection. Institutions are not required to assign accounts but do so in an effort to reduce their default rate, thereby making themselves eligible for additional program funding.

Office of Postsecondary Education

Type of Review: New
Title: Publication User Survey
Agency Form Number: E40–29P
Frequency: On occasion
Affected Public: Non-profit institutions; small businesses or organizations
Reporting Burden: Responses: 50,600; Burden Hours: 1518
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: This survey will ask financial aid administrators and high school counselors how well publications from the Office of Student Financial Aid (OSFA) meet their information needs. OSFA will use this information for guidance in developing future editions of its publication.

Office of Elementary and Secondary Education

Type of Review: Reinstatement
Title: Performance Status Report for the Magnet Schools Assistance Program
Agency Form Number: A10–8P
Frequency: Annually
Affected Public: State or local government
Reporting Burden: Responses: 44; Burden Hours: 132
Recordkeeping Burden: Recordkeepers: 44; Burden Hours: 88.

Abstract: This report form is used by institutions, organizations and individuals who sponsor projects and receive grants under the Magnet Schools Assistance Program. The Department uses the information collected to monitor the performance of the grantees.

Office of Elementary and Secondary Education

Type of Review: New
Title: Application for Drug Free Schools and Communities Regional Centers Program
Agency Form Number: A10–11P
Frequency: Annually
Affected Public: Individuals or households; State or local governments; non-profit institutions; small businesses or organization
Reporting Burden: Responses: 50; Burden Hours: 22,500
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0.

Abstract: This application will be used by State and educational agencies, local educational agencies and institutions of higher education to apply for grants under the Regional Centers Program. The information collected will be used by the Department of award grants and monitor the performance of effective alcohol and drug abuse education and prevention programs.

[FR Doc. 87–9356 Filed 4–23–87; 8:45 am]

BILLING CODE 4000–01–M

Notice Inviting Applications for New Awards Under the Research and Development Centers Program, Fiscal Year 1987 (CFDA #84.117D).

Purpose: To fund three research and development centers to conduct research and development in the priority

areas of English literacy, mathematics and elementary education.

Deadline for transmittal of applications: June 26, 1987.

Applications available: April 21, 1987.

Available funds: Approximately $1,500,000.

Estimated average size of awards: $500,000 (per year).

Estimated number of awards: 3.

Project period: Centers for Mathematics and English Literacy—3 years; Center for Elementary Education—5 years.

Applicable regulations: (a) The Education Department General Administrative Regulations in 34 CFR Parts 74, 75, 77, and 78; and (b) the Regional Educational Laboratories and Research Development Center Program Regulations in 34 CFR Parts 706 and 708.

Priorities: The Secretary has chosen from the list of priorities in 34 CFR 706.12 the following as absolute priorities: (1) English literacy, including reading, writing and language skills (§ 706.12(r)). Within this absolute priority the Secretary invites applications proposing research on the teaching and learning of literature. However, applications that meet this invitational priority will not receive an absolute or competitive advantage over applications within this absolute priority that do not meet this invitational priority.

(2) Mathematics (§ 706.12(s)).

(3) Elementary education (§ 706.12(w)).

Only applications that propose a research center in one of these priority areas will be considered under this competition.

Within each absolute priority, the Secretary is particularly interested in applications proposing research to examine what is and what should be learned and taught, how student performance in these areas should be assessed, and how the subject matter in each priority area should be delivered through instruction. However, applications meeting this invitational priority will not receive an absolute competitive advantage over other applications that do not meet this invitational priority.

Applicants should note that the Secretary intends to announce later in April, 1987 a competition under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages. The Secretary intends to invite applications for a center, similar to a research and development center under this program, to improve curricula in science.

Weighting for selection criteria: The program regulations at 34 CFR 706.31(e) authorize the Secretary to distribute an additional 15 points among the selection criteria in 34 CFR 708.32 to bring the total of possible points to a maximum of 100 points. For the purpose of this competition the Secretary will distribute the additioinal points as follows:

Mission and strategy, (§ 708.32(a)). Five (5) additional points will be added for a possible total of 20 points for this criterion.

Plan of operation, (§ 708.32(c)). Five (5) additional points will be added for a possible total of 25 points for this criterion.

Budget and cost effectiveness, (§ 708.32(e). Five (5) additional points will be added for a total of 5 points for this criterion.

For application or information contact: Dr. Conrad Katzenmeyer, CERI, Office of Research, Room 608D, 555 New Jersey Avenue, NW., Washington, DC 20208–1430, (202) 357–6026.

There will be a briefing for prospective applicants on May 5, 1987 from 1:00 to 4:30 PM in Rm 326, 555 New Jersey Avenue, NW., Washington, DC.

Program authority: 20 U.S.C. 1221e.

Dated: April 21, 1987.

Chester E. Finn Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–9237 Filed 4–21–87; 9:34 am]

BILLING CODE 4000–01–M

Notice Inviting Applications for New Awards Under the Research and Development Centers Program for FY 1987 (CFDA #84.117M)

Purpose: To support a research and development center to study secondary school teaching, organization and management of schools, and student achievement and educational standards.

Deadline for transmittal of applications: June 26, 1987.

Applications available: April 21, 1987.

Available funds for FY 1987: $300,000.

Estimated maximum size of award: It is anticipated that up to $2.7 million will be awarded over the five year project period.

Estimated number of awards: 1.

Project period: Up to 5 years.

Applicable regulations: (a) The Education Department General Administrative Regulations in 34 CFR Parts 74, 75, 77, and 78; (b) Regional Educational Laboratories and Research and Development Center Program regulations in 34 CFR Parts 706 and 708.

Priorities: The Secretary has chosen for this competition the following combination of absolute priorities from the list of priorities at 34 CFR 706.12: Teaching (§ 706.12(b)); organization and management of schools; including effective school administration and leadership (§ 706.12(f)); student achievement and educational standards, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate (§ 706.12(1)); and secondary education (§ 706.12(x)). Only those applications that propose a research center to study a combination of all these priorities will be considered under this competition.

Within these absolute priorities the Secretary particularly invites applications proposing to study how the secondary school context affects teachers, promotes or hinders effective teaching and ultimately affects student outcomes. However, applications meeting this invitational priority will not receive an absolute or competitive advantage over applications which do not meet this invitational priority.

Weighting for selection criteria: The program regulations at 34 CFR 706.31(e) authorize the Secretary to distribute an additional 15 points among the selection criteria in 34 CFR 708.32 to bring the total possible points to maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Mission and strategy (§ 708.32(a)). Five (5) additional points will be added for a possible total of 20 points for this criterion.

Plan of operation (§ 708.32(c)). Five (5) additional points will be added for a possible total of 25 points for this criterion.

Budget and cost effectiveness (§ 708.32(e)). Five (5) additional points will be added for a possible total of 5 points for this criterion.

For applications or information contact: Betty Demarest, OERI, Office of Research, Room 627F, 555 New Jersey Avenue, NW., Washington, DC 20208–1430. (202) 357–6211.

There will be a briefing for prospective applicants May 5, 1987 from 10:00 a.m. to 12:30 p.m. in OERI Conference Room 326, 555 New Jersey Avenue, NW., Washington, DC.

Program authority: 20 U.S.C. 1221e.

Dated: April 21, 1987.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–9238 Filed 4–21–87; 9:35 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS—FRL-3191-7]

Comment Period for Intergovernmental Review on Applications for Asbestos Hazards Abatement (Schools) Assistance

AGENCY: Environmental Protection Agency.

ACTION: Notice.

This letter is the Environmental Protection Agency's (EPA) official notification to States of an accelerated intergovernmental review period for applications in the "Asbestos Hazards Abatement (Schools) Assistance" program. EPA will issue awards in this program on May 26, 1987, in order to meet a Congressional deadline. Therefore, the 60 day period required by Executive Order 12372 for States to review and comment on applications before they are funded must be reduced to 25 days. May 25, 1987, is the last day that intergovernmental review comments can be considered by EPA before issuing the awards. The text of the letter is reprinted below. Dear State Designee and State Single Point of Contact:

Congress passed a Joint Resolution on March 17, 1987, directing the Environmental Protection Agency (EPA) to award grants and loans under the Asbestos School Hazard Abatement Act of 1984 in time to ensure that eligible educational agencies can complete asbestos abatement work by the end of the 1987 summer school recess. To comply with the Joint Resolution, EPA will issue awards under its "Asbestos Hazards Abatement (Schools) Assistance" program, Catalog of Federal Domestic Assistance number 66.702, on May 26, 1987.

EPA is also directed to comply with the intergovernmental review requirement of Executive Order 12372 to allow States 60 days to comment on applications subject to their official review processes. In this instance, EPA can provide only 25 days (i.e., until May 25, 1987) for States to review and comment. The Office of Management and Budget has agreed that a waiver from the 60 day requirement is necessary for EPA to be able to issue awards by May 26.

The State designee for the asbestos program and the State single point of contact for E.O. 12372 will need to coordinate their activities to assure that applications subject to the State's official intergovernmental review process are reviewed. Completed applications are due to Governors' offices no later than April 30, 1987, and will be forwarded to EPA by May 8, 1987. To expedite both State and EPA reviews and actions on the applications, a concurrent review process is necessary. Therefore, applications received on/before April 30, 1987, should be entered into the State review process no later than April 30, 1987.

Any questions regarding this waiver and or the recommended procedure for expediting the intergovernmental review process should be directed to Harry Baker, (202) 475–8270 or Corinne Allison, (202) 382–5294.

Sincerely,

John A. Moore,

Assistant Administrator, Pesticides and Toxic Substances.

Dated: April 17, 1987.

Michael M. Stahl,

Acting Director, Asbestos Action Program.

[FR Doc. 87–9297 Filed 4–23–87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3192-2]

Science Advisory Board; Environmental Engineering Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that the Environmental Engineering Committee of the Science Advisory Board will hold a two-day meeting on May 11–12, 1987 at the Environmental Protection Agency, Conference Room #1 (on the Ground Floor, north of the EPA Washington Information Center), Waterside Mall, 401 M Street SW., Washington, DC. The meeting will begin at 9:00 a.m. and last until 5:00 p.m. on May 11, and begin at 9:00 a.m. and last until 1:00 p.m. on May 12.

The primary purpose of the meeting is to begin the Committee's review of the Underground Storage Tank Release Simulation Model developed by EPA's Office of Underground Storage Tanks. At the meeting the Committee will receive detailed briefings on the Model. The SAB review will likely focus on the fate, transport, and exposure components of the Model. For technical information on the Model interested parties should contact Mr. Sammy Ng of the Office of Underground Storage Tanks at 202/382–7903.

In addition to this review, the Committee will discuss the following topics: activities of the SAB's Drinking Water Subcommittee, SAB self-initiated reviews, and an update on alternate concentration limits (ACLs). The latter topics will be general discussions, for they are not subjects of SAB reviews at this time.

Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for oral statements. For parties interested in underground storage tank issues, please note that SAB reviews are not a forum for providing general comments on Agency regulations or proposals. Rather, the Committee is interested in the presentation of technical views on specific topics undergoing review—in this case, on the Underground Storage Tank Release Simulation Model, and especially the fate, transport, and exposure components. Comments should be restricted to such technical issues.

Anyone wishing to make oral or written comments must contact Mr. Eric Males (202/382–2552) prior to close of business on May 4, 1987 in order to be placed on the agenda. Any member of the public wishing to attend should contact Mrs. Brenda Browne at 202/382–2552.

Dated: April 15, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–9298 Filed 4–23–87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3192-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 6, 1987 through April 10, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. As a courtesy to readers, EPA is publishing the following summary of rating definitions.

Summary of Rating Definitions

Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EISs

ERP No. D–CGD–C50010–NY, Rating EO2, Davids Island Residential Development, Marina and Bridge Access From New Rochelle Mainland and Davids Island Construction, Bridge Permit, 404 Permit, NY. **SUMMARY:** EPA has environmental objections to the project as proposed because of impacts to marine habitats, air quality, cultural resources and secondary impacts to necessary community services. Accordingly, EPA requested that additional information be presented in the final EIS to address these concerns.

ERP No. D–COE–F36151–OH, Rating LO, Blanchard River Flood Protection Plan, OH. **SUMMARY:** EPA's review resulted in no objections to the proposed activity.

ERP No. D–FHW–B50006–ME, Rating EC2, Fore River Bridge (Million Dollar Bridge)/ME–77 Rehabilitation or Replacement, Broadway in S. Portland to York St. in Portland, Sect. 10 and 404 Permits, Bridge Permit, Fore River, ME. **SUMMARY:** EPA believes that the rehabilitation alternative and both the low level-long alternatives DS/WO and DS/W with wetland mitigation are environmentally acceptable alternatives that will comply with EPA's Sect. 404(b)(1) Guidelines, Clean Water Act (CWA). EPA further believes that the near shore disposal option for dredged material would cause significant habitat loss and water quality degradation.

ERP No. D–SCS–K36090–CA, Rating LO, Kellogg Creek Detention Basin Flood Control Plan, Marsh-Kellogg Watershed, 404 Permit, CA. **SUMMARY:** EPA noted a lack of objections to the project and commended the SCS for its goal of minimizing adverse impacts to wetlands and riparian habitats. EPA, however, requested additional discussion in the final EIS on water quality, possible chemical use and Sect. 404 CWA requirements.

Final EISs

ERP No. F–BLM–K61071–CA, N. Central California Wilderness Study Area, Timbered Crater and Lava Wilderness Study Areas, Wilderness Recommendations, Designation or Nondesignation Suitability, CA. **SUMMARY:** EPA noted that the final EIS did not contain information on surface an ground water resources (quality and quantity) as EPA requested in its 1983 comment letter on the draft EIS. EPA requested that BLM's Record of Decision commit to a monitoring plan which will be used to prompt mitigation measures if measurable impacts to water quality or beneficial uses occur.

ERP No. F–DOE–J22002–CO, Climax Uranium Mill Site, Remedial Actions and Cleanup of Radioactive Contaminated Material, CO. **SUMMARY:** EPA made no formal comments. EPA reviewed the EIS and the project was found to be satisfactory.

ERP No. F–SCS–H36097–KS, Wolf River Watershed Protection and Flood Prevention Plan, KS. **SUMMARY:** EPA made no formal comments. EPA has no objections to the project as proposed in the draft EIS.

Regulations

ERP No. R–LAB–A99175–00, 30 CFR Part 57, Ionizing Radiation Stds. for Underground Metal and Nonmetal Mines (51 FR 45678). **SUMMARY:** Based on review of radiation standards proposed by the Mine Safety and Health Administration, EPA has several areas of significant concern including adequacy of the: (1) The health basis for the standards, (2) monitoring requirements, (3) provisions allowing use of respirators, (4) record keeping and reporting, (5) education of workers and supervisors, and (6) application of the requirement that exposure be "as low as reasonably achievable."

Dated: April 21, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–9355 Filed 4–23–87; 8:45 am]

BILLING CODE 6560–01–M

[ER–FRL–3191–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed April 13, 1987 Through April 17, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870129, Final, FHW, OR, Lester Avenue/I-205 Interchange Constuction and Improvements, between Sunnyside Road and Foster Road Interchanges, Clackamas County, Due: May 26, 1987, Contact: Dale Wilken (503) 399-5749.

EIS No. 870130, FSuppl, COE, AL, Black Warrior and Tombigbee Rivers Maintenance and Operation, New Information, Due: May 26, 1987, Contact: Diane Findley (205) 694-3857.

EIS No. 870131, Draft, COE, KY, Upper Cumberland River Basin Area, Flood Damage Reduction, Harlan County, Due: June 8, 1987, Contact: Ray Hendricks (615) 736-5027.

EIS No. 870132, DSuppl, FHW, MD, Calvert Road Closure, US 1 to MD-201, Metro Line Construction, Additional Information, Prince George's County, Due: June 15, 1987, Contact: Edward Terry (301) 962-4010.

Amended Notice

EIS No. 870008, Draft, AFS, CA, Eldorado National Forest, Highway 88 Future Recreation Use Determination, El Dorado Amador and Alpine Counties, Published FR-1-30-87-OFFICIALLY WITHDRAWN.

Dated: April 24, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-9354 Filed 4-23-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51671; FRL-3191-1]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-one such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 87-921, 87-922, 87-923, 87-924, and 87-925—July 2, 1987.

P 87-926, 87-927, 87-928, 87-929, 87-930, 87-931, 87-932, 87-933, 87-934, 87-935, 87-936, 87-937, and 87-938—July 5, 1987.

P 87-939, 87-940, 87-941, 87-942, 87-943, 87-944, 87-945, 87-946, 87-947, 87-948, 87-949, 87-950, 87-951, 87-952, and 87-953—July 6, 1987.

P 87-954, 87-955, 87-956, 87-957, and 87-958—July 7, 1987.

P 87-959, 87-960, and 87-961—July 8, 1987.

Written comments by:

P 87-921, 87-922, 87-923, 87-924, and 87-925—June 1, 1987.

P 87-926, 87-927, 87-928, 87-929, 87-930, 87-931, 87-932, 87-933, 87-934, 87-935, 87-936, 87-937, and 87-938—June 4, 1987.

P 87-939, 87-940, 87-941, 87-942, 87-943, 87-944, 87-945, 87-946, 87-947, 87-948, 87-949, 87-950, 87-951, 87-952, and 87-953—June 5, 1987.

P 87-954, 87-955, 87-956, 87-957, and 87-958—June 6, 1987.

P 87-959, 87-960, and 87-961—June 7, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51671]" and the specific PMN 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 non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential 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.

P 87-921

Manufacturer. Dow Corning Corporation.

Chemical. (G) Dimethyl, methylphenyl polysiloxane fluid.

Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

Toxicity Data. Acute Oral: > 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative.

P 87-922

Importer. Confidential.

Chemical. (G) Polyester.

Use/Import. (G) Plastic resin. Import range: Confidential.

P 87-923

Manufacturer. Bald Eagle Company.

Chemical. (G) Quarternary ammonium compound.

Use/Production. (S) Industrial fabric softener and cosmetic conditioner. Prod. range: Confidential.

P 87-924

Manufacturer. Dow Corning Corporation.

Chemical. (G) Dimethyl, methylphenyl polysiloxane fluid.

Use/Production. (S) Industrial intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames test: Non-mutagenic.

P 87-925

Manufacturer. Confidential.

Chemical. (G) Dimer acids, dicarboxylic acid, ethylenediamine, diamine polyamide resin.

Use/Production. (S) Industrial hot melt adhesive used in the construction of box-toes for shoes. Prod. range: Confidential.

P 87-926

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Ethylene interpolymer.

Use/Production. (G) General industrial use. Prod. range: Confidential.

P 87-927

Manufacturer. Confidential.

Chemical. (G) Polyesterimide.

Use/Production. (G) Intermediate for electrical insulation coatings. Prod. range: Confidential.

P 87-928

Manufacturer. Confidential.

Chemical. (G) Alkylalkoxysulfate salt.

Use/Production. (G) Semi-contained. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Moderate.

P 87-929

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified styrene/butadiene latex.

Use/Production. (S) Industrial, commercial and consumer polymer binder for an industrial paper/paperboard coating formulation. Prod. range: Confidential.

P 87-930

Manufacturer. The Dow Chemical Company.

Chemical. (S) 2-hydroxybutyl-2-propenoate.

Use/Production. (S) Industrial monomer for acrylic type coatings in automobile top coats; industrial and commercial reactant in manufacture of products to be used in adhesive and utraviolet and electron beam coating and ink application. Prod. range: Confidential.

P 87-931

Manufacturer. The Dow Chemical Company.
Chemical. (S) 1-(hydroxymethyl) propyl-2-propenoate.
Use/Production. (S) Industrial monomer for acrylic type coatings in automobile top coats; industrial and commercial reactant in manufacture of products to be used in adhesive and utraviolet and electron beam coating and ink application. Prod. range: Confidential.

P 87-932

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyether polyol.
Use/Production. (S) Industrial and commercial polyglycol for polyurethane used in encapsulation of electronic components. Prod. range: Confidential.

P 87-933

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyether polyurethane polymer.
Use/Production. (S) Industrial and commercial polyurethane coatings and industrial polyurethane elastomer. Prod. range: Confidential.

P 87-934

Manufacturer. The Dow Chemical Company.
Chemical. (G) Styrene/butadiene copolymer.
Use/Production. (S) Industrial cement/concrete modifier. Prod. range: Confidential.

P 87-935

Manufacturer. The Dow Chemical Company.
Chemical. (G) Advancement product of cresol epoxy novolac.
Use/Production. (S) Site-limited and industrial transfer molding of electronic parts; manufacture of pipe coatings; and solder mast applications. Prod. range: Confidential.

P 87-936

Manufacturer. The Dow Chemical Company.
Chemical. (G) Modified epoxy resin formulation.
Use/Production. (S) Industrial graphite, glass and kevlar composites for aerospace applications and electrical laminates. Prod. range: Confidential.

P 87-937

Manufacturer. The Dow Chemical Company.
Chemical. (G) Modified epoxy resin formulation.
Use/Production. (S) Industrial graphite, glass and kevlar composites for aerospace applications and electrical laminates. Prod. range: Confidential.

P 87-938

Manufacturer. The Dow Chemical Company.
Chemical. (G) Modified polyvinylidene chloride polymer.
Use/Production. (S) Industrial mold extrusion of plastic articles. Prod. range: Confidential.

P 87-939

Importer. Goldschmidt Chemical Corporation.
Chemical. (G) Organofunctional polysiloxane.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.
Toxicity Data. Acute oral: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Skin sensitization: Non-sensitizer.

P 87-940

Manufacturer. Pennwalt Corporation.
Chemical. (G) Sulfide antioxidant synergist.
Use/Production. (S) Industrial, commercial and consumer antioxidant synergist for polymer and Co-UV stabilizer for polymers. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin–Non-irritant, Eye–Non-irritant; Ames test: Non-mutagenic.

P 87-941

Manufacturer. NL Industries, Incorporated.
Chemical. (G) Water-dispersed polyurethane resin.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-942

Manufacturer. NL Industries, Incorporated.
Chemical. (G) Polyurethane prepolymer.
Use/Production. (G) Reactive intermediate. Prod. range: Confidential.

P 87-943

Manufacturer. NL Industries, Incorporated.
Chemical. (G) Polyurethane prepolymer.
Use/Production. (G) Reactive intermediate. Prod. range: Confidential.

P 87-944

Manufacturer. Allied-Signal.
Chemical. (G) Modified olefin/carboxylic acid copolymer.
Use/Production. (G) Plastics & elastomer additive. Prod. range: Confidential.

P 87-945

Manufacturer. Confidential.
Chemical. (G) Substituted vinyl acetate/ethylene polymer.
Use/Production. (G) Polymeric bonding of cellulosic fibers. Prod. range: Confidential.

P 87-946

Importer. Confidential.
Chemical. (G) Polyester.
Use/Import. (G) Polyester resin. Import range: Confidential.

P 87-947

Importer. Confidential.
Chemical. (G) Polymer of aromatic diisocyanates, aliphatic diisocyanates, aliphatic glycol's and aliphatic diacid.
Use/Import. (S) Industrial auxiliary for leather. Import range: Confidential.

P 87-948

Importer. Confidential.
Chemical. (G) Substituted benzenesulfonic acid, salt.
Use/Import. (G) Auxiliary for paper. Import range: Confidential.
Toxicity Data. Irritation: Skin—Non-Irritant, Eye—Non-irritant.

P 87-949

Importer. Confidential.
Chemical. (G) Ethyldimethylpropylamine.
Use/Import. (G) Industrial chemical intermediate. Import range: Confidential.

P 87-950

Importer. Confidential.
Chemical. (G) Blocked aliphatic urethane copolymer.
Use/Import. (S) Textile finish. Import range: Confidential.

P 87-951

Importer. Confidential.
Chemical. (G) Polyethylene polyamine, salt.
Use/Import. (S) Site-limited auxiliary for paper. Import range: Confidential.
Toxicity Data. Acute oral: 5.0 ml/kg; Irritation: Skin—Non-irritant, Eye—Slight.

P 87-952

Manufacturer. NL Industries, Incorporated.
Chemical. (G) Water-dispersed polyurethane polymer.

Use/Production. (G) Open non-dispersive manner. Prod. range: Confidential.

P 87–953

Importer. Confidential.
Chemical. (G) Polyester.
Use/Import. (G) Polyester resin. Import range: Confidential.

87–954

Manufacturer. Confidential.
Chemical. (G) Polymer of mixed alkyl acrylates and methacrylates, n-substituted acrylamide, acrylic acid, amine salt.
Use/Production. (G) Industrial open, non-dispersive use. Prod. range: Confidential.

P 87–955

Manufacturer. Minnesota Mining and Manufacturing Company.
Chemical. (G) Functional acrylate.
Use/Production. (G) Monomer for a polymeric adhesive. Prod. range: Confidential.

P 87–956

Manufacturer. Confidential.
Chemical. (G) Comb branch poly (urethane-acrylate).
Use/Production. (G) Coating for open, non-dispersive use. Prod. range: Confidential.

P 87–957

Manfuacturer. Confidential.
Chemical. (G) Methyl methacrylate copolymer.
Use/Production. (S) Industrial used coating with a dispersive use. Prod. range: 8,000 to 25,000 kg/yr.

P 87–958

Maufacturer. Confidential.
Chemical. (G) Substituted phenyl substituted napthalene, metal complex salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–959

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic diamino alcohol.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: 900 to 9,000 kg/yr.

P 87–960

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic diamino alcohol salt.
Use/Production. (G) Industrial used coating having an open use. Prod. range: 1,270 to 12,700 kg/yr.

P 87–961

Manufacturer. Confidential.
Chemical. (G) Polyurethane-polysiloxane copolymer.
Use/Production. (G) Low friction or high slip additive to coatings, open non-dispersive use. Prod. range: Confidential.

Dated: April 15, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87–9075 Filed 4–23–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59813; FRL–3190–9]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250, EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of recept. This notice announces receipt of five such polymer exemption submissions and provides a summary of each.

DATES: Close of Review Period.

Y 87–135, April 26, 1987.
Y 87–136, April 27, 1987.
Y 87–137, 87–138 and 87–139, April 28, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the exemption received by EPA. The complete non-confidential documents are 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.

Y 87–135

Manufacturer. Confidential.
Chemical. (G) Alkylene copolymer.
Use/Production. (G) Adhesive. Prod. range, Confidential.

Y 87–136

Manufacturer. Confidential.
Chemical. (G) Polyester of a reaction mixture of carbomonocylic acid, sulfonated carbocylic diester, and alkylene glycols.
Use/Production. Industrial size for testile fibers. Prod. range, Confidential.

Y 87–137

Manufacturer. Confidential.
Chemical. (G) Silicone alkyd resin.
Use/Production. (S) Industrial component for industrial implement coating. Prod. range: 17,500 to 35,000 kg/yr.

Y 87–138

Importer. Confidential.
Chemical. (G) Adipic acid polyester.
Use-Import. (S) Industrial plasticizer. Import range: Confidential.

Y 87–139

Manufacturer. Confidential.
Chemical. (G) Tall oil fatty acid alkyd resin.
Use/Production. (S) Industrial component for industrial implement finish. Prod. range: 5,900 to 12,000 kg/yr.

Dated: April 13, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87–9076 Filed 4–23–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59242; FRL–3199–5]

Toxic and Hazardous Substances Control; Certain Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing 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 two applications for exemption, provide a summary, and requests comments on the appropriateness of granting each exemption.

DATE: Written comments by: May 11, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-59242]" 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 non-confidential versions of the TME applications received by EPA. The complete non-confidential applications are 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 87-14

Close of Review Period. May 28, 1987.
Manufacturer. Confidential.
Chemical. (G) Epoxy resin ingredient.
Use/Production. (G) Expoxy resin. Prod. Range: Confidential.

T 87-15

Close of Review Period. May 30, 1987.
Manufacturer. Confidential.
Chemical. (G) Amide of polycarboxylic acid.
Use/Production. (G) Organic stabilizer. Prof. Range: Confidential.

Date: April 20, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-9299 Filed 4-23-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59814 FRL-3199-6]

Toxic and Hazardous Substances Control; Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such polymer exemption submissions and provides a summary of each.

DATES: Close of review period.

Y 87-140—May 3, 1987.
Y 87-141 and 87-142—May 5, 1987.

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 non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential 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.

Y 87-140

Manufacturer. Confidential.
Chemical. (S) Castor oil, dehydrated castor oil, pentaerytyritol, glycerol, benzoic acid, phthalic anhydride, lithium neodecanoate.
Use/Production. (S) Industrial, polymer used as the major vehicle component of a protective coating (paint) formulated for use on wood substrates. Prod. range: 22,680 to 45,360 kg/yr.

Y 87-141

Importer. Confidential.
Chemical. (G) Vinyl/acrylate polymer.
Use/Import. (G) Polymer component for specialty industrial coatings. Import range: Confidential.

Y 87-142

Manufacturer. CIBA-GEIGY Corporation.
Chemical. (S) 1-piperidineethanol, 4-hydroxy-2,2,6,6-tetramethyl-propanedioic acid, diethyl-, diethyl ester.
Use/Production. (S) Industrial light stabilizer for automotive coatings. Prod. range: Confidential.

Date: April 20, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-9300 Filed 4-23-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-788-DR]

Maine; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine (FEMA-788-DR), dated April 9, 1987, and related determinations.

DATED: April 16, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Maine, dated April 9, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 9, 1987:

Cumberland, Hancock, Knox, Lincoln, Sagadahoc, and Waldo Counties for Individual Assistance.

Waldo County for Public Assistance.

The Towns of Bridgton, Naples, New Gloucester, and Pownal in Cumberland County; the Towns of Dresden, Somerville, and Waldoboro in Lincoln County; and the Towns of Old Orchard Beach and the City of Saco in York County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Joe D. Winkle,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 87-9274 Filed 4-23-87; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-789-DR]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire, (FEMA-789-DR), dated April 16, 1987, and related determinations.

DATED: April 16, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice: Notice is hereby given that, in a letter of April 16, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from severe storms and flooding beginning on or about March 30, 1987, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 83-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration. Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Albert A. Gammal, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared major disaster and are designated eligible as follows:

Cheshire, Grafton, Hillsborough, Merrimack, Rockingham, and Sullivan Counties for both Individual Assistance and Public Assistance, and Carroll and Strafford Counties for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton,

Director.

[FR Doc. 87-9273 Filed 4-23-87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

[No. Ac-594]

First Federal of Western Pennsylvania, Sharon, Penn.; Final Action Approval of Conversion Application

Dated: April 16, 1987.

Notice is hereby given that on April 3, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal of Western Pennsylvania, Sharon, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-9353 Filed 4-23-87; 8:45 am]

BILING CODE 6720-01-M

[No. 87-466]

Midwest Stock Exchange; Approval of Applications for Unlisted Trading Privileges;

Dated: April 16, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: On January 2, 1987 and January 27, 1987, respectively, the Midwest Stock Exchange filed with the Federal Home Loan Bank Board ("Board") applications ("Applications"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange:

Coast Savings and Loan Association, Los Angeles, California (FHLBB No. 7046), Common Stock, No Par Value

Standard Federal Bank, Troy, Michigan (FHLBB No. 0161), Common Stock, $1.00 Par Value

Notice of the Applications and opportunity for hearing was published in the **Federal Register** on March 27, 1987, interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 87-305 dated March 18, 1987 (52 FR 9938, March 27, 1987). The Board received no comments with respect to the Applications. Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Applications for unlisted trading privileges in these securities on April 15, 1987.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to Section 6 of the Act, the Midwest Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system comtemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Midwest Stock Exchange are executed at prices which are reasonably related to those occurrring in other markets. Further, the approval of the Appications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of

General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in the above named securities on April 15, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-9352 Filed 4-23-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

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: 841.

Name: J.E. Tomkins & Son, Inc.

Address: 2091 New Highway, Farmingdale, NY 11735.

Date revoked: March 31, 1987.

Reason: Requested revocation voluntarily.

License Number: 2807.

Name: On Board International, Inc.

Address: 1227 West Temple Steet, Los Angeles, 90026.

Date revoked: March 31, 1987.

Reason: Surrendered license voluntarily.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 87-9256 Filed 4-23-87; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Reissuance of License; Ultramar Forwarding

Notice is hereby givern that the following ocean freight forwarder license has been reissued 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 No.	Name and Address
1946-R	Jose A. Fernandez dba Ultramar Forwarding, 854 N.W. 87th Avenue, Miami, FL 33172.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 87-9257 Filed 4-23-87; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC., 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 206-010715-002.

Title: Eurospan.

Parties: North Europe-U.S. Gulf Freight Association, Gulf-European Freight Association.

Synopsis: The proposed amendment would permit the parties to participate in joint tariffs covering the European inland segment for cargoes transported in the trade.

Agreement No.: 213-011059-001.

Title: Crowley Caribbean Transport, Inc./American Transport Lines, Inc. Space Charter Agreement.

Parties: American Transport Lines, Inc. (ATL), Crowley Caribbean Transport, Inc. (CCT).

Synopsis: The proposed amendment would expand the scope of the agreement to include all ports in Central and South American and would permit ATL to charter on CCT vessels. It also reflects ATL's change of address. The parties have requested a shortened review period.

Agreement No.: 203-011063-001.

Title: United States/Jamaica Discussion Agreement.

Parties: Crowley Caribbean Transport, Inc., R.B. Kirkconnell & Bro. Ltd.

Synopsis: The proposed amendment would add Sea-Land Service, Inc. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 217-011093.

Title: Lykes/Italia Space Charter Agreement.

Parties: Lykes Bros. Steamship Co., Inc. (Lykes), Italia di Navigazione S.P.A. (Italia).

Synopsis: The proposed agreement would permit Italia to charter space aboard Lykes' vessels for cargoes moving between U.S. South Atlantic and Gulf ports and Mediterranean ports, and inland and coastal points via such ports. Additionally, Lykes would be pemitted to provide or arrange for terminal related services for Italia under the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: April 21, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-9322 Filed 4-23-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens' Capital Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 15, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Altanta, Georgia 30303:

1. *Citizens' Capital Corporation,* Robertsdale, Alabama; to become a bank holding company by acquiring 80

percent of the voting shares of Citizens' Bank, Inc., Robertsdale, Alabama.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Marine Corporation,* Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Banco di Roma, Chicago, Illinois.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Shakopee Bancorporation, Inc.,* St. Paul, Minnesota; to become a bank holding company by acquiring 96.7 percent of the voting shares of Citizens State Bank of Shakopee, Shakopee, Minnesota.

Board of Governors of the Federal Reserve System, April 20, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-9266 Filed 4-23-87; 8:45 am]

BILLING CODE 6210-01-M

PNC Financial Corp; Proposal to Underwrite and Deal in Certain Securities to a Limited Extent

PNC Financial ("Applicant"), Pittsburgh, Pennsylvania, a bank holding company within the meaning of the Bank Holding Company Act, 12 U.S.C. 1841 *et seq.* ("BHC Act"), has applied pursuant to section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through PNC Investment Company ("Company"), Pittsburgh, Pennsylvania, in underwriting and dealing in commercial paper and municipal revenue obligations (including certain industrial development bonds) to a limited extent (hereinafter "ineligible securities"). Company would only sell such commercial paper to sophisticated investors and institutions as are consistent with the requirements of the commercial paper exemption in section 3(a)(3) of the Securities Act of 1933, 15 U.S.C. 77c(a)(3). Company would sell municipal revenue securities to the general public.

Applicant is also applying for approval under § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)) to engate, *de novo,* through Company in underwriting and dealing in U.S. government, agency and municipal obligations and money market instruments that state member banks are expressly authorized to underwrite and deal in under 12 U.S.C. 24 Seventh and 12 U.S.C. 355. The foregoing activities are presently conducted by Applicant's principal banking subsidiary, Pittsburgh National Bank. Applicant proposes to transfer the underwriting and dealing activities in eligible securities presently conducted by Pittsburgh National Bank to Company.

The activities would be performed principally through Company's offices in Pittsburgh, serving customers throughout the United States. Company may establish offices in other locations as it deems necessary and appropriate.

Section 4(c) (8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper indident thereto." The Board has not previously approved the proposed underwriting and dealing activities for bank holding companies. The Board has approved applications under section 4(c)(8) by Bankers Trust New York Corporation to engage in the limited placement of third-party commercial paper with purchasers, even if that activity were deemed to constitute underwriting, and by The Chase Manhattan Corporation to engage in limited underwriting and dealing in commercial paper. Bankers Trust New York Corporation, 73 Federal Reserve Bulletin 138 (1987). The Chase Manhattan Corporation (Order dated March 18, 1987).

Applicant states that the proposed activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto on the basis of its belief that banks engage in activities that it believes are functionally and operationally similar to those involved in the application, including discounting promissory notes; placing commercial paper as agent with institutional customers for third party issuers; arranging loan participations or syndications with other banks and institutional lenders; and underwriting and dealing in money market instruments and bank-eligible municipal revenue securities.

In determining whether a particular activity is a proper incident to banking, the Board considers whether the performance of the activity by an affiliate of a holding company 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 interest or unsound banking practices. Applicant maintains that permitting bank holding companies to engage in the proposed activities would be procompetitive; would result in lower costs to issuers; would increase the depth and liquidity of secondary markets; would enable holding companies to provide increased services to customers; and would enhance the stability and profitability of bank holding companies by further diversifying their products and services. In addition, Applicant believes the proposal would not result in adverse effects.

The application also presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member banks, such as Pittsburgh National Bank, with a firm that is "enaged principally" in the "underwriting, public sale or distribution" of securities.

Applicant states that it would not be "engaged principally" in such activities on the basis of restrictions that would limit the amount of the proposed activity relative to the total business conducted by Company and relative to the total market in such activity.

During any two year period, the Company's underwriting and dealing in ineligible securities ("ineligible activities") will account for no more than 15 percent of its total activities, measured by compliance with two of the three indicia set forth below:

(1) The dollar volume of underwriting commitments (or underwriting or primary sales if larger) and dealer sales attributable to ineligible activities, companed with total dollar volume of all of Company's activities;

(2) The average assets acquired in connection with ineligible activities, compared with the average assets acquired in connection with all of Company's activities; and

(3) The gross income from ineligible activities, compared with ther gross income from all of Company's activities.

In addition, Applicant will limit Company's involvement in the market for ineligible activities through the following restrictions:

(1) The volume of all municipal revenue securities underwritten by Company in any one calendar year shall not exceed 3 percent of the total amount of such securities underwritten domestically by all firms during the previous calendar year.

(2) The amount of all municipal revenue securities held by Company for dealing at any one time shall not exceed 3 percent of the total amount of such securities underwritten domestically by

all firms during the previous calendar year.

(3) The total amount of commercial paper outstanding on any day underwritten by Company shall not exceed 10 percent of the average daily amount of dealer-placed commercial paper outstanding during the prior four calendar quarters (Applicant would reduce this limit from 10 percent to 5 percent if the Board determines that such a reduction in market share is legally required).

(4) The total amount of commercial paper held in inventory by Company on any day shall not exceed 10 percent of the average daily amount of dealer-placed commercial paper outstanding during the prior four calendar quarters. (Applicant would reduce this limit from 10 percent to 5 percent if the Board determines that such a reduction in market share is legally required).

In publishing Applicant's proposal for comment, the Board does take any position on the "engaged principally" issue under the Glass-Steagall Act or other issues raised by the proposal under the Bank Holding Company Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal is consistent or inconsistent with the Glass-Steagall Act or that the proposal meets or is likely to meet the standards of the Bank Holding Company Act. The Board previously published for comment applicaitons by Citicorp (50 FR 20847), J.P. Morgan & Co. Incorporated (50 FR 41025), Bankers Trust (51 FR 16590), and other bank holding companies to underwrite and deal in the proposed ineligible securities. The Board held a hearing on certain issues presented by the applications of Citicorp, J.P. Morgan and Bankers Trust on February 3, 1987.

Comments are requested on the scope of activity permitted by the phrase "engaged principally" under the Glass-Steagall Act, including whether the phrase contemplates the type of limitations involved in this application, which are based on Applicant's market share and on a percentage of the affiliate's total business activities. The Board also seeks comment on whether the term "engaged principally" in section 20 would preclude a member bank affiliate from engaging in activities restricted by this section on a substantial and regular or non-incidental basis and without regard to the amount of other activities conducted by the affiliate.

Comments are also requested on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole 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."

Upon the expiration of the public comment period, depending upon the comments received, the Board may wish first to consider the legal issue presented by the application under the Glass-Steagall Act in order to determine whether there is a legal basis for considering whether the activities could be permitted for a bank holding company under the Bank Holding Company Act.

Any request for a hearing on these questions must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 22, 1987.

Board of Governors of the Federal Reserve System, April 20, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-9265 Filed 4-23-87; 8:45 am]

BILLING CODE 6210-01-M

F I N, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 4, 1987.

A. Board of Governors of the Federal Reserve System, (William W. Wiles, Secretary) Washington, DC 20551:

1. *F I N, Inc.*, Mesa, Arizona; to become bank holding company by acquiring 100 percent of the voting shares of American National Bank of Afton, Afton, Wyoming.

Board of Governors of the Federal Reserve Systems, April 22, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-9478 Filed 4-23-87; 9:39 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 April 10, 1987.

Public Health Service (PHS)

(Call Reports Clearance Officer on 202-245-2100 for copies of Package)

Food and Drug Administration

Subject: 21 CFR Part 510-Adverse Drug Reaction Lack of Effectiveness, Product Defeat Report—Revision—(0910-0012).

Respondents: Businesses or other for-profit.

Health Resources Services Administration

Subject: Project Proposal for Provisions of Sanitation Facilities-(Pub. L. 86-121)—Extension—(0915-0018).
Respondents: Individuals or households; State or local governments.
Subject: Request for Report of Immunizations Administered—Extension—(0915-0030).
Respondents: Businesses or other for-profit; Small businesses or organizations.

Office of the Assistant Secretary for Health

Subject: 1987 National Medical Expenditure Survey (Pretest of Medical Provider Survey Patient Identified Physicians Survey and Health Insurance Plan Survey)—Revision—(0937-0153).
Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Alcohol, Drug Abuse and Mental Health Administration

Subject: Community Mental Health Centers Construction Grantee Checklist—Extension—(0930-0104).
Respondents: State or local governments; Non-profit institutions; Small businesses or organizations.

OMB Desk Officer: Shannah Koss.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

Subject: Notice Regarding Substitution of Party Upon Death of Claimant—Extension—(0960-0288).
Respondents: Individuals or households.
Subject: Client Satisfaction Survey (Conceptual Clearance Request)—NEW.
Respondents: Individuals or households.
Subject: Request for Review of Hearing Decision/Order—Revision—(0960-0277)
Respondents: Individuals or households.
Subject: Letter to Landlord Requesting Rental Information—Existing Collection
Respondents: Individuals or households
Subject: Acknowledgment of Notice of Hearing—Revision—(0960-0280)
Respondents: Individuals or households
Subject: Waiver of Right to Personal Appearance Before Administrative Law Judge—Revision—(0960-0284)
Respondents: Individuals or households
Subject: Claimant's Work Background—Revision—(0960-0300)
Respondents: Individuals or households
Subject: Field Office Past-adjudicative Study Beneficiary Contacts—NEW
Respondents: Individuals or households

OMB Desk Officer: Judy Egan.

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/FDA: 202-245-2100
SSA: 301-594-5706

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 Building, Room 3208, Washington, DC. 20503.

Attn: (name of OMB Desk Officer).

Dated: April 17, 1987.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87-9289 Filed 4-23-87; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC)
Date: May 18-19, 1987
Place: May 18—Auditorium, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, *May 19*—Ballroom C, Ramada, Inn, Intersection of U.S. 48 and I-79, Morgantown, West Virginia 26505
Time and type of meeting: Open 9 a.m. to 5 p.m.—May 18, Open 9 a.m. to 12 noon—May 19.
Contact person: Robert E. Glenn, Executive Secretary, MHRAC, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: Commercial: (304) 291-4474, FTS: 923-4474

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of previous meeting and future meeting dates; and a discussion of mining research priorities for NIOSH as viewed by representatives of other government agencies, the mining industry, and organized labor.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduld at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affilation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: April 17, 1987.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87-9141 Filed 4-23-87; 8:45 am]

BILLING CODE 4160-19-M

Board of Scientific Counselors; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Board of Scientific Counselors (BSC)
Date: May 12, 1987
Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226
Time and type Of meeting: Open 8:30 a.m. to 9:30 a.m.—May 12, Closed 9:30 a.m. to 10:00 a.m.—May 12
Contract person: Glendel J. Provost, J.D., M.P.H., Executive Secretary, BSC, NIOSM, CDC, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: Commercial: (404) 329-3901, FTS: 236-3901

Purpose: The Board is charged with advising the Director of the National Institute for Occupational Safety and Health on the scientific quality and efficacy of the Institute's research.

Agenda: Agenda items for the meeting will include announcements, consideration of minutes of the previous meeting, planning of site visits to review NIOSH divisions, and further meeting dates and locations. Beginning at 9:30 a.m. through 10 a.m., May 12, the Board will discuss certain matters the public disclosure of which could constitute a violation of sections 552b(c)(6) and/or 552b(c)(9)(B) of Title 5 U.S. Code. Therefore, pursuant to said provisions and the determination of the Director, Centers for Disease Control, this portion of the meeting will not be open to the public.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: April 17, 1987.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87-9140 Filed 4-23-87; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 87N-0135]

Drug Export; Megace (Megestrol Acetate) Tablets, 160 Milligrams

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bristol-Myers has filed an application requesting approval for the export of the human drug Megace (megestrol acetate) Tablets, 160 milligrams (mg) to Canada.

ADDRESS: Relevant information on this application may be directed to the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (Section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Bristol-Meyers Co., 345 Part Avenue, New York, NY 10154, has filed an application requesting approval for the export of the drug Megace (megestrol acetate) Tablets, 160mg, to Canada. The application was received and filed in the Center for Drugs and Biologics on April 9, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 4, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-days review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: April 10, 1987.

Daniel L. Michels,

Director Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-9260 Filed 4-23-87; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting:

Denver district office, chaired by Leroy M. Gomez, District Director. The topics to be discussed are diagnostic test kits, anabolic steroids, antibiotics in animal feeds, alar in apples, decaffeinated coffee, sulfite recalls, and cholesterol labeling.

DATE: Wednesday, April 29, 1987, 7:30 p.m.

ADDRESS: United States Department of Agriculture (USDA) Conference Rm., 1211 Northwest Bypass, Great Falls, MT 59404.

FOR FURTHER INFORMATION CONTACT: Janine Jarvella, Consumer Affairs Officer, Food and Drug Administration, 500 U.S. Customhouse, 19th and California Sts., Denver, CO 80202, 303-844-4915.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: April 17, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-9320 Filed 4-21-87 4:46 p.m.]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Minneapolis district office, chaired by John Feldman, District Director. The topic to be discussed is food labeling.

DATE: Tuesday, April 28, 1987, 1 p.m.

ADDRESS: Mount Mary College, Notre Dame Hall, Rm 250, 92nd and Burleigh, Milwaukee, WI 53222.

FOR FURTHER INFORMATION CONTACT: Don Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–349–3900.

Minneapolis district office, chaired by John Feldman, District Director. The topic to be discussed is food labeling.

DATE: Thursday, May 7, 1987, 9:30 a.m.

ADDRESS: LaCrosse County Courthouse, County Board Meeting Rm., 400 North Fourth St., LaCrosse, WI 54601.

FOR FURTHER INFORMATION CONTACT: Don Aird, Consumer Affairs Officer, Food and Drug Administration, 240, Hennepin Ave., Minneapolis, MN 55401, 612–349–3900.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Officies, and to contribute to the agency's policymaking decisions on vital issues.

Dated: April 17, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–9321 Filed 4–21–87; 4:46 pm]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–07–4322–02; 1784–010]

Arizona Strip District Grazing Advisory Board and District Advisory Council; Field Tour and Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of field tour and meetings.

SUMMARY: A combined field tour in the Shivwits Resource Area is scheduled for Tuesday, May 19, leaving the district office at 7:30 a.m. The tour will stop at specific sites for discussion on riparian management, desert tortoise, fire control, and recreation.

A formal Grazing Board meeting will begin at 9 a.m. on Monday, May 11 in the Holiday Inn, 850 South Bluff in St. George, Utah. Primary topics are 1987 range improvement projects and resource management planning issues.

The Council will meet at 8 a.m. on Wednesday, May 20 in Dixie Center Room 2 at 225 South 700 East, St. George, Utah. Discussion will focus on resource management planning, water rights, riparian management, and land exchanges.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, 196 East Tabernacle, St. George, Utah 84770, (801) 673–3545.

SUPPLEMENTARY INFORMATION: All meetings are open to the public. Interested persons must provide their own transportation and lunch for the field trip, which returns to St. George around 5 p.m. A public comment period is set for 9:30 a.m. for the Board meeting and 8:30 a.m. for the Council meeting on dates noted above. Written statements will also be accepted for consideration. Arrangements to attend or comment should be made at least 5 days in advance.

G. William Lamb,

Arizona Strip District Manager.

April 14, 1987

[FR Doc. 87–9314 Filed 4–23–87; 8:45 am]

BILLING CODE 4310–32–M

[ID–020–07–4212–13; I–226682]

Realty Action; Exchange of Public and Private Lands in Cassia County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public and private lands in Cassia County, Idaho.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the *Federal Land Policy and Management Act of 1976,* 43 U.S.C. 1716.

T. 12 S., R. 25 E., B.M.
Sec. 3: N½SW¼, NW¼SE¼; comprising 120 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from J. Vard Chatburn:

T. 11 S., R. 25 E., B.M.
Sec. 27: SE¼NE , E½SE¼; comprising 120 acres of private land.

The purpose of this exchange is to acquire non-Federal land which has high public value for livestock grazing and wildlife habitat. The land to be acquired has legal access and adjoins a large block of public land along its north and east borders. Resources available on the parcel include grazing land and habitat for mule deer, chukar partridge, and sage grouse. The land to be transferred from the United States is isolated and difficult and uneconomic to manage. This land has resource values similar to the land to be acquired, but due to its lack of legal assess, the public cannot realize benefits from those resources. The public interest will be well served by completing the exchange.

Lands to be transferred from the United States will reserve to the United States a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

Publication of this notice segregates the public lands from appropriation under the public land laws, including the mining laws as provided by 43 CFR 2201.1(b). The segregative effect of the NORA shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of publication, whichever occurs first.

Exchange Comments: For a period of 45 days from the date of first publication, interested parties may submit comments to the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, ID 83318.

FOR FURTHER INFORMATION CONTACT: Further information concerning the exchange, including the environmental assessment, is available for review at the Burley District Office. Anyone having questions may contact Sharon LaBrecque, Snake River Realty Specialist, at (208) 678–5514.

Dated: April 16, 1987

Terrance M. Costello,

Snake River Area Manager.

[FR Doc. 87–9313 Filed 4–23–87; 8:45 am]

BILLING CODE 4310–GG–M

[ES–940–07–4520–13; ES–037308, Group 4]

Filing of Plat of Dependent Resurvey; Maine

April 20, 1987.

1. The plat of the dependent resurvey of the boundaries of the land held in trust for the Penobscot Indian Nation in Argyle Township, Penobscot County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on June 4, 1987.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey and

Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., June 4, 1987.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 87-9315 Filed 4-23-87; 8:45 am]

BILLING CODE 4310-GJ-M

[ID-050-4410-13]

Shoshone District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Advisory Council.

DATE: Wednesday, May 20, 1987, at 9:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, District Manager, Shoshone District Office, P.O. Box 2 B, Shoshone, Idaho 83352. Telephone (208) 886-2206 or FTS 554-6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items:

District-Wide Plan Amendment

Other Program Reports

The Shoshone District Advisory Council is established under section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 43 U.S.C. 1701 et seq.) as amended. Operation and administration of the Council will be in accord with the Federal Advisory Committee Act of 1972 (Pub L. 92-463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1784.

The meeting will be open to the public. Anyone may present an oral statement before the Council between 9:00 and 10:00 a.m. or may file a written statement with the Council regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District Manager by May 19, 1987. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Jon H. Idso,

District Manager.

[FR Doc. 87-9313 Filed 4-23-87; 8:45 am]

BILLING CODE 4310-GG-M

[OR-3621, OR-6160; OR-943-07-4220-11; GP-07-155; 7-00151]

Oregon; Notice of Proposed Contintuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that all or portions of two separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Umpqua National Forest

1. OR 3621, Public Land Order No. 4626 of 4-14-1969.
Pickett Butte Road No. 3113, 1.3 Acres.
Located in Douglas County, 26 miles southeast of Roseburg.
T. 30 S., R. 2W., W.M., Sec. 23.

Mt. Hood National Forest

2. OR 6160, Public Land Order No. 4910 of 9-16-1970.
Ripplebrook Campground, 45, Acres.
Located in Clackamas County, 45 miles southeast of Portland.
T. 6 S., R. 6 E., W.M., Sec. 2.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The existing withdrawals will continue until such final determination is made.

Dated: April 15, 1987.

L. Morrison,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-9192 Filed 4-23-87; 8:45 am]

BILLING CODE 4310-33-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31010]

Poseyville and Owensville Railroad Co., Inc.; Acquisition and Operation Exemption; CSX Transportation, Inc.

The Poseyville and Owensville Railroad Company, Inc. (P&O), a wholly owned subsidiary of Merchants Grain and Transportation, Inc. (Merchants), has filed a notice of exemption to acquire and operate the line of CSX Transportation, Inc. (CSX), between milepost LZJ 282.239 at Poseyville, IN and milepost LZJ 271.0 at Owensville, IN, a distance of 11.239 miles. Any comments must be filed with the Commission and served on: Peter A. Greene; Thompson, Hine and Flory; 1920 N Street, NW., Suite 700, Washington, DC 20036; (202) 331-8800.

This notice is related to Finance Docket No. 31031 in which Merchants has filed a petition pursuant to 49 U.S.C. 10505 [1] for exemption from the prior approval requirements of 49 U.S.C. 11343 to continue in control of P&O upon P&O's acquisition of the CSX line. Merchants presently controls MG Rail, Inc. (MG), a class III terminal line railroad, and Arrow Transportation Company (Arrow), a water carrier

[1] Merchants had originally filed a notice of exemption pursuant to the 49 CFR 1180.2(d)(2) class exemption. In light of the Commission's decision in Finance Docket No. 30998, et al., *Stone Container Corporation-Control-Exemption-Southwest Forest Industries, Inc.* (not printed), served April 1, 1987, Merchants filed its petition for exemption under 49 U.S.C. 10505, in effect modifying its earlier filing.

holding common and contract carrier authority and a motor contract carrier.

Use of this exemption by P&O is subject to Merchants securing prior Commission approval or exemption of its common control relationship with P&O, MG, and Arrow.

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. Subject to the above stated condition, the filing of a petition to revoke will not automatically stay the transaction.

Decided: April 14, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-8921 Filed 4-23-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31020]

City of Jackson, OH; Exemption Acquisition; Certain Lines of Baltimore and Ohio Railroad Co. and Chesapeake and Ohio Railway Co.

The City of Jackson, OH (Jackson) has filed a notice of exemption to acquire 52.83 route miles of line owned by The Baltimore and Ohio Railroad Company (B&O) and the Chesapeake and Ohio Railway Company (C&O) as well as for certain incidental trackage rights over 5.9 miles of the B&O and C&O for purposes of interchange. The involved trackage to be acquired runs from Firebrick, OH (milepost 32.76) to Hamden, OH (milepost 0.00/127.0) to West Junction [1] (milepost 112.3/95.5) to RA Junction (milepost 91.6).[2] The incidental trackage rights begin from RA Junction (milepost 91.6) to VA Junction (milepost 85.7) near Vauces, OH.

Transactions relating to operations over the involved line by Indiana & Ohio Eastern Railroad, Inc. (Indiana) and control of Indiana are subjects of notices of exemption filed concurrently in Finance Docket Nos. 31017 and 31019.

Any comments must be filed with the Commission and served on Robert L. Calhoun, Sullivan & Worcester, Suite 806, 1025 Connecticut Avenue, NW., Washington DC 20036, and Jack L. Detty, City Attorney, Jackson, OH 45650.[3]

[FR Doc. 87-9330 Filed 4-23-87; 8:45 am]

BILLING CODE 7035-01-M

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[1] West Junction is the intersection between the Renick Subdivision of the B&O/C&O, starting at M.P. 95.5 and the Parkersburg Division which intersects at M.P. 112.3 at that point. Applicant has been advised that prior to the control of the B&O by the C&O, each carrier operated separate trackage in the area which has been consolidated and rationalized over the years without re-designing the mileposts.

[2] Under the purchase agreement, B&O/C&O retains trackage rights over a portion of the line between Hamden, OH and West Junction, OH.

[3] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. The United Transportation Union has asked to become a party to this protest. Since this transaction involves an exemption form 49 U.S.C. 10901l, only a showing of exceptional circumstances will justify the imposition of labor protective conditons. RLEA's request is denied, because the requisite showing has not been made. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901, I.C.C. 2d 810 (1985).*

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: Air Products and Chemicals, Inc., P.O. Box 538, Allentown, Pennsylvania 18105.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(i) Air Productions Transportation Company—Delaware.

(ii) Air Productions Canada Ltd. ("Prodair Canada Ltee." in Quebec)—Dominion of Canada.

B. 1. Parent corporation and address of principal office: Amoco Corporation (Indiana) 200 E. Randolph Dr. (P.O. Box 87703), Chicago, IL 60680.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation:

a. Amoco Chemicals Corporation (Delaware), 200 E. Randolph Dr. (P.O. Box 87759), Chicago, IL 60680.

b. Welchem, Inc. (Delaware), 5450 N.W. Central Drive, Houston, TX 77092.

c. Amoco Oil Company (Maryland) 200 E. Randolph Dr. (P.O. Box 87707), Chicago, IL 60680.

d. Amoco Petroleum Additives Co. (Delaware), 231 S. Beniston Avenue, Clayton, MO 63105.

e. Amoco Production Company (Delaware), 200 E. Randolph Dr. (P.O. Box 87689), Chicago, IL 60680.

f. Amoco Pipeline Company (Maine), 200 E. Randolph Dr. (P.O. Box 87707), Chicago, IL 60680.

g. Amoco Fabrics & Fibers Co. (Delaware), 550 Interstate North, Atlanta, GA 30339.

h. Amoco Foam Products Co. (Delaware), Shadowood Office Park, 2110 Powers Ferry Road, Suite 200, Atlanta, GA 30339.

i. Amoco Container Company (Delaware), 1858 Meca Way, Norcross, GA 30093.

j. Amoco Gas Company (Delaware), 501 Westlake Park Boulevard, Houston, TX 77253.

k. Amoco Performance Products, Inc. (Delaware), 38C Grove Street, Ridgefield, CT 06877.

C. 1. Parent corporation and address of principal office: Bend Industries, Inc. (a Wisconsin Corporation), 2929 Paradise Dr., P.O. Box 178, West Bend, WI 53095.

2. Wholly-owned subsidiaries which will participate in the operation and address of their respective principal offices

(i) Appleton Concrete Products Co., Inc. (a Wisconsin Corporation), 1132 East Wisconsin Avenue, Appleton, WI 54911.

(ii) Fond du Lac Concrete Products Corp. (a Wisconsin Corporation), 183 W. Follett St., Fond du Lac, WI 54935.

(iii) Bend Industries Construction Svc. (a Wisconsin Corporation), 183 W. Follett St., Fond du Lac, WI 54935.

(iv) Waupun Concrete Products Corp. (a Wisconsin Corporation), 811 W. Main St., Waupun, WI 53963.

(v) Falls Block & Supply Co., Inc. (a Wisconsin Corporation), N91 W17174 Appleton Avenue, Menomonee Falls, WI 53051.

(vi) West Bend Precast, Inc. (a Wisconsin Corporation), 2929 Paradise Dr., West Bend, WI 53095.

(vii) Ampress Brick Co., Inc. (an Illinois Corporation), 1269 Golf Rd., Des Plaines, Illinois 60016.

D. 1. Parent corporation and address of principal office: Browning-Ferris Industries, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

2. Wholly-owned subsidiaries which will participate in the operations, address of their respective offices, and states of incorporation:

1. Action Disposal System, Inc., 4300 East 65th Street, Inver Grove Heights, Minnesota 55075—Minnesota.

2. Ahearn Trucking Co., Inc., 845 Burnett Road, Chicopee, Massachusetts 01020—Massachusetts.

3. American Sheds, Inc., 4511 N. Rowland, El Monte, California 91734—California.

4. Atkinson Enterprises, Inc., 1401 Newman Street, Indianapolis, Indiana 46204—Indiana.

5. Avon Disposal, Inc., 2445 Brown Rd., Pontiac, Michigan 48055—Michigan.

6. Beach Disposal, Inc., 17101 Pine Ridge Road, SW., Ft. Myers Beach, Florida 33931—Florida.

7. Boundary Rent-A-Fence, 4611 N. Rowland, El Monte, California 91734—California.

8. BFI Acquisition Company, P.O. Box 3151, Houston, Texas 77253—Ohio.

9. BFI Acquisition, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

10. BFI Aviation Services, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

11. BFI Constructors, 1417 North Harper Street, Santa Ana, California 92703—California.

12. BFI Energy Systems, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

13. BFI Energy Systems of Bergen County, Inc., P.O. Box 3151, Houston, Texas 77253—New Jersey.

14. BFI Energy Systems of Boston, Inc., P.O. Box 3151, Houston, Texas 77253—Massachusetts.

15. BFI Energy Systems of Broward County, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

16. BFI Energy Systems of Delaware County, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

17. BFI Energy Systems of Essex County, Inc., P.O. Box 3151, Houston, Texas 77253—New Jersey.

18. BFI Energy Systems of Fresno, Inc., P.O. Box 3151, Houston, Texas 77253—California.

19. BFI Energy Systems of Hempstead, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

20. BFI Energy Systems of Lehigh Valley, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

21. BFI Energy Systems of Los Angeles, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

22. BFI Energy Systems of Lowell, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

23. BFI Energy Systems of Middle Connecticut, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

24. BFI Energy Systems of Plymouth, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

25. BFI Energy Systems of Southeastern Connecticut, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

26. BFI Energy Systems of Texas, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

27. BFI Modern Landfill, Inc., P.O. Box 925, Belleville, Illinois 62223—Illinois.

28. BFI Hospital Waste Systems, Inc., 2699 White Road, Suite 100, Irvine, California 92714—Georgia

29. BFI Hospital Waste Systems (South Central), Inc., Health Management, Inc., 2605 Nonconnah Blvd., Suite 105, Memphis, Tennessee 38132—Tennessee.

30. BFI Suburban Michigan, Inc., 2201 Hamlin Road, Utica, Michigan 48087—Michigan.

31. BFI Waste Systems, Inc., P.O. Box 3151, Houston, Texas 77253—Texas.

32. BFI Waste Systems of Indiana, Inc., 10 North West Street, Crown Point, Indiana—Indiana.

33. Black Hawk Industrial Disposal, Inc., 2135 W. Bennett, Springfield, Missouri 65807—Missouri.

34. Browning-Ferris, Inc., P.O. Box 79622, Houston, Texas 77279–9622—Delaware.

35. Browning-Ferris, Inc., 1302 Concourse Drive, 4th Floor, Linthicum, Maryland 21090—Maryland.

36. Browning-Ferris Industries, Chemical Services, Inc., P.O. Box 3151, Houston, Texas 77253—Nevada.

37. Browning-Ferris Industries, Waste Control, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

38. Browning-Ferris Industries, Waste Systems, Inc., 1302 Concourse Drive, 4th Floor, Linthicum, New Jersey 21090—New Jersey.

39. Browning-Ferris Industries, Inc., 100 Hallett Street, Boston, Massachusetts 02124—Massachusetts.

40. Browning-Ferris Industries of Alabama, Inc., 2605 Nonconnah Blvd., Memphis, Tennessee 38132—Alabama.

41. Browning-Ferris Industries of Arkansas, Inc., 1911 West 65th Street, Little Rock, Arkansas 72209—Arkansas.

42. Browning-Ferris Industries of Arizona, Inc., 55 Almaden Blvd., 4th Floor, San Jose, California 95113—Delaware.

43. Browning-Ferris Industries of California, Inc., 55 Almaden Blvd., 4th Foor, San Jose, California 95113—California.

44. Browning-Ferris Industries of Central Jersey, Inc., Petticoat Lane, Annandale, New Jersey 08801—Delaware.

45. Browning-Ferris Industries of Colorado, Inc., 5590 East 55th Avenue, Commerce City, Colorado 80022—Colorado.

46. Browning-Ferris Industries of Connecticut, Inc., 49 Burtville Avenue, Derby, Connecticut 06418—Delaware.

47. Browning-Ferris Industries of Eastern Pennsylvania, Inc., 1302 Concourse Drive, 4th Floor, Linthicum, Maryland 21090—Pennsylvania.

48. Browning-Ferris Industries of Elizabeth, N.J. Inc., 714 Division Street, Elizabeth, New Jersey 07207—New Jersey.

49. Browning-Ferris Industries of Falls Township, Inc., 1302 Concourse Drive, 4th Floor, Linthicum, Maryland 21090—Pennsylvania.

50. Browning-Ferris Industries of Florida, Inc., 7580 Phillips Highway, Jacksonville, Florida 32216—Delaware.

51. Browning-Ferris Industries of Georgia, Inc., 2 Peachtree Street, N.W., c/o CT Corporation System, Atlanta, Georgia 30383—Georgia.

52. Browning-Ferris Industries of Hawaii, Inc., 46145 Molina Place, Kanehoe, Oahu, Hawaii 96744—Delaware.

53. Browning-Ferris Industries of Idaho, Inc., 117 East 37th Street, Boise, Idaho 83701—Idaho.

54. Browning-Ferris Industries of Illinois, Inc., 1827 Walden Office Square, Suite 107, Schaumburg, Illinois 60195—Delaware.

55. Browning-Ferris Industries of Indinana, Inc., 801 East Michigan, Evansville, Indiana 47714—Indiana.

56. Browning-Ferris Industries of Iowa, Inc., 4487 Delaware Street, Des Moines, Iowa 50313—Iowa.

57. Browning-Ferris Industries of Kansas, Inc., 3920 West Blocker, Wichita, Kansas 67213—Kansas.

58. Browning-Ferris Industries of Kansas City, Inc., 3150 North 7th, Kansas City, Kansas 66115—Missouri.

59. Browning-Ferris Industries of Kentucky, Inc., 289 Blue Sky Parkway, Lexington, Kentucky 40509—Delaware.

60. Browning-Ferris Industries of Long Island, Inc., 1600 Merrick Road, Merrick, New York 11566—New York.

61. Browning-Ferris Industries of Louisiana, Inc., P.O. Box 79622, Houston, Texas 77279–9622—Louisiana.

62. Browning-Ferris Industries of Louisville, Inc., P.O. Box Drawer A, Sellersburg, Indiana 47172—Indiana.

63. Browning-Ferris Industries of Michigan, Inc., 5400 Cogswell Road, Wayne, Michigan 48184—Michigan.

64. Browning-Ferris Industries of Minnesota, Inc., 9813 Flying Cloud Drive, Eden Prairie, Minnesota 55344—Minnesota.

65. Browning-Ferris Industries of Mississippi, Inc., P.O. Box 267, Biloxi, Mississippi 39533—Mississippi.

66. Browning-Ferris Industries of Montana, Inc. 1819 South Avenue West, Missoula, Montana 59801—Nevada.

67. Browning-Ferris Industries of Nebraska, Inc., 2121 South 24th Street, Omaha, Nebraska 61808—Nebraska.

68. Browning-Ferris Industries of New Hampshire, Inc., P.O. Box 466, Portsmouth, New Hampshire 02801—New Hampshire.

69. Browning-Ferris Industries of New Jersey, Inc., 1302 Concourse Drive, 4th Floor, Linthicum, Maryland 21090—New Jersey.

70. Browning-Ferris Industries of New York, Inc., 136 Sicker Road, Latham, New York 12110—New York.

71. Browning-Ferris Industries of North Jersey, Inc., 54 Montesano Rd., Fairfield, New Jersey 07006—New Jersey.

72. Browning-Ferris Industries of Ohio, Inc., 1280 Boardman-Canfield Road, Youngstown, Ohio 44512—Delaware.

73. Browning-Ferris Industries of Ohio and Michigan, Inc., P.O. Box 5069, Pt. Place Station, Toledo, Ohio 43611—Ohio.

74. Browning-Ferris Industries of Oregon, Inc., 9363 North Columbia Blvd., Portland, Oregon 97203—Oregon.

75. Browning-Ferris Industries of Paterson, N.J., Inc., 54 Montesano Rd., Fairfield, New Jersey 07006—New Jersey.

76. Browning-Ferris Industries of Pennsylvania, Inc., Main Street, P.O. Box 248, West Sunbury, Pennsylvania 16061—Delaware.

77. Browning-Ferris Industries of Philadelphia, Inc., 1302 Concourse Drive, 4th Floor, Linthicum, Maryland 21090—Pennsylvania.

78. Browning-Ferris Industries of Puerto Rico, Inc., 65th Infantry Station, Rio Piedras, Puerto Rico 00929—Puerto Rico.

79. Browning-Ferris Industries of Quincy, Illinois, Inc., 2821 Wismann Lane, Quincy, Illinois 62301—Iowa.

80. Browning-Ferris Industries of Rochester, Inc., 2117 Marian Road, S.E., Rochester, Minnesota 55901—Minnesota.

81. Browning-Ferris Industries of South Jersey, Inc., Cranbury Station Road, R.D. #4, Cranbury, New Jersey 08512—New Jersey.

82. Browning-Ferris Industries of South Atlantic, Inc., 500 Northridge Rd., Suite 825, Atlanta, Georgia 30338—North Carolina.

83. Browning-Ferris Industries of Southeastern Michigan, Inc., 10930 West Six-Mile Road, Northville, Michigan 48167—Michigan.

84. Browning-Ferris Industries of Springfield, Inc., 2115 West Bennettt, Springfield, Missouri 65807—Missouri.

85. Browning-Ferris Industries of St. Louis, Inc., 11506 Bowling Green, Creve Coeur, Missouri 63141—Delaware.

86. Browning-Ferris Industries of Tennessee, Inc., 2605 Nonconnah Blvd., Suite 105, Memphis, Tennessee 38132—Tennessee.

87. Browning-Ferris Industries of Utah, Inc., P.O. Box 26333, Salt Lake City, Utah 84125—Utah.

88. Browning-Ferris Industries of Vermont, Inc., P.O. Box 121, Springfield, Vermont 05156—Vermont.

89. Browning-Ferris Industries of Washington, Inc., 44 Almaden Blvd., 4th Floor, San Jose, California 95113—Washington.

90. Browning-Ferris Industries of West Virginia, Inc., 97 10th Street, Fairmont, West Virginia 26554—Delaware.

91. Browning-Ferris Industries of Western Jersey, Inc., R.D. #2, Box 97A, Annandale, New Jersey 08801—New Jersey.

92. Browning-Ferris Industries of Wisconsin, Inc., 3083 Highway MM, Madison, Wisconsin 53711—Wisconsin.

93. Browning-Ferris Industries of Wyoming, Inc., P.O. Box 3151, Houston, Texas 77253—Wyoming.

94. Browning-Ferris Services, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

95. CMS Development Corp., 500 Northridge Rd., Suite 825, Altanta, Georgia 30338—North Carolina.

96. Captiva Disposal, Inc., 17101 Pine Ridge Road, S.W., Ft. Myers Beach, Florida 33931—Florida.

97. CECOS International, Inc., 2321 Kenmore Avenue, Buffalo, New York 14207—New York.

98. CECOS Treatment Corporation, 51 Broderick Road, Bristol, Connecticut 06010—Connecticut.

99. Comet Enterprises, Inc., P.O. Box 3151, Houston, Texas 77253—Ohio.

100. Disposal Specialists, Inc., P.O. Box 121, Springfield, Vermont 05156—Vermont.

101. Dooley Equipment Corporation, 164 Market Street, Brighton, Massachusetts 02135—Massachusetts.

102. Empire Sweeping Company, P.O. Box 7189, Sta. A, 1929 36th Street, Canton, Ohio 44705—Ohio.

103. Environmental Equipment Corp., P.O. Box 3151, Houston, Texas 77253—Texas.

104. Express Waste Systems, Inc., 1080 Airport Rd., Fall River, Massachusetts 02727—Massachusetts.

105. E & E Hauling, Inc., 26 West 580 Schick Road, Bloomingdale, Illinois 60108—Illinois.

106. ESI, Inc., P.O. Box 3151, Houston, Texas 77253—Pennsylvania.

107. Fall River Landfill, Inc., 1080 Airport Rd., Fall River, Massachusetts 02727—Massachusetts.

108. Franklintown East Realty Inc., 1447 Martin Road, Magadore, Ohio 44260—Pennsylvania.

109. George Fenske Sanitary Service, Inc., 2117 Marion Road, S.E., Rochester, Minnesota 55901—Minnesota.

110. Hall's Ferry Investments, Inc., 11506 Bowling Green Dr., Creve Coeur, Missouri 63146—Missouri

111. Heavy Equipment Leasing Services Co., Inc., 2321 Kenmore Avenue, Buffalo, New York 14207—New York.

112. Highway 36 Land Development Company, 5590 East 55th Avenue, Commerce City, Colorado—Colorado.

113. Homestand Land Corp., R.D. #2, P.O. Box O, Blockway, Pennsylvania 15824—Pennsylvania.

114. HL-NIW, Inc., 2321 Kenmore Avenue, Buffalo, New York 14207—New York.

115. Indoco, Inc., P.O. Box 3151, Houston, Texas 77253—Texas.

116. International Disposal Corp., P.O. Box 3151, Houston, Texas 77253—Delaware.

117. International Disposal Corp., P.O. Box 3151, Houston, Texas 77253—Texas.

118. International Disposal Corp. of California, P.O. Box 1987, San Jose, California 95109—California.

119. International Disposal Corporation of Indiana, P.O. Box 3151, Houston, Texas 77253—Delaware.

120. International Disposal Corporation of Kansas, P.O. Box 3151, Houston, Texas 77253—Kansas.

121. Isler's Refuse Service, Inc., P.O. Box R, Station C, Canton, Ohio 44708—Ohio.

122. Jarabek Disposal, Inc., 1080 Airport Road, Fall River, Massachusetts 02727—Massachusetts.

123. Jeffco Land Reclamation Company, 8480 Tower Road, Commerce City, Colorado 80002-9499—Colorado.

124. Jeffco Land Reclamation, Inc., 11506 Bowling Green, Creve Coeur, Missouri 63141—Missouri.

125. Joe Ball Sanitation Service, Inc., 4053 Mile Strip Road, Blasdell, New York 14219—New York.

126. Karas Trucking Co., Inc., 16200 Brookpark Rd., Cleveland, Ohio 44135—Ohio.

127. LaGrange Disposal Co., Inc., 5050 Lake Street, Melrose Park, Illinois 60160—Illinois.

128. Land Reclamation, Inc., 2321 Kenmore Avenue, Buffalo, New York 14207—New York.

129. Landfill, Inc., 8480 Tower Road, Commerce City, Colorado 80022-9499—Colorado.

130. Landfill, Inc., P.O. Box 15200, Kansas City, Kansas 66115—Missouri.

131. Lanham Waste Control, Inc., 2 Peachtree Street, N.W., c/o CT Corporation System, Atlanta, Georgia 30383—Georgia.

132. Louis Kmito & Son, Inc., 95 Liberty Street, Randolph, Massachusetts 02368—Massachusetts.

133. Lyon Development Company, 5380 South Milford Road, New Hudson, Michigan 48165—Michigan.

134. Merrimack Valley Medical Services Company, Inc., Zero Farley

Street, Lawrence, Massachusetts 01843—Massachusetts.

135. Mickey McGuire Sanitation, Inc., P.O. Box 758, Frankfort, Kentucky 40601—Kentucky.

136. Moore Industrial Disposal, Incorporated, P.O. Drawer M, East Cleveland Road, Hutchins, Texas 75141—Texas.

137. National Disposal Service, of Nebraska, Inc., 212 South 24th Street, Omaha, Nebraska 68108—Nebraska.

138. New Hope Landfill, Inc., P.O. Drawer M, East Cleveland Road, Hutchins, Texas 75141—Texas.

139. Newco Waste Systems, Inc., 2321 Kenmore Avenue, Buffalo, New York 14207—New York.

140. Newco Waste Systems of New Jersey, Inc., R.D. #1, Box 160, Ocean Heights Avenue, Linwood, New Jersey 08221—New Jersey.

141. Niagara Landfill, Inc., River Road, Tonawanda, New York 14150—New York.

142. Niagara Recycling, Inc., 2321 Kenmore Avenue, Buffalo, New York 14207—New York.

143. Niagara Sanitation Company, Inc., 262 Woodward Avenue, Kenmore, New York 14217—New York.

144. Northern Disposal, Inc., 234 Thatcher Street, East Bridgewater, Massachusetts 02333—Massachusetts.

145. Northwest Sweepers, Inc., 5716 Jensen Drive, Houston, Texas 77026—Texas.

146. Pine Bend Landfill, Inc., 2495 East 117th Street, Inner Grove Heights, Minnesota 55075—Minnesota.

147. Prince William Trash Service, Inc., P.O.Box 45, Manassas, Virginia 22110—Virginia.

148. RHF, Inc., P.O. Box 79622, Houston, Texas 77279–9622—Texas.

149. R.R.I.E.B.S., Inc., 2321 Kenmore Avenue, Buffalo, New York 14207—New York.

150. RWCGP, Inc., P.O. Box 3151, Houston, Texas 77253—Texas.

151. Redco Leasing Corporation, 234 Thatcher Street, East Bridgewater, Massachusetts 02333—Massachusetts.

152. Reliable Refuse Service, Inc., 2135 West Bennett, Springfield, Missouri 65807—Missouri.

153. Removal, Inc., P.O. Box 2348, Gardena, California 90247—California.

154. Residential Service, Inc., P.O. Box 3151, Houston, Texas 77253—Nebraska.

155. Resource Recovery Corporation, 115 Washington Street, Holliston, Massachusetts 01746—Massachusetts.

156. River City Refuse Removal, Inc., 1102 Menomonie Street, Eau Claire, Wisconsin 54701—Massachusetts.

157. Risk Services, Inc., P.O. Box 3151, Houston, Texas 77253—Delaware.

158. Rot's Disposal Service, Inc., P.O. Box O, Downer's Grove, Illinois 60515—Illinois.

159. Sanible Disposal, Inc., 17101 Pine Ridge Road, S.W., Ft. Myers Beach, Florida 33931—Florida.

160. Springfield Relay Systems, Inc., 2135 West Bennett, Springfield, Missouri 65807—Missouri.

161. The Trash Men, Inc., 11506 Bowling Green Drive, Creve Coeur, Missouri 63146—Missouri.

162. Town and Country Waste Service, Inc., P.O. Box 456, Muskego, Wisconsin 53150—Wisconsin.

163. United Sanitation Co., 4511 North Rowland, El Monte, California 91734—California.

164. Waste Disposal, Inc., P.O. Box 15200, Kansas City, Kansas 66115—Kansas.

165. Wasteco, Inc., 1600 North Lincoln Ave., Pasadena, California 91103—California.

166. West Roxbury Crushed Stone Co., 10 Grove St., West Roxbury, Massachusetts 02132—Massachusetts.

167. Westowns Disposal Systems, Inc., 2583 Bryan Evansville Road, Casper, Wyoming 82601—Wyoming.

168. Woodlake Sanitary Service, Inc., 9813 Flying Cloud Drive, Eden Prairie, Minnesota 55344—Minnesota.

E. 1. Parent corporation and address of principal office: Ensign-Beckford Industries, Inc., 10 Mill Pond Lane, Simsbury, CT 06070.

2. Wholly-owned subsidiaries which will participate in the operations, and their State of Incorporation:

i. The Ensign-Bickford Company—Connecticut.

ii Ensign-Bickford Optics Company—Connecticut.

iii Trojan Corporation—Utah.

F. 1. Parent corporation and address of principal office: Hess Brothers, Inc., 3145 Bordentown Avenue, P.O. Box 198, Parlin, New Jersey 08859.

2. Wholly-owned subsidiaries which will participate in the operations, and their State of incorporation:

Name and Jurisdiction Where Incorporated:

Mt. Holly Construction Co., a New Jersey Corporation.

Riverdale Quarry Co., a New Jersey Corporation and its Burlington Asphalt Corp. division.

Devault Crushed Stone, Inc., a Commonwealth of Pennsylvania Corporation, (100% Wholly owned by Riverdale Quarry Co. which in turn is 100% owned by Hess Brothers, Inc.).

G. 1. Parent corporation and address of principal office: Interchem, Inc.—State of Inc., Suite 400, 2839 Paces Ferry Road, Atlanta, Georgia 30339, State of Incorporation—Georgia.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(i) Interez, Inc.—State of Inc., 10100 Linn Station Road, P.O. Box 37600, Louisville, Kentucky 40233, State of Incorporation—Georgia.

(ii) Hi-Tek Polymers, Inc.—State of Inc., P.O. Box 32190, One Riverfront Plaza, Louisville, Kentucky 32190, State of Incorporation—Georgia.

(iii) Colloids, Inc.—State of Inc., 394 Frelinghuysen Avenue, Newark, New Jersey 07114, State of Incorporation—Georgia.

(iv) North Chemical Company, Inc.—State of Inc., 1525 Church Street Extension, Marietta, Georgia 30060, State of Incorporation—Georgia.

(v) Alcolac, Inc.—State of Inc., 3440 Fairfield Road, Baltimore, Maryland 21226, State of Incorporation—Georgia.

(vi) Walsh Chemical Corporation—State of Inc., 207 Telegraph Drive, Castonia, North Carolina 28054, State of Incorporation—Georgia.

H. 1 Parent corporation and address of principal office: CMI Corporation, P.O. Box 1985, I 40 & Morgan Road, Oklahoma City, OK 73138.

2. Wholly-owned subsidiary which will participate in the operations, and State of Corporation: RayGo, Inc., P.O. Box 1362, 9401 85th Avenue N., Minneapolis, MN 55440.

State of Incorporation: Oklahoma.

I. 1. Parent corporation and address of principal office: Hoover Holding Company, Inc., 300 Texas Street, Pine Bluff, Arkansas 71601.

2. Wholly owned subsidiaries which will participate in operations and States of incorporation;

(i) Hoover Oil Company, Inc. (Arkansas).

(ii) Hoover Distributing Company, Inc. (Mississippi).

(iii) Artemece Transportation Company, Inc. (Tennessee).

(iv) Mid-South Tank & Line, Inc. (Mississippi).

(v) Southern Tank & Line (Arkansas).

(vi) Hoover Leasing Corporation (Arkansas).

J. 1. Parent Corporation and address of Principal Office: Madden Contracting Co., Inc., Sibley Road, P.O. Box 856, Minden, LA 71058.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation.

(1) Longview Asphalt, Inc., Robert Wilson Road, P.O. Box 3661, Longview, TX 75606.

State of Incorporation: Texas.

K. 1. Parent Corporation: PPG Industries, Inc., One PPG Place, Pittsburgh, PA 15272.

2. Wholly-owned subsidiaries which will participate in the operations:

(I) Jordon Chemical of PA.

(II) Mazer Chemical of IL.

(III) Chemfil Corp. of MI.

L. 1. Parent Corporation: Pratt & Lambert, Inc., 75 Tonawanda Street, Buffalo, NY 14207—A New York Corporation.

2. Wholly-owned subsidiaries which will participate in the operations, and address of its respective principle offices:

(i) Southern Coatings, Inc., 730 Fulton Street, Sumter, SC 29150—A South Carolina Corporation.

(ii) Miracle Adhesive Corporation, 250 Pettit Avenue, Drawer D, Bellmore, NY 11710—A New York Corporation.

(iii) Pierce & Stevens, 710 Ohio Street, Buffalo, NY 14203—A New York Corporation.

(iv) United Paint, 404 E. Mallory Street, Memphis, TN 38109—A Tennessee Corporation.

(v) UP Coatings, Inc., 1309 Melody Road, Marysville, CA 95901—A California Corporation.

(vi) Spatz Paints, Inc., 1439 Hanley Industrial Court, St. Louis, MO 63144—A Missouri Corporation.

M. 1. Parent corporation and address of principal office: Pressure Vessel Service, Inc., d/b/a PVS Chemicals, Inc., 11001 Harper Avenue, Detroit, Michigan 48213.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporations:

(i) Bay Chemical Company—Michigan.

(ii) Dynecol, Inc.—Michigan.

(iii) Chemical Transport Services, Inc.—Michigan.

(iv) PVS Chemicals, Inc. (Illinois)—Michigan.

(v) PVS Chemicals, Inc. (New York)—Michigan.

(vi) PVS Chemicals, Inc. (Ohio)—Michigan.

(vii) Fanchem, Ltd.—Ontario, Canada.

(viii) PVS Chemicals, Inc. (Michigan)—Michigan.

(ix) PVS—Nolwood Chemicals—Michigan.

N. 1. The Parent Corporation is The Stanley Works, a Connecticut corporation, with a principal office at 1000 Stanley Drive, New Britain, Connecticut 06053.

2. The wholly-owned subsidiaries of The Stanley Work which will participate in the Intercorporate Hauling Operations are:

(1) Stanley-Proto Industrial Tools, Inc., a Connecticut corporation, with principal offices at 14117 Industrial Park Blvd., N.E., Newton County Industrial Park, Covington, Georgia 30209.

(2) Stanley-Vidmar, Inc., a Connecticut corporation, with principal offices at 11 Grammes Road, Allentown, Pennsylvania 18103.

(3) Stanley-Bostitch, Inc., a Delaware corporation, with principal offices at Briggs Drive, East Greenwich, Rhode Island 02818.

(4) Taylor Rental Corporation, a Delaware corporation, with principal offices at 1000 Stanley Drive, New Britain, Connecticut 06053.

(5) Sutton-Landis Shoe Machinery Company, Inc., a Delaware corporation, with principal offices at 3500 Scarlett Oak Boulevard, St. Louis, Missouri 63122.

(6) National Hand Tool Corporation, a Delaware corporation with principal offices at 12827 Valley Lane, Dallas, Texas 75234.

(7) Hartco Company, an Illinois corporation with principal offices at 7707 North Austin Avenue, Skokie, Illinois 60076.

(8) Stanley-Vidmar Systems, Inc., a Delaware corporation, with principal offices at 10603 Chester Road, Cincinnati, Ohio 45215.

(9) Stanley Automatic Openers, Inc., a Delaware corporation, with principal offices at 5740 East Nevada, Detroit, Michigan 48234.

(10) Halstead Enterprises, Inc., a California corporation, with principal offices at 11355 Arrow Route, Rancho Cucamonga, California 91730.

(11) Acme Holding Corporation, a Delaware corporation, with principal offices at 300 East Arrow Highway, San Dimas, California 91773.

O. 1. Parent Corporation: Sunohio Company, 1700 Gateway Blvd. SE., Canton, OH 44707.

2. Wholly-owned subsidiaries: Transtec Environmental, Inc., 1700 Gateway Blvd. SE., Canton, OH 44707, Incorporated in the State of Ohio.

Noreta R. McGee,

Secretary.

[FR. Doc. 87-9327 Filed 4-23-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31017]

Indiana & Ohio Eastern Railroad, Inc.—Exemption Lease and Operation—Certain Lines of the City of Jackson, OH

The Indiana & Ohio Eastern Railroad, Inc. (Indiana), a noncarrier, has filed a notice of exemption to lease and operate 52.83 route miles of line to be acquired by the City of Jackson, OH from Firebrick, OH (milepost 32.76) to Hamden, OH (milepost 127.0) to West Junction, OH (milepost 112.3) to RA Junction (milepost 91.6). Incidental trackage rights will be needed over the lines of The Baltimore and Ohio Railroad Company (B&O), and the Chesapeake and Ohio Railway Company (C&O) from milepost 91.6 to milepost 85.7 between RA Junction and Vauces, OH, solely for purposes of interchange between Indiana and the B&O and C&O at the latter point. Transactions relating to control of Indiana and acquisition of the line by Jackson are subjects of notices of exemptions filed concurrently in Finance Docket Nos. 31019 and 31020, respectively. Any comments must be filed with the Commission and served on Robert L. Calhoun, Sullivan & Worcester, Suite 806, 1025 Connecticut Avenue, NW., Washington, DC 20036.[1]

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: April 20, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19328 Filed 4-23-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31019]

Indiana & Ohio Rail Corp.—Continuance in Control Exemption—Indiana & Ohio Eastern Railroad, Inc.

Indiana & Ohio Corp. (IORC), a noncarrier, has filed a notice of exemption to continue in control of Indiana & Ohio Eastern Railroad, Inc. (IOER), a newly-formed rail carrier.

IORC is the parent corporation of IOER and also controls two rail common carriers, the Indiana & Ohio Railroad Company (IOR) and the Indiana & Ohio Railway, Inc. (IORI). The IORI

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[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. The United Transportation Union has asked to become a party to this protest. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's request is denied, because the requisite showing has not been made. *See* Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901, 1 I.C.C. 2d 810 (1985).

operations total approximately 26 miles in length and run as folows: (1) between Mason, OH, and Middletown, OH, where it connects with the Consoildated Rail Corporation (Conrail); and (2) between Brecon, OH, and Norwood, OH, connecting with Conrail near Cincinnati, OH. The IOR owns and operates a line that runs approximately 26 miles from Brookville, IN to Valley Junction, OH, where it connects with Conrail. IORC's control of these carriers was authorized in Finance Docket No. 30961.

The IOER is a newly-formed corporation which will lease and operate over approximately 52.83 miles between Firebrick, OH and RA Junction, near Vauces, OH. Also incidential trackage rights of approximate 5.9 miles will be needed over the lines of The Baltimore & Ohio Railroad (B&O) and The Chesapeake and Ohio Railway Company (C&O) between the RA Junction (milepost 91.6) and (milepost 85.7) near Vauces. Transactions relating to IOER's operations and the acquisition of the involved track by the City of Jackson, OH are subjects of notices of exemptions in Finance Docket Nos. 31017 and 31020, filed concurrently with this notice.

IORC states that the four lines do not connect, although they are managed and operated as one entity. IORC also states that the continuance in control of IOR, IORI and IOER is not part of a series of anticipated transactions that would lead to a connection between them or any railroad in their corporate family. This is a transaction involving the acquisition or continuance in control of a nonconnecting carrier that is exempt from the prior review requirement of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). This will satisfy the requirements of 49 U.S.C. 10505(g)(2).[1]

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.

[1] The Railway Labor Executves' Association (RLEA) filed a requet for labor protection. The United Transportation Union has asked to become a party to this protest. Since this transaction involves an exemption from 49 U.S.C. 11343, whereby the imposition of lalbor protective conditions is mandatory, labor protective conditions has been imposed above.

Decided: April 20, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-9329 Filed 4-23-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Decree in Action To Enjoin Discharge of Water Pollutants; Grand Chromium Plating Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Grand Chromium Plating Corp.*, Civil Action No. CV-85-4477, was lodged with the United States District Court for the Eastern District of New York on *April 13*, 1987. The consent decree establishes a compliance program for the Brooklyn, New York plant owned and operated by *Grand Chromium Plating Corp.*, to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.* and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $80,000.00

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *Grand Chromium Plating Corp.*, D.J. Ref. No. 90-5-1-1-2470.

The consent decree may be examined at the Office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza, East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-9253 Filed 4-23-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Occidental Chemical Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on *April 16, 1987* a proposed Consent Decree in *United States v. Occidental Chemical Corporation*, Civil Action No. 85-4558, was lodged with the United States District Court for the District of New Jersey. The proposed Consent Decree concerns the discharge of vinyl chloride, a hazardous air pollutant, from Occidental Chemical Corporation's polyvinyl chloride plant on River Road in Burlington, New Jersey. The proposed Consent Decree requires the defendant to implement a remedial action plan and pay a civil penalty for alleged past violations of the Clean Air Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Occidental Chemical Corporation*, D.J. Ref. #90-5-2-1-807A.

The proposed Consent Decree may be examined at the offices of the United States Attorney, Federal Building, 970 Broad Street, Room 502, Newark New Jersey 07102; the Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice at the above address. In requesting a copy, please enclose a check in the amount of $2.90

payable to the Treasurer of the United States, to cover the cost of reproduction.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-9254 Filed 4-23-87; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Corporation for Open Systems International; Change in Membership

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq., the Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on March 24, 1987 disclosing a change in the membership of COS. The additional written notification was filed for the purpose of extending the protections of Section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986 COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986. 51 FR 21260. On August 6, 1986, September 30, 1986, and January 2, 1987, COS filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on September 4, 1986 (51 FR 31735), on October 28, 1986 (51 FR 39434), and on February 13, 1987 (52 FR 4671), respectively.

On January 27, 1987, Data Connection Limited became a party to COS.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-9251 Filed 4-23-87; 8:45 am]

BILLING CODE 4410-01-M

Zirconium Alloy Tubing Corrosion Research and Development Program; Sandvik Special Metals Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notice has been filed by Sandvik Special Metals Corporation simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Zirconium Alloy Tubing Corrosion Research and Development Program (the "Program") and (2) the nature and objectives of the Program. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Program and its general areas of planned activity are given below.

The parties to the Program are Sandvik Special Metals Corporation, The Babcock & Wilcox Company, Combustion Engineering, Inc., Advanced Nuclear Fuels Corporation, and Teledyne Wah Chang Albany, a division of Teledyne Industries, Inc.

The objectives of the Program are to conduct studies and research pertaining to the corrosion of zirconium alloy tubing, particularly as it may be utilized in nuclear power reactors, and improvements in the design and manufacture of zirconium alloy tubing for such applications with reduced corrosion susceptibility, and to collect data and information which has already been developed concerning the corrosive effects of water and other substances on zirconium alloy tubing, and to compile and study such information, and to experiment and test any products, services and processes resulting from such research.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-9252 Filed 4-23-87; 8:45 am]

BILLING CODE 4410-01-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 Officer 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 number 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 users 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/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 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.

Request for OMB Control Number on Existing Collection

Lead
OSHA-248
Occupational Safety and Health Administration
Recordkeeping; On occasion
Businesses or Other For-Profit; Small Businesses or Organizations; Federal Agencies or Employees
50,037 Respondents; 1,650,908 Hours.

This standard requires employers to monitor employee exposure to lead, to provide medical surveillance, to train employees about the hazards, of lead, and to establish and maintain accurate records of employee exposure to lead. These records will be used by

employers, employees, physicians and the Government to ensure that employees are not being harmed by exposure to lead.

Extension

Employment and Training Administration
Request for Readmission
1205–0031; ETA 660
On occasion
State or local governments; businesses or other for-profit
5,150 respondents; 1,287 burden hours; 1 form

This form provides information on Job Corps readmissions. It is used only when screeners can document that the applicant has the motivation and potential to complete the program if readmitted. It identifies the reasons for previous termination and the terminating center.

Employment and Training Administration
Enrollment and Departure Report
1205–0032; ETA 657
On occasion
State or local governments; businesses or other for-profit; non-profit institutions
63,000 respondents; 5,229 hours; 1 form

This form is used to ascertain whether the applicant accepts assignment to a Job Corps center. If the assignment is accepted, the form is completed and accompanies the enrollee to the Job Corps Center. It is also a vehicle for accounting for assignments refused by applicants.

Air Quality Record
OSHA–233; 1218–0067
Occupational Safety and Health Administration
On occasion
Businesses or Other for-Profit; Small Businesses or Organizations
187,500 Responses; 46,876 Hours

Underground construction employers are required to keep a record of air quality test results in order to identify decreasing oxygen levels or potentially hazardous concentrations of air contaminats in time to take corrective action prior to the attainment of hazardous conditions.

Notice of Alleged Safety and Health Hazards
OSHA–7
Occupational Safety and Health Administration
On occasion
Individuals or households;
13,200 Responses, 4686

The OSHA–7 is used by employees to report unsafe or unhealthful conditions in the workplace. Employee reports are authorized by section 8(f) of the Occupational Safety and Health Act. The information is used by OSHA to evaluate the alleged hazardous working conditions and to schedule an inspection or respond in another manner, as appropriate.

Mine Safety the Health Administration
Hearing Conservation Plan
1219–0017
On occasion
Businesses and other for profit; small businesses or organizations
170 respondents; 85 hours

Within 60 days after receiving a notice of violation for noise levels in excess of the permissible standard, coal mine operators are required to submit to MSMA a plan for the administration of a continuing, effective hearing conservation program.

Mine Safety and Health Administration
Records of Results of Examinations of Self-Rescuers
1219–0044
Quarterly
Businesses or other for profit; small businesses or organizations
2,007 respondents; 8,510 hours

Requires underground coal mine operators to keep records of the results of examinations of self-rescue devices.

Reinstatement

Bureau of Labor Statistics
LMI Cooperative Agreement, Financial and Administrative Reports
1220–0079
Monthly, Quarterly, Annually
State Governments
715 responses; 2,390 hours; 8 hours

The Bureau of Labor Statistics will enter into agreements with State Employment Security Agencies to provide labor market information statistics. The cooperative agreement will specify performance standards that must be met as a condition of funding, and will provide a basis for administrative and financial monitoring of the programs. Signed at Washington, DC. this 21st day of April, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87–9337 Filed 4–23–87; 8:45 am]

BILLING CODE 4510–26–M

Computer Matching Project Involving Recipients of Federal Black Lung Benefits Residing in Pennsylvania and Pennsylvania Death Records

a. *Authority:* The Office of Inspector General (OIG) pursuant to its authority under Pub. L. 95–452 (Inspector General Act of 1978, 5 U.S.C. app.) has initiated a program of computer matching.

b. *Description of the match:* One of the responsibilities of the Inspector General under the Act is to prevent and detect fraud and abuse in the programs and operations of the Department of Labor while keeping the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the need for and progress of corrective actions.

Since July 1, 1976, the Department of Labor's Employment Standards Administration has administered the Federal Black Lung program under the Black Lung Benefit Act, 30 U.S.C. 901, et seq. Approximately 400,000 Black Lung claimants are entitled to medical benefits and approximately 90,000 of those are entitled to monthly compensation under the Black Lung Benefits Act.

The Pennsylvania Department of Health, Division of Health Statistics and Research maintains records of individuals who have died in the State of Pennsylvania. Each calendar year, the State of Pennsylvania develops a death file. The Pennsylvania Department of Health does not release its death file. However, the death file may be used in conducting computer matches and the matched records can be released.

The purpose of the match is to determine if overpayments occur after a claimant dies and the Black Lung Program is either not informed or not informed timely of the claimant's death. Previous audits and investigations have identified overpayments which occurred after a claimant died.

The Pennsylvania Department of Health has developed the computer programs which utilize the death file for the purpose of conducting computer matches. These programs require the DOL OIG to send a magnetic tape file containing the DOL Black Lung compensation records to the Pennsylvania Department of Health. Pennsylvania's programs require a match on social security number.

Matched records will be provided to OIG's Philadelphia Regional Audit Office (OIG PRAO). Each matched record will be manually validated and verified to determine entitlement to benefits. The Federal Agency will use the validated listings to pursue investigations and take other appropriate actions.

c. *Federal records to be matched:* The description of the Federal Records to be matched is as follows: Black Lung Benefit Payment File (47 FR 30378, July 13, 1982; as amended in 48 FR 5824, February 8, 1983; and 50 FR 5144, February 6, 1985).

d. *Period of the match:* During early 1987, an initial, test match using 1985 state date is being performed. The actual match using 1982–84 and 1986 data will be completed by December 1987.

e. *Privacy protection and data security:* The personal privacy of individuals identified on tapes is protected by strict compliance with the Privacy Act, 5 U.S.C. 552(a) et seq, and Office of Management and Budget Circular A–108. Information from matching programs is used only for official purposes. The agreement between the DOL IG and the Pennsylvania Secretary of Health contains several additional safeguards including the provision that in no case will a matched record be the sole basis for terminating or reducing Federal Black Lung benefits.

The Federal Black Lung compensation records are stored at the OIG timesharing facility, Boeing Computer Services, in Vienna, Va. The file and a backup copy of the file will be obtained from Boeing Computer Services for the purpose of the match. The primary file copy will be sent to and secured by the Pennsylvania Department of Health. The backup copy and listing of matched records will be secured by the OIG PRAO. Matched records will not be released to either the press or the public.

f. *Disposition of source and matched records:* Source records will not become part of any DOL OIG system of records. Data will be maintained by the OIG PRAO and will be used only for this computer crossmatch. The source and matched records listing will be maintained with the audit workpapers for a period of 3 years after which time they will be destroyed.

Signed at Washington, DC, on the 17th day of April, 1987.

J. Brian Hyland,

Inspector General.

[FR Doc. 87–9338 Filed 4–23–87; 8:45 am]

BILLING CODE 4510–21–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 4, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 4, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 13th day of April 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firms	Location	Date received	Date of petition	Petition No.	Articles produced
AMAX Molybdenum Division (Workers)	Fort Madison IA	4/13/87	4/3/87	19, 511	Amonium Para Tungstate (APT).
A.T.&T. Information Systems (CWA)	Katy, TX	4/13/87	4/3/87	19, 512	Telephone Equipment.
Alcated NV, Advanced Technology Center (Company)	Shelton, CT	4/13/87	3/31/87	19, 513	Software Package.
Beckman Industrial Instrumentation Product Division (Workers)	Brea, CA	4/13/87	4/7/87	19, 514	Digital Multi. Meters.
Belle Counter, Co (Workers)	Belle, MO	4/13/87	3/30/87	19, 515	Shoes.
CSX Oil & Gas Corporation-Western Region (Workers)	Denver, CO	4/13/87	4/1/87	19, 516	Crude Oil.
Central Appalachian Coal Co. (UMW)	Montgomery, WV	4/13/87	2/7/87	19, 517	Steam Coal.
Daniel Geophysical, Inc. (Company)	Denver, CO	4/13/87	3/31/87	19, 518	Seismic Reflection Data.
Enterprise Aluminum, Co. (IAM)	Eatonton, GA	4/13/87	3/26/87	19, 519	Aluminum Cookware.
Enterprise Aluminum, Co. (IAM)	Macon, GA	4/13/87	3/26/87	19, 520	Aluminum Cookware.
Exxon Company (Workers)	Houston, TX	4/13/87	4/1/87	19, 521	Crude Oil.
General Electric Co. (Workers)	Portsmouth, VA	4/13/87	3/17/87	19, 522	Monochrone and Color TV Receivers.
Hartford Mills (Workers)	Hopedale, MA	4/13/87	4/3/87	19, 523	Table Cloths.
Hyster Company (ILTB)	Danville, IL	4/13/87	3/31/87	19, 524	Lift Trucks.
Kim & Jim, Inc. (ILGWUI)	Fall River, MA	4/13/87	3/26/87	19, 525	Ladies Sportswear.
Newton Sportswear, Inc. (ILGWUI)	Worcester, MA	4/13/87	4/1/87	19, 526	Ladies' Skirts.
North American Royalties, Inc. (Workers)	Midland, TX	4/13/87	3/23/87	19, 527	Oil & Gas.
Penn Capillary & Tube, Division (Workers)	New Ross, IN	4/13/87	4/2/87	19, 528	Drawn Copper Tubing.
Pennzoil (Fed. of So. PA.)	Bradford, PA	4/13/87	3/30/87	19, 529	Crude Oil.
Pennzoil Production Co. (Workers)	Lafayette, LA	4/13/87	4/6/87	19, 530	Gas & Oil Products.
Road Machinery & Supplies Co. (Workers)	Virginia, MN	4/13/87	4/2/87	19, 531	Parts Distributor.
Ryan Brothers Transfer Inc. (Company)	Hibbing, MN	4/13/87	3/31/87	19, 532	Blasting Agent.
TFI, Inc. (U.S.W.A.)	Shelby, OH	4/13/87	3/26/87	19, 533	Automobile Exhaust Tubing.
Warner Jewelry Case Co. (IAMAW)	Buffalo, NY	4/13/87	3/27/87	19, 534	Jewelry Boxes.
William Prym (ACTWU)	Dayville, CT	4/13/87	4/2/87	19, 535	Sewing Materials.
Wisconsin Drill Head Co. (CUAW)	West Allis, WI	4/13/87	4/3/87	19, 536	Machine Tools.
Zenith Electronics Corporation of TX (Workers)	McAllen, TX	4/13/87	3/23/87	19, 537	Color TV Parts.

[FR Doc. 87–9339 Filed 4–23–87; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-19, 457]

AT&T Technologies, Inc., AT&T Technology Systems, Mesquite, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 6, 1987 in response to a worker petition received on April 6, 1987 in response to a worker petition received on April 6, 1987 which was filed on behalf of workers at AT&T Technologies, Incorporated, AT&T Technology Systems, Mesquite, Texas (Dallas Works).

A negative determination applicable to the petitioning group of workers was issued on February 13, 1987 (TA-W-18, 330). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 15th day of April 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-9340 Filed 4-23-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18, 510]

Columbiana Pump Co., Columbiana, OH; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 3, 1986 in response to a worker petition which was filed by the United Steelworkers of America on behalf of workers at Columbiana Pump Company, Columbiana, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 7th day of April 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-9341 Filed 4-23-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16, 542 et al.]

Green River Steel Corp., Owensboro KY, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-16,542—Owensboro, Kentucky; TA-W-16,542A—Los Angeles, California; TA-W-16,542B—Warren, Michigan; TA-W-16,542C—Beaver, Pennsylvania; TA-W-16,542D—Missouri City, Texas; and TA-W-16,542E—Cleveland, Ohio.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 27, 1986 applicable to all workers of Green River Steel Corporation, Owensboro, Kentucky. the certification notice was published in the **Federal Register** on April 8, 1986 (51 FR 11992).

On the basis of additional information, the Office of Trade Adjustment Assistance, reviewed the certification. The additional information from the company revealed that out-of-state salesmen were not included in the Department's certification.

The intent of the certification is to cover all workers at the Green River Steel Corporation in Owensboro, Kentucky; Los Angeles, California; Warren, Michigan; Beaver, Pennsylvania; Missouri City, Texas and Cleveland, Ohio.

The amended notice applicable to TA-W-16,542 is hereby issued as follows:

All workers of Green River Corporation, Owensboro, Kentucky; Los Angeles, California; Warren, Michigan; Beaver, Pennsylvania; Missouri City, Texas and Cleveland, Ohio who became totally or partially separated from employment on or after September 30, 1984 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of April 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-9342 Filed 4-23-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,997]

Tenneco Oil Co., Exploration and Production Division, San Antonio, TX; Affirmative Determinations; Correction

The certification notice for workers at Tenneco Oil Company, Exploration and Production Division, San Antonio, Texas issued in response to petition TA-W-18,997 on January 9, 1987, and published in the **Federal Register** on February 19, 1987 in FR Doc. 87-3462 on page 5212 was issued in error. All workers of Tenneco Oil Company's Exploration and Production Division at San Antonio, Texas were already eligible for adjustment assistance under an earlier certification issued on December 23, 1986, TA-W-18,503. This certification was subsequently amended on March 23, 1987 to identify workers in San Antonio, Texas and in other States. The certification for workers in San Antonio is TA-W-18,503A.

Accordingly, Certification TA-W-18,997 for workers at Tenneco Oil Company's Exploration and Production Division at San Antonio, Texas is cancelled herewith.

Signed at Washington, DC, this 15th day of April 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-9343 Filed 4-23-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,510]

Wilker Brothers Co., McKenzie, TN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 6, 1987 in response to a worker petition received on April 6, 1987 which was filed on behalf of workers at Wilker Brothers Company, McKenzie, Tennessee.

An active certification covering the petitioning group of workers remains in effect (TA-W-15,770). Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 15th day of April 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-9344 Filed 4-23-87; 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 be 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 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 necessary 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 rate and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determiantions 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.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. FL87-41 dated January 2, 1987.

Agencies with construction projects pending to which this wage decsion would have been applicable should utilize General Wage Determination Nos. FL87-36 and FL87-38. See Regulations Part 1 (29 CFR), Section 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6 (c) (2) (i) (A), the incorporation of the withdrawal decision in contract specifications, the opening of bids is within ten (10) days of this notice, need not to be affected.

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 number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida:
- FL87-35 (Jan. 2, 1987). pp. 193-194.
- FL87-36 (Jan. 2, 1987). pp. 197-198.
- FL87-37 (Jan. 2, 1987). pp. 202-203.
- FL87-38 (Jan. 2, 1987). pp. 205-207.
- FL87-39 (Jan. 2, 1987). pp. 209-211.
- FL87-40 (Jan. 2, 1987). pp. 213-214.
- FL87-42 (Jan. 2, 1987). pp. 217-218.
- FL87-43 (Jan. 2, 1987). pp. 219-220.
- FL87-44 (Jan. 2, 1987). pp. 222, pp. 222a-222b.

New Jersey:
- NJ87-2 (Jan. 2, 1987). pp. 616, pp. 619-620.
- NJ87-3 (Jan. 2, 1987). pp. 636.
- NJ87-4 (Jan. 2, 1987). pp. 660.

New York:
- NY87-9 (Jan. 2, 1987). pp. 768.
- NY87-11 (Jan. 2, 1987). pp. 782.

Pennsylvania:
- PA87-7 (Jan. 2, 1987). pp. 906-907.
- PA87-17 (Jan. 2, 1987). pp. 964-965.
- PA87-18 (Jan. 2, 1987). pp. 970-972.

Listing by Location (index). pp. xxiii-xxiv.

Listing by Decision (index). p. li

Volume II

Illinois:
- IL87-1 (Jan. 2, 1987). pp. 70.
- IL87-3 (Jan. 2, 1987). pp. 114-115.
- IL87-6 (Jan. 2, 1987). pp. 132.
- IL87-13 (Jan. 2, 1987). pp. 176.
- IL87-14 (Jan. 2, 1987). pp. 186.
- IL87-15 (Jan. 2, 1987). pp. 196.
- IL87-16 (Jan. 2, 1987). pp. 206.
- IL87-17 (Jan. 2, 1987). pp. 216.

Indiana:
- IN87-3 (Jan. 2, 1987). pp. 269.
- IL87-3 (Jan. 2, 1987). pp. 282.

Ohio
- OH87-2 (Jan. 2, 1987). pp. 734-753.

Texas
- TX87-9 (Jan. 2, 1987). pp. 944.

Volume III

California:
- CA87-4 (Jan. 2, 1987). pp. 69.

Utah

Utah
- UT87-1 (Jan. 2, 1987). pp. 306.

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, DC 20402, (202) 783–3238.

When ordering subscription(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, regularly weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 17th day of April 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

FR Doc. 87–9036 Filed 4–23–87; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–87–92–C]

Alfred Whited Coal Co. No. 3; Petition for Modification of Application of Mandatory Safety Standard

Alfred Whited Coal Company No. 3, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its No. 2 Mine (I.D. No. 44–05386) located in Buchanan County, Virginia. 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 whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least 20 feet in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees.

2. Petitioner requests a modification of the standard to allow for a 20-foot cut to be taken in the face. In further support of this request, petitioner states that:

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the corner of the entry will be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry will be a 90 degrees angle to the face and the hole drilled 5 feet from the right rib will be a 75 degree angle to the face with a margin of error of +/− 5 degrees. This pattern will provide a 10-foot barrier in all direction to the cut to be taken. This pattern will also prevent the cut being taken from intersecting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel as well as the restricted area available to maneuver the drilling machine.

3. 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 May 26, 1987. Copies of the petition are available for inspection at that address.

Dated: April 17, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–9345 Filed 4–23–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–67–C]

Ray Dean Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Ray Dean Mining Compnay, Inc., P.O. Box 819, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1710 (cabs or canopies) to its No. 1 Mine (I.D. No. 15–11263) located in Pike 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 cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Winnifred seam ranging from 38 to 56 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the use of cabs or canopies on the mine's electric equipment would result in a diminution of safety to the miners affected because the cabs or canopies could strike and dislodge roof support. The cabs or canopies would also limit the equipment operator's visibility, creating the chances of an accident.

4. For these reasons, petitioner requests modification of 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 May 26, 1987. Copies of the petition are available for inspection at that address.

Dated: April 17, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health

[FR Doc. 87–9346 Filed 4–23–87; 8:45 am]

BILLING CODE 4510–13–M

[Docket No. M-87-97-C]

S. & R. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

S. & R. Coal Company, Box 12A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its No. 2 Slope (I.D. No. 36-06448) located in Schuylkill County, Pennsylvania. 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 all haulage equipment be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment.

2. Petitioner states that the use of automatic couplers on underground mine cars would result in a diminution of safety to the miners affected due to the sharp radius curves in the track, undulating pitch of the slopes, different types of small lightweight cars, and the systems of haulage.

3. For these reasons, petitioner requests a modification of 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 May 26, 1987. Copies of the petition are available for inspection at that address.

Dated: April 17, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-9347 Filed 4-23-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-39-C]

Snyder Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Snyder Coal Company, 120 Elm Street, Shamokin, Pennsylvania 17936, has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its N & L Slope (I.D. No. 36-02203) located in Northumberland County, Pennsylvania. 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 follow:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations fo respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. 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 May 26, 1987. Copies of the petition are available for inspection at that address.

Dated: April 16, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-9348 Filed 4-23-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-96-C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219-0196 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Hampton No. 3 Mine (I.D. No. 46-01283) located in Boone County, West Virginia. 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 return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to adverse roof conditions, a certain area of the return cannot be safely traveled, and rehabilitation of the area would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish check points where air measurements and gas readings will be made on a weekly basis. Records of such measurements or readings will be made in a book kept on the surface.

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 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 May 26, 1987. Copies of the petition are available for inspection at that address.

Dated: April 17, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-9349 Filed 4-23-87; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Electrical, Communications, and Systems Engineering, Directorate for Engineering; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Electrical, Communications, and Systems Engineering, Directorate for Engineering.

Date: May 11 and 12, 1987.

Time: May 11—8:00 am to 5:30 pm; May 12—9:00 am to 3:00 pm.

Place: National Science Foundation, Conference Room 643, Washington, DC.

Type of meeting: Closed.

Contact person: Dr. Allen R. Stubberud, Division Director, Division of Electrical, Communications and Systems Engineering, Room 1151, National Science Foundation, Washington, DC 20550, Telephone: 202–357–9618.

Minutes: May be obtained from contact person listed above.

Purpose of meeting: Perform oversight of program management, overall program balance, and other aspects of program performance.

Agenda: Committee Review of the Quantum Electronics, Waves & Beams, Solid State & Microstructures Engineering, Systems Theory and Operations Research, and Instrumentation, Sensing and Measurement Programs, including examination of proposal jackets, reviewer comments, and other privileged materials.

Reason for closing: The meeting will consist of a review of grant, withdrawal, and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 20, 1987.

[FR Doc. 87–9242 Filed 4–23–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee For Ocean Sciences (ACOS);

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ocean Sciences (ACOS).

Date and time: May 15, 1987—8:30 a.m. to 1:30 p.m.

Place: Conference Room B. Michelson Hall, U.S. Naval Academy, Annapolis, MD 21402.

Type of meeting: Open.

Those planning to attend are encouraged to notify the Division of Ocean Sciences (Don De Haven 202/357–9639) by Tuesday, May 5th as meeting room capacity may limit attendance.

Contact person: Dr. M. Grant Gross, Director, Division of Ocean Sciences, Room 609, National Science Foundation Washington, DC—Telephone: 202/357–9639

Summary minutes: May be obtained from the contact person.

Purpose of committee: To provided advice and recommendations concerning oceanographic research and its support by the NSF Division of Ocean Sciences.

Agenda: The Committee will hold one session as noted above. It will hear presentations and status reports on various topics of current interest from officials and representatives from NSF, other Departments and Agencies and, as appropriate, from other organizations active in ocean science research as well as from subcommittees and/or working groups. Topics to be presented and discussed include: Report of the Ocean Principals Working Group; International activities as well as oversight review activities concerning NAS/OSB and UNOLS. The Committee will take appropriate action on these and other matters as may be required. The Committee will also conduct necessary administrative functions with respect to: approval of minutes of the previous meeting; determination of time and place for the next meeting as well as any other appropriate business.

M. Rebecca Winkler,

Committee Management Officer.

April 20, 1987.

[FR Doc. 87–9243 Filed 4–23–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Advanced Scientific Computing and Networking, Communications Research and Infrastructure; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Advanced Scientific Computing and Networking, Communications Research and Infrastructure.

Dates and times: May 14—8:00 a.m.–5:00 p.m.; May 15—8:00 a.m.–3:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street NW.

Type of meeting: Open: May 14—8:00 a.m.–4:00 p.m.; May 15—8:00 a.m.–3:00 p.m.

Closed: May 14—4:00 p.m.–5:00 p.m.

Contact person: Dr. John W.D. Connolly, National Science Foundation, Phone: 202/357–7558.

Summary of minutes: May be obtained from John W.D. Connolly.

Purpose of meeting: To provide advice and recommendations concerning NSF support of advanced scientific computing and networking, communications research and infrastructure.

Agenda: The open session will be focused on planning and policy issues. These will include a review of recent actions and budget priorities. The closed session will discuss pending proposals.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87–9239 Filed 4–23–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cellular Physiology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cellular Physiology.

Date and time: May 11, 12, 13, 1987—8:30 a.m. to 5 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of meeting: Closed.

Contact persons: Dr. Maryanna P. Henkart, Program Director, Cellular Physiology Program, (202) 357–7377, Room 321, National Science Foundation, Washington, DC 20550.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in Cellular Physiology.

Agenda: To review and evaluate research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 20, 1987.

[FR Doc. 87–9240 Filed 4–23–87; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Developmental Biology; Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Developmental Biology.

Date and time: May 14, 15, 16, 1987, starting at 9:00 a.m. to 5:30 p.m.

Place: Conference Room 643, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. Joseph P. Mascarenhas, Program Director, or Dr. Judith Plesset, Assistant Program Director, Developmental Biology Program, Room 321, Telephone 202/357–7989.

Purpose of advisory panel: To provide advice and recommendations concerning support of research in developmental biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and the personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

April 20, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-9241 Filed 4-23-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-289 (CH)]

General Public Utilities Nuclear (Three Mile Island Nuclear Station, Unit No. 1); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this proceeding:

Alan S. Rosenthal, Chairman
Thomas S. Moore
Howard A. Wilber

Dated: April 20, 1987.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 87-9357 Filed 4-23-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL & OL-1, 50-444-OL & OL-1] (Offsite Emergency Planning); (Onsite Emergency Planning and Safety Issues)

Atomic Safety and Licensing Appeal Board; Oral Argument; Public Service Co. of New Hampshire et al.

In the Matter of Public Service Co. of New Hampshire, et al.; (Seabrook Station, Units 1 and 2);

Notice is hereby given that, in accordance with the Appeal Board's memorandum and order of April 17, 1987, oral argument on both: (1) the intervenors' applications for a stay pending appeal of the Licensing Board's March 25, 1987 partial initial decision in the onsite emergency planning and safety issues phase of this operating license proceeding; and (2) the intervenors' joint motion seeking directed certification of the Licensing Board's March 20, 1987 memorandum and order in the offsite emergency planning phase of this proceeding will be heard commencing at *10:00 a.m. on Friday, April 24, 1987, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.* The stay applications will be heard first. Following a luncheon recess, argument will be heard on the directed certification motion.

Dated: April 17, 1987.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 87-9358 Filed 4-23-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361-OL and 50-362-OL (ASLBP No. 86-538-06-OL-R)]

Southern California Edison Co. et al.; San Onofre Nuclear Generating Station, Units 2 and 3; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Southern California Edison Company, et al.* (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361-OL and 50-362-OL, is hereby reconstituted by appointing Administrative Judge Sheldon J. Wolfe as Chairman in place of Administrative Judge James L. Kelley, who retired to part time status and is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

Sheldon J. Wolfe, Chairman,
Cadet H. Hand, Jr.,
Elizabeth B. Johnson

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Sheldon J. Wolfe, Chairman; Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 20th day of April 1987.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 87-9359 Filed 4-23-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Cancellation of Public Hearings on Restoration of the Application of Column 1 Rates of Duty of the Tariff Schedules of the United States to the Products of Poland

AGENY: Trade Policy Staff Committee (TPSC), Office of the United States Trade Representative, Executive Office of the President.

SUMMARY: This publication gives notice that the public hearings on the application of column 1 rates of duty of the Tariff Schedules of the United States (TSUS) to the products of Poland, scheduled for April 28, 1987 by the TPSC and announced in the **Federal Register** of March 31, 1987, have been cancelled. No requests to appear were received prior to the April 20 deadline.

Written submissions: Written submissions, in 20 copies, will be accepted until 5:30 p.m., April 29, 1987. These submissions should be sent to Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, NW., Room 521, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Carol Thompson, Office of Europe and the Mediterranean, Office of the United States Trade Representative, 600 17th Street, NW., Room 317, Washington, DC 20506, telephone: 202-395-3211.

David P. Shark,

Acting Chairman, Trade Policy Staff Committee.

[FR Doc. 87-9268 Filed 4-23-87; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142
Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549

Extension

Rule 15c3-1
File No. 270-87

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities

and Exchange Commission has submitted for extension of OMB approval Rule 15c3–1 (17 CFR 240.15c3–1) promulgated under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) requiring brokers or dealers to prepare computations to ensure that sufficient amounts of liquid assets are maintained to cover their current indebtedness. Seven thousand respondents incur a cumulative total of 1150 burden hours to comply with the rule.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Room 3228, NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

April 15, 1987.

[FR Doc. 87–9331 Filed 4–23–87; 8:45 am]

BILLING CODE 8010–01–M

Agency Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549

Revision

Form BD

File No. 270–19

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance the following proposed revision to Form BD under the Securities Exchange Act of 1934.

Form BD—Application for Registration as a Broker or Dealer, inclusion of consent to service of process.

The potential respondents are 3,714 registered broker-dealers.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

April 17, 1987.

[FR Doc. 87–9332 Filed 4–23–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24355; File No. SR–NASD–87–9]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Performance-Type Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 6, 1987, the National Association of Securities Dealers, Inc., filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Self-Regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends paragraph (f) of Article III, section 19 of the NASD Rules of Fair Practice to provide an exemption from that section's prohibition of sharing in the proceeds of customer accounts which will allow members to charge performance related fees if certain criteria are met.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Self-Regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Self-Regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendment to Article III, section 19(f) of the NASD Rules of Fair Practice would, under certain circumstances allow performance-type fees. Section 19(f) generally prohibits members or persons associated with members from sharing in the profits or losses in customer accounts other than in direct proportion to the amount invested.

The proposed rule change was adopted by the Board of Governors in view of the recent promulgation by the SEC of Rule 205–3 under the Investment Advisers Act of 1940 (Advisers Act). In the past, the NASD has occasionally taken no-action positions with respect to members' receipt of certain performance-type fees in circumstances where a customer has entered into an agreement with a member or persons associated with a member and the facts indicate that (1) the investment is relatively large; (2) the number of investors is limited; (3) there is evidence of the investors' sophistication; and (4) the agreement could be reasonably considered to be entered into by virtue of arm's-length negotiation.

The adoption of SEC Rule 205–3 under the Advisers Act marked the codification of the SEC staff's position since 1975 that, under certain factual circumstances, the prohibitions of section 205(l) of the Advisers Act against performance-type fees may not be necessary or appropriate in the public interest.

The proposed amendment would permit members and associated persons to receive performance fees under circumstances similar to those permitted by the SEC. More specifically, the proposed rule change will allow a member or person associated with a member to receive compensation based on a share of profits or gains in an account when (a) written authorization is obtained from a member; (b) the customer meets stated minimum net worth or investment size requirements; (c) there is a reasonable belief that the customer understands the compensation method and its risks; (d) the arrangement is reduced to writing; (e) there is a reasonable belief that the agreement was reached through arms-length negotiation; (f) the arrangement takes into account gains and losses over at least a one year period; and (g) the member has disclosed all material information relating to the arrangement.[1]

The NASD believes the proposed rule change is consistent with sections 15A(b)(6) and 15A(b)(9) of the Act. Section 15A(b)(6) requires that the Association's rules be designed to promote just and equitable principles of trade. Section 15A(b)(9) requires that the

[1] It is the position of the SEC's Division of Investment Management that compensation received by a member or person associated with a member under this rule would constitute "special compensation" for purposes of the exception to the definition of investment adviser in section 202(a)(11)(C) of the Act. Any member or person associated with a member, required to be registered under the Advisers Act, or state law, who receives compensation based on a share of profits or capital appreciation of a customer's account must comply with section 205(l) and Rule 205–3 under the Advisers Act, or applicable state law, with respect to such compensation.

Association's rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to eliminate a prohibition which the NASD believes, under the limited circumstances of the rules is not necessary to promote just and equitable principles of trade and to eliminate a competitive restriction on NASD members who are currently unable to avail themselves of the provisions of the Advisers Act rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The NASD solicited comments from members regarding the proposed rule change in Notice to Members 86–31. A total of 9 responses were received. Copies of the Notice to Members and comment letters have been submitted to the Commission as Exhibit 2 to this filing. The primary areas of comment related to inconsistencies with Advisers Act Rule 205–3 and the relationship of this rule to other regulatory requirements.

III. Dates of Effectiveness of the Proposed Rule Change and Timing of Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the Self-Regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–87–9 and should be submitted by May 15, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 16, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–9281 Filed 4–23–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24365; File No. SR–NSCC–87–03]

Self-Regulatory Organizations; National Securities Clearing Corp.; Order Granting Approval to a Proposed Rule Change

National Securities Clearing Corporation ("NSCC") on February 27, 1987, submitted a proposed rule change to the Commission under section 19(b) of the Securities Exchange Act of 1934 ("Act"). The proposal amends NSCC's Procedures to authorize Continuous Net Settlement ("CNS") operations for securities subject to reorganizations. The Commission published notice of the proposal in the **Federal Register** on March 12, 1987.[1] No comments were received. For the reasons discussed below, the Commission is approving the proposal.

I. Description of the Proposal

The proposed rule change establishes a Reorganization Processing System ("System"), which would allow the majority of securities subject to a reorganization to be processed within the CNS system.[2] The new System, set out in section VI, Paragraph I.4 of NSCC's Procedures, distinguishes between "involuntary" reorganizations such as mergers and liquidations where the security holder must participate, and "voluntary" reorganizations such as tender and exchange offers where there is a choice of whether to participate.[3]

For involuntary reorganizations, NSCC will convert automatically long and short CNS positions in the subject security into the equivalent positions of the new securities and/or cash on the day after the initial date of the reorganization. Fractional shares will be credited and charged in cash, in the same manner that stock dividends are handled today.

With respect to voluntary reorganizations, NSCC initially intends only to process transactions in securities subject to tender offers with eight-day protection periods.[4] In processing those transactions, NSCC will establish a reorganization sub-account for each competing tender offer, up to a maximum of two. If there are more than two competing tender offers, the securities will be exited from CNS. Four days after the expiration date of the tender offer ("E+4"), a participant with a long CNS position in a security subject to a tender offer can instruct NSCC to move that position to a sub-account.[5] This constitutes a formal request for NSCC to provide protection for the terms of the tender offer. After NSCC's day cycle processing on E+5, NSCC will establish the sub-account and move into the sub-account a corresponding number of short positions, beginning with the oldest short positions.[6] On E+6, and

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[1] Securities Exchange Act Rel. No. 24188 (March 6, 1987), 52 FR 7732.

[2] Currently, NSCC facilities do not exist to process most reorganizations within the CNS system. Although some corporate mergers and name changes are processed on an intermittent basis, most securities issues involved in reorganizations are exited from CNS and settled via NSCC-generated receive and deliver instructions to the long and short participants, respectively.

[3] The System cannot accommodate: (1) Securities subject to redemption if there is a conversion privilege attached; (2) securities subject to a reorganization where either baby bonds, *i.e.*, bonds of less than $1,000 face amount, are issued or elections are involved; and (3) securities made ineligible for processing at a Qualified Securities Depository during a corporate reorganization. In addition, a security may not be eligible for CNS Reorganization Processing if NSCC determines that operational difficulties prevent the processing of the security in the System.

[4] Industry practice permits broker-dealers who guarantee delivery to tender agents, to deliver tendered securities up to eight days after tender date.

[5] NSCC's CNS system generates a net long or a net short position for each participant each day. Long participants are entitled to receive securities versus money payment and short participants are entitled to receive money payment versus delivery of securities.

[6] As a result of this pairing of long and short positions, a participant with a short position could have only a partial allocation of its position to the CNS Reorganization Sub-Account and thus could have short positions both in the sub-account and its CNS General Account.

each day thereafter, NSCC will mark each short position to the tender offer price.[7]

Between E+5 and the end of the protection period, regular CNS allocations will take place, with the long positions in the sub-account having the highest priority. Upon completion of the tender offer, NSCC will exchange the long and short positions in the sub-accounts for the securities and/or cash under the terms of the tender offer.[8]

NSCC's proposal provides protection to the long participant up to the terms of the tender offer, but prohibits long participants from issuing buy-in notices to NSCC during the protection period. If a long participant incurs, or anticipates incurring, greater liability, the long participant must notify NSCC.[9] NSCC then will reverse the entries made which credited and debited the terms of the tender offer, and will issue, receive and deliver instructions to the long participant and corresponding short participant(s) respectively. Immediately upon issuance of such instructions, the member due to receive the securities may take appropriate action, such as initiating buy-in procedures in the cash market, to protect its position.

II. NSCC's Rationale for the Proposed Rule Change

NSCC believes that the proposal is consistent with the purposes and requirements of section 17A of the Act. Specifically, because the proposed rule change will allow NSCC to increase its ability to process a greater number of transactions within the CNS system, it should promote the prompt and accurate clearance and settlement of securities transactions. Moreover, NSCC believes that the proposed System should facilitate the immobilization of securities thus assuring the safeguarding of funds and securities in NSCC's possession or for which it is responsible.

III. Discussion

The Commission is approving the proposal because it believes the proposal is consistent with section 17A of the Act. As discussed below, the Commission believes that the proposal is designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of funds and securities in NSCC's possession or for which it is responsible.

Prior to NSCC's proposal, most securities subject to a reorganization had to be exited from NSCC's CNS system and settled through the use of receive and deliver instructions issued by NSCC to participants. The costs to participants of processing hard copy receive and deliver instructions were high, as was the risk inherent in the physical delivery of securities or the uncertainty of final settlement. Because those transactions would not be guaranteed after settlement date, long participants faced considerable risk and operational costs associated with buy-ins to meet tender obligations. The Commission believes NSCC's proposal responds to a 1983 Commission directive to NSCC to provide a full range of automated, centralized services for securities subject to reorganizations and, in particular, voluntary reorganizations.[10]

The Commission believes the proposal should promote the prompt and accurate clearance and settlement of securities transactions for a number of reasons. First, participants are afforded the benefits of the netting process when reorganizations are processed through the CNS system. The CNS system summarizes and nets together each participant's daily transactions in each issue with any previous open positions to create a single long position or a single short position. This reduces the number of actual settlements required and thereby lowers clearing costs for participants. Second, CNS provides automatic book-entry delivery or receipt of the securities at DTC versus net money settlement. Automatic movement of securities is more efficient and less prone to error than miscellaneous depository deliveries or physical delivery of the securities. For example, fails, which typically result from delays associated with physical delivery of securities, should be reduced once the new System is in place. Additionally, clearance and settlement in an automated environment lowers processing costs for participants.

The Commission also believes the new System will assure the safeguarding of securities and funds in NSCC's control or for which it is responsible. Because NSCC rules require participants to settle CNS delivery obligations by book-entry movement at DTC, rather than by physical delivery of certificates, the System should promote the immobilization of securities certificates. This, in turn, should reduce the risks of loss that can result from physical delivery. These risks can become particularly acute during periods of high volume, which is typical for issues subject to a tender or exchange offer.

Finally, the Commission believes the proposal is designed to provide NSCC participants with increased certainty through protection up to the terms of a tender offer, while providing NSCC with protection against member default. Under the proposal, NSCC would assess short participants "marks" reflecting the differences between the current market value and tender offer price. Those marks would be held by NSCC and would be available along with other participant assets, such as Clearing Fund contributions, in the event of default.

IV. Conclusion

On the basis of the foregoing, the Commission finds that NSCC's proposed rule change is consistent with the Act and, in particular, with Section 17A of the Act.

Accordingly, *it is therefore ordered*, under section 19(b)(2) of the Act, that the proposal (File No. SR–NSCC–87–03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 17, 1987.

Jonathan G. Katz,

Secretary

[FR Doc. 87–9283 Filed 4–23–87; 8:45 am]

BILLING CODE 8010–01–M

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[7] Under the proposal, long positions are not entitled to the tender offer price at this point. MSCC holds the marks from the short positions in escrow until it is notified by the Depository Trust Company ("DTC") that the tender agent has paid the tender offer price. At that point, NSCC credits the long positions, debits the short positions, and refunds the marks collected from the shorts.

[8] In the event that not all shares are accepted pursuant to the terms of the tender offer, entries crediting and debiting the securities and/or cash are made on a *pro rata* basis based on the *pro rata* acceptance ratio of the tender offer as reported to NSCC by a Qualified Securities Depository.

[9] Buy-ins generally would not be necessary under the System because long positions in the sub-account automatically receive high priority in NSCC's allocation process and NSCC protects long positions up to the amount of the tender offer. Greater liability, however, could result when a participant anticipates having to buy in securities in the cash market at a premium to make full delivery to a tender agent who is unwilling to accept a partial tender.

[10] In proposing the rule to require that securities depositories be available for processing transactions during a tender offer, the Commission specifically noted that the CNS system is unavailable during a tender offer and encouraged NSCC to redesign the system. *See* Securities Exchange Act Rel. No. 19678 (April 5, 1983), 48 FR 17603.

[Release No. 34-24363; File No. SR-NYSE-87-10]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Trading Review, Investigation and Reporting Requirements, Annual Compliance Reports, Customer Complaint Statistics, and Compliance Official Examination.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 27, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change [1]

(A) Proprietary and Employee Trading Review

Proposed Rule 342.21 requires members and member organizations to subject to review procedures trades for their own accounts, for the accounts of associated members, allied members and employees, and for related accounts in NYSE listed securities and in related financial instruments. The rule also requires a specific investigation into any trade that appears to violate Federal securities laws and/or Exchange rules—particularly those laws and rules against insider trading and manipulation and deceptive devices. Members and member organizations (pursuant to proposed Rule 351(e)) must take one of the two following actions in relation to each trade:

(1) State in writing, in a prescribed form and on a quarterly basis, that they have established and diligently followed adequate procedures for reviewing trades and, therefore, have no reasonable cause to believe that the trade violated these laws and rules, or

(2) If a trade is subject to an inquiry, make written status reports, detailing, among other things, the commencement, quarterly progress, or completion of any internal investigation.

(B) Annual Compliance Report

In the wake of last year's disclosures regarding insider trading, the Exchange launched a comprehensive review of its procedures for detecting and investigating anomalous trading and prosecuting illegal trading or referring it to the Commission. In February, the Exchange also directed its members and member organizations to undertake an equivalent review of their internal supervisory and compliance procedures.

To help assure that members and member organizations, and, in particular, their senior management, build upon this review by continuing to give supervision and compliance problems and issues the attention they require, proposed Rule 342.30 requires the annual preparation of an internal report covering each member's and each member organization's supervision and compliance efforts during the preceding year. The report is to include information on customer complaints and inquiries into suspicious trades, on significant violations and compliance problems, and on the year's supervisory and compliance efforts and initiatives in specified areas. The compliance personnel of a member organization must submit the report to their CEO or managing partner. (This report would be available to the Exchange on request.)

(C) Customer Complaint Statistics

Proposed Rule 351(d) requires member organizations periodically to report to the Exchange summary information regarding customer complaints.

(D) Compliance Official Examination

In addition to passing the Series 8 examination, the proposed rule change requires sole proprietors and the key compliance officials at each member organization to take a new "Compliance Supervisor Qualification Examination." The Exchange may take into consideration unique factors and circumstances in regard to the application of this requirement to particular individuals. (Rule 342.13(b).)

(E) Compliance with Information Requests

Companion changes make clearer that, when the Exchange requests information, failure to submit the information within the specified time period is a violation of Exchange rules. The changes also permit the Exchange to levy fines for such violation under its summary proceedings rule. (Rules 476 and 476A.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—The Exchange proposes to strengthen the self-regulatory process by specifying review, inquiry and reporting requirements respecting activities of members and member organizations. The general purpose of these initiatives is to strengthen the supervisory and compliance functions of the Exchange's members and member organizations and to require them to demonstrate to the Exchange that they are meeting their supervisory and compliance responsibilities.

(b) *Statutory Basis*—The basis under the 1934 Act for the proposed rule change is one of the key requirements under section 6(b)(5) of the 1934 Act, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The proposed rule change also relates to sections 9, 10 and 14 of the 1934 Act by focusing in particular on enforcing the prohibitions against insider trading and use of manipulative and deceptive devices.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has received four letters commenting on drafts of the rules included in the proposed rule change, copies of which are available from the self-regulatory organization and at the places specified in Item IV below.

The first letter argued that the Exchange's expansion of its reporting requirements risked that member

[1] The complete text of the proposed rules are available at the places specified in Item IV below.

organizations would perceive the requirements as self-incriminating, which would stifle preparation of internal records of management problems. (3/3/87 Letter to Robert J. Birnbaum, President, NYSE, from Alvin H. Einbender, COO/EVP, Bear, Stearns & Co., Inc.) The Bear Stearns letter also suggested that the attorney-client privilege might be involved. It also hypothesized that the statement and investigation reporting requirements might open a member organization to a defamation action by an employee whose trades were involved.

In the second letter, an *ad hoc* group of compliance professionals argued that Rule 351(e)'s "certification" requirement radically changed the self-regulatory process from its traditional one of guidance and education. (3/4/87 Letter to Robert J. Birnbaum, President, NYSE, from Saul S. Cohen, Rosenman & Colin.) The group supported testing requirements for compliance officials and tabulation of complaint information, but cautioned that the reporting should occur less frequently than quarterly. It urged the Exchange to avoid forcing compliance officials into a mode that inhibited communication and offended due process. The group urged the Exchange's Board to defer acting on the proposals to assure due deliberations and consideration.

The third comment letter endorsed the testing requirement for compliance officials and the Exchange's creation of a legal and compliance advisory group, but wondered whether the testing requirement might dissuade small firms from becoming NYSE members. (3/17/87 Letter to David Marcus, Executive Vice President, NYSE, from Michael Unger, Goldstein & Manello.) The letter also urged a continuing education program for compliance officials and consultation with NASAA.

In the fourth letter, the Executive Committee of the SIA's Compliance and Legal Division carried forward many of the ideas of the second letter through specific suggestions for textual changes. (3/20/87 Letter to Donald Van Weezel, Managing Director, NYSE, from Saul S. Cohen, Rosenman & Colin.) The changes included incorporating a "good faith" standard into the requirement to comply with information requests, shifting the burden of determining whether a violation has occurred from member organizations to the Exchange, removing the requirement for periodic reporting on the status of investigations, and deleting the statement requirement when no violation is found. The letter also suggested reformulating the annual report requirement into a review and discussion requirement, and placing the statement responsibility solely on "line" supervisors rather than compliance officials.

The Exchange made several changes in the text of the proposed rule change in an effort to be responsive to the comments while preserving the goals of its initiatives. For the reasons discussed above, the Exchange believes its initiatives must go forward notwithstanding the important concerns that the letters raise.

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any other unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with repsect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-NYSE-87-10 and should be submitted by May 15, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 17, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-9284 Filed 4-23-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24366; File No. SR-PSE-87-07]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc.; Relating to Display of Multiple-Series Orders and Stock/Options Orders on the Autex System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 30, 1987, the Pacific Stock Exchange, Inc. ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to implement a six-month test of the dissemination of certain indications of market interest through the Autex Trading Information System ("Autex"). The Exchange proposes to include in the test a total of ten stock options in two trading crowds. Participation in the test would be mandatory for brokers or market makers. The proposal is designed to permit brokers and market makers to display indications of interest for multiple-series orders and stock/option orders through the Autex system. Brokers and market makers would be required to vocalize such indications of interest at the trading post prior to any dissemination through the Autex system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory

organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Autex is a system that allows subscribers, which generally are professional or institutinal entities, to display and disseminate interests in securities. The Exchange proposes a limited six-month test whereby interest in more complex option and stock/option orders would be disseminated through the Autex system.

Currently, there is no way to disseminate electronically indications of interest for multi-series orders (*e.g.*, spreads, straddles, and combination orders) from the options floor. This also is true for indications of stock/option order interest (*e.g.*, covered writes, conversion and reverse conversion orders.) These types of more complicated orders of interest generally to professional or insititutional entities.

Under the proposal, once a floor broker or market maker expresses an indication of interest in one of these types of orders at the trading post and receives no reciprocal interest, he or she could request the Exchange staff to disseminate the interest through the Autex system. The Autex terminals will be located on the Exchange floor.

This proposed program would facilitate the process that the floor brokers already undertake, but would do so in a much more efficient manner. Instead of the floor broker having to manually contact each of the upstairs customers that might be interested in the order, those customers would be able to receive the indication of interest through the Autex system. The floor broker's time therefore would be saved by not having to contact those customers, and he then could devote more of his time to other orders on the floor. In addition, the floor broker still would be able to contact any customer, just as before.

The PSE is unsure whether this program would be utilized enough to justify a permanent status; a six-month pilot program is suggested. Should the program meet the expectations of the Exchange, a future rule filing requesting permanent status would be submitted.

The proposed rule change is consistent with section 6(b)(5) of the Act. The proposal, by replacing a mechanism now in place with a more efficient procedure, would facilitate transactions on the floor of the Exchange and eliminate impediments to the efficient functioning of the marketplace. At the same time, the proposal would not jeopardize the effectiveness of any of the rules or obligations that already exist on the Exchange floor.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission, and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 15, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 20, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-9285 Filed 4-23-87; 8:45 am]

BILLING CODE 8010-10-M

[Release No. 34-24352; File No. SR-PHLX-87-01]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to European Exercise for Value Line Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 23, 1987 The Philadelphia Stock Exchange, Inc. filed with the securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commissison is pubishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX"), pursuant to Rule 19b-4, hereby proposes the following rule change: (Brackets indicate deletions; italics indicate additions.)

Rule 1000A. Applicability and Definitions

(a) No change. (b) (1-11) No Change.
(b)(12) The term "European option" means an option contract that can be exercised only on the last trading day prior to the day it expires.

Rule 1006A. Other Restrictions on Options Transactions and Exercises

With respect to index options, restrictions or exercise may be in effect until the opening of business on the last trading day before the expiration date. *With respect to Value Line index European option contracts, restrictions on exercise will be in effect until the last trading day prior to expiration.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change

and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow the PHLX to offer European style option contracts on the Value Line index. The Phlx presently trades American style options on the Value Line index (XVL) and would differentiate the proposed Value Line index European options by using the symbol VLE to identify the "Current index value". The Value Line index is broad-based, encompassing approximately 1,700 exchange-listed and over-the-counter securities, and is an equally weighted geometric average of their prices. The PHLX believes that a European exercise feature respecting Value Line index options would particularly appeal to potential Value Line index options sellers and spread traders, since it restricts exercise until the trading day prior to expiration. Except for the proposed restriction on early exercise trading in the Value Line index European options would be conducted in accordance with existing PHLX equity option and index option rules.

The proposed rule change is consistent with section 6(b)(5) of the Securities and exchange Act of 1934 in that it will facilitate transactions in securities and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Completition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 15, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 16, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-9286 Filed 4-23-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24353; File No. S7-870]

Options Price Reporting Plan: Notice of Immediate Effectiveness of Amendment

On March 25, 1987, the participants in the "Options Price Reporting Authority" ("OPRA") submitted to the Commission, pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), an amendment to the "Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information,"[1] which was submitted to the Commission pursuant to section 11A(a)(3)(B) of the Act.[2]

I. Description of the Amendment

OPRA proposes to establish a fee to be paid by vendors and subscribers who furnish a dial-up cumputer printer market data service to their customers. The fee would be established at a monthly rate of $5.00 per active computer port through which the service is provided.

II. Purpose of the Amendment

OPRA indicates that the purpose of the new fee is to permit securities firms and others to offer a dial-up market data service to their customers without requiring the customers who receive the service to become OPRA subscribers and pay applicable subscriber fees. Currently, OPRA contracts state that OPRA vendors may provide such a service to only OPRA subscribers. At least one firm now provides this dial-up market data service, but under the terms of existing OPRA agreements the service may be offered only to customers who are OPRA subscribers, or it must utilize delayed information. The proposed new fees would encourage other firms to offer a computerized dial-up printer service utilizing current market data by eliminating any fees imposed directly on recipients of the service and by simplifying the administrative requirements to be met by providers of the service. The device charge to be imposed on providers of the service is comparable to OPRA's recently adopted fee charged to providers of voice-synthesized market data services.[3] The charge is consistent with OPRA's present fee structure, which imposes a change upon professional subscribers based upon the number of devices through which current market information may be accessed. The new fee has been established at a level below the aggregate subscriber fee that would be payable if a dial-up market data service could be offered only to subscribers.

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[1] *see* Securities Exchange Act Release No. 17638 (March 18, 1981).

[2] The Commission previously, by order, granted registration to OPRA as a securities information processor. At that time, OPRA's functions were limited to the collection and dissemination of options last sale reports. *See* Securities Exchange Act Release No. 12035 (January 22, 1976), 41 FR 4369. In order to comply with the procedures of Rule 11Aa3-2 applicable to the establishment of fees for exclusive securities information processors, OPRA has filed this fee as a Plan amendment under the Rule.

[3] *See* Securities Exchange Act Release No. 23804 (November 14, 1986), 51 FR 42324.

III. Manner of Implementation of the Amendment

The Dial-up Printer Market Data Service Fee will be implemented by adopting a Dial-up Printer Market Data Service Rider to OPRA's existing vendor and subscriber agreements,[4] which must be executed by every subscriber or vendor who wishes to offer this service. The Rider describes the terms and conditions governing the service.

IV. Request for Comment

Pursuant to Rule 11Aa3–2(c)(3) under the Act, the amendment and the Dial-up Printer Market Data Service Fee and Rider became effective upon filing with the Commission. The Commission, however, may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Act. In order to assist the Commission in determining whether to abrogate the amendment and to require refiling and further review, interested persons are invited to submit their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549, by May 15, 1987 All communications should refer to File No. S7–820.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(27).

Dated: April 16, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–9279 Filed 4–23–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 20, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Departmental Offices

OMB Number: New.
Form Number: TDF 68–70.1, TDF 68–70.1a, TDF 68–70.2, TDF 68–70.2, TDF 68–70.2b, TDF 68–70.2c.
Type of Review: New.
Title: Life Insurance Company Survey.
Description: The purpose of the survey is to collect data for Congressionally mandated Treasury Department studies of the Federal taxes paid by life insurance companies. The study will affect 326 companies in the life insurance industry.
Respondents: Businesses.
Estimated Burden: 5,480 hours.
Clearance Officer: Dale A. Morgan (202) 343–0263, Departmental Offices, Room 2224, Main Treasury Building, 15th & Pennsylvania Avenue NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB Number: New.
Form Number: 964–A.
Type of Review: New.
Title: Computation of Gain or Loss Recognized on Section 333 Liquidation.
Description: Form 964–A is used by corportions who wish to liquidate under section 333. In order to qualify, the corporation must have an applicable value of $10,000 or less. If the corporation qualifies, Form 964–A is used to determine the amount of gain or loss the corporation must include as income on its final tax return. The IRS uses the information to determine if the corporation qualifies and if so the amount of income that must be included.
Respondents: Businesses.
Estimated Burden: 5,588 hours.
Clearance Officer: Garrick Shear, (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–9276 Filed 4–23–87; 8:45 am]

BILLING CODE 4810–25–M

[No. 101–17]

Disestablishment of the Office of Revenue Sharing and Reorganization of Domestic Finance Functions

Dated: March 24, 1987.

By virtue of the authority vested in me as Secretary of the Treasury, including authority vested in me by 31 U.S.C. 321(b), it is ordered that:

1. *The Assistant Secretary of the Treasury (Management)* is hereby delegatged authority to provide for the orderly disestablishment of the Office of Revenue Sharing in accordance with Title XIV of the Consolidated Omnibus Reconciliation Act of 1985, Pub. L. 99–272, dated April 7, 1986.

2. *The Office of the Deputy Assistant Secretary (State and Local Finance),* including the Office of State and Local Finance, is hereby disestablished. The residual policy functions shall be identified by, and transferred to, the Assistant Secretary (Economic Policy).

3. *The Assistant Secretary of the Treasury (Management) and the Assistant Secretary (Economic Policy)* shall provide for the appropriate disposition of all real and personal property, records, data and personnel of the Offices affected by this Order.

4. This Order amends the following Treasury Orders (TO):

a. TO 101–05, "Supervision of Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated February 17, 1987; and

b. TO 103–01, "Organization and Functions of the Office of the Assistant Secretary (Domestic Finance)," dated March 18, 1982.

James A. Baker, III,

Secretary of the Treasury.

[FR Doc. 87–9323 Filed 4–23–87; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in my by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459),

[4] *See* Exhibit A of OPRA's submission filed March 25, 1987.

Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Italian Master Drawings from the British Royal Collection: Leonardo to Canaletto" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about May 10, 1987 to on or about July 26, 1987; the Fine Arts Museum of San Francisco, San Francisco, California beginning on or about August 8, 1987, to on or about October 25, 1987; the Art Institute of Chicago, Chicago, Illinois, beginning on or about November 10, 1987, to on or about January 26, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: April 21, 1987.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 87–9361 Filed 4–23–87; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 52, No. 79
Friday, April 24, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, May 4, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. Report on Commission Operations (Optional)
3. Notice of Proposed Rulemaking: Amendments to Federal Sector Complaint Processing Regulations
4. Notice of Proposed Rulemaking Adoption of the Commission's Remedies Policy Into the Federal Sector Regulations

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated and issued: April 22, 1987.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 87–9434 Filed 4–22–87; 3:11 pm]

BILLING CODE 6750–06–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 A.M., April 29, 1987.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Agreements Nos. 202–010776–015 and 202–010776–018) Modifications of the Asia North America Rate Agreement.
2. Agreement No. 207–011083—Fednav-Canmar RoRo Coordinated Service.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 87–9365 Filed 4–22–87; 9:26 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, April 29, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 21, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–9366 Filed 4–22–87; 10:16 am]

BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE; 10:00 a.m., Thursday, April 30, 1987.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Close.

MATTER TO BE CONSIDERED:

1. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Acting Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,

Acting Secretary of the Board.

[FR Doc. 87–9410 Filed 4–22–87; 1:26 pm]

BILLING CODE 7535–01–M

Corrections

Federal Register
Vol. 52, No. 79
Friday, April 24, 1987

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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 70357-7057]

Pacific Halibut Fisheries—United States Treaty Indian Tribes

Correction

In rule document 87-7336 beginning on page 10759 in the issue of Friday, April 3, 1987, make the following correction:

§ 301.19 [Corrected]

On page 10761, in § 301.19(d), in the table, in the entry opposite "Quileute", "30" " should read " 36" ".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 87-008]

Changes to Coast Guard District Boundaries and Reassignment of Units

Correction

In rule document 87-8892 beginning on page 13082 in the issue of Tuesday, April 21, 1987, make the following correction:

On page 13082, in the third column, insert "**EFFECTIVE DATE:** This amendment is effective April 30, 1987." after the last line of the **SUMMARY** paragraph.

BILLING CODE 1505-01-D

federal register

Friday
April 24, 1987

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for: Trichilia Triacantha, Cornutia Obovata, Louisiana Pearshell, and Solidago Albopilosa; Proposed Rules

DEPARTMENT OF THE INTERIOR

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Trichilia Triacantha, a Puerto Rican Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Trichilia triacantha* (Bariaco) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Critical habitat is not proposed. *Trichilia triacantha* is a plant 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 proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Trichilia triacantha*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by June 23, 1987. Public hearing requests must be received by June 8, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

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

SUPPLEMENTARY INFORMATION:

Background

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, respectively. Presently, eighteen 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 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, a factor which has 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 82480). The species was placed in category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) and was retained in this category in the November 28, 1983 (48 FR 53640), update of the 1980 notice and the 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 Endangered Species Act (16 U.S.C. 1531 *et seq.*), 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. This proposed rule indicates that the petitioned action is warranted and constitutes the final required finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Trichilia triacantha* Urban (Bariaco) 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 remaining plants are widely scattered and confined to Commonwealth Forest lands, thus they are largely protected from cutting. The areas where individuals or populations are most likely to be extant are in the Guayanilla Hills, which are being rapidly developed. If there are undiscovered plants in these areas, they most likely will be destroyed.

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 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 eighteen 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 determining to propose this rule. 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. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The distribution of *Trichilia triacantha* is sufficiently restricted that collecting or vandalism could seriously damage or eliminate the remaining populations. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will 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 proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat.

If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *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. 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 to 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. With respect to *Trichilia triacantha,* is anticipated that few trade permits would ever be sought or issued since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Trichilia triacantha;*

(2) The location of any additional populations of *Trichilia triacantha,* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject areas and their possible impacts on *Trichilia triacantha.*

Final promulgation of the regulation on *Trichilia triacantha* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the

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, DC. 403 pp.

Hernandez Aquino, L. 1977. Diccionario de Voces Indigenas de Puerto Rico. Editorial 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 proposed rule is Mr. David Densmore, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851-7297).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Meliaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		
Meliaceae—Mahogany family:						
Trichilia triacantha	Barisco	U.S.A. (PR)	E		NA	NA

Dated: March 24, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-9029 Filed 4-23-87; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Cornutia Obovata

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Cornutia obovata* (Palo de Nigua) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Critical habitat is not proposed. *Cornutia obovata* is endemic to semievergreen seasonal forests of the limestone hills and lower mountains of northern and central Puerto Rico. The species is threatened by deforestation and extremely low population size. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Cornutia obovata*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by June 23, 1987. Public hearing requests must be received by June 8, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

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

SUPPLEMENTARY INFORMATION:

Background

Cornutia obovata was first collected by Paul Sintenis in 1885 on Monte Torrecilla near Barranquitas in the mountains of central Puerto Rico. The species was known only from the type locality until 1938, when it was discovered in Río Abajo Commonwealth Forest. Recently, a single tree was found immediately to the west of Río Abajo near the Arecibo Observatory. However, a small population reported from Susùa Commonwealth Forest in southwestern Puerto Rico (Vivaldi and Woodbury 1981) has never been relocated. At present, only seven individuals are known to exist in two widely separated localities.

Cornutia obovata is an evergreen tree reaching 33 feet (10 meters) in height, with a trunk diameter of 6 inches (15 centimeters). The leaves are opposite, obovate, blunt or rounded at the apex, with the lower surface finely hairy. The flowers are terminally clustered, tubular, and purplish in color. The fruits are small, round, and finely hairy. The species is endemic to semievergreen forests on both limestone and volcanic soils from 1,000 to 3,000 feet (300 to 900 meters) in elevation. The two sites where the species is known to occur are widely disjunct: Río Abajo Commonwealth Forest and its surrounding areas are within the limestone karst region of northern Puerto Rico, while Monte Torrecilla is located in the Central Cordillera, a montane region of volcanic origin.

Although deforestation had undoubtedly caused the loss of many populations or individuals of *Cornutia obovata*, the species has never been in larger numbers. It is known that individual trees have been lost to forest clearing for a variety of land uses.

Cornutia obovata was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Fish and Wildlife Service, as published in the Federal Register (45 FR 82480) dated December 15, 1980. The species was designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened), and was retained in category 1 in the November 28, 1983, update (48 FR 53640) of the 1980 notice, and the September 27, 1985, revised notice (50 FR 39526).

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service made subsequent petition findings in October of 1983, 1984, 1985, and 1986 that listing *Cornutia obovata* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. This proposed rule indicates that the petitioned action is warranted, and constitutes a final required petition finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cornutia obovata* Urban (Palo de Nigua) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Modification of habitat or direct destruction of plants appear to have been significant factors reducing the numbers of *Cornutia obovata* in the past. At present, two of the seven known individuals occur on private land, one near a trail utilized heavily by squatters, and one other near a Commonwealth of Puerto Rico communication facility that receives heavy use. Both of these areas are subject to deforestation for a variety of purposes, and thus this significant proportion of the remaining plants is at risk. The other five trees are within a unit of the Commonwealth Forest System, and will only be threatened if management policies allowing alteration of the vegetation fail to consider them.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has recently adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Cornutia obovata* is not yet on the Commonwealth list. Federal listing would provide interim protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* With only seven plants known to exist, rarity is itself a factor affecting the survival of *Cornutia obovata*. The species has always been found as widely separated individual mature trees, without evidence of regeneration. Although it is unlikely that any single natural event could lead to its extinction, gradual attrition of individuals from a variety of natural causes appears likely. If still undetermined factors are preventing its reproduction by seed or vegetative means, there will be a net decline in its numbers and a loss of genetic diversity.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Cornutia obovata* as endangered. Since there are so 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. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Cornutia obovata* is sufficiently small that collecting or vandalism could seriously affect the survival of the species.

Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners have or will be 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 *Cornutia obovata* at this time.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Cornutia obovata*, as discussed above. Federal involvement is not expected where the species is known 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. 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 to remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Cornutia obovata* will ever be sought or issued since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Cornutia obovata;*

(2) The location of any additional populations of *Cornutia obovata,* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject areas and their possible impacts on *Cornutia obovata.*

Final promulgation of the regulation on *Cornutia obovata* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1974, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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

Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Cornutia obovata* Urban. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 35 pp.

Author

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

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Verbenaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		
Verbenaceae—Verbena family:						
Cornutia obovata	Palo de Nigua	U.S.A. (PR)	E		NA	NA
*	*	*	*	*		

Dated: March 24, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–9030 Filed 4–23–87; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Louisiana Pearlshell (Margaritifera hembeli)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine 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 reservior construction, silviculture practices, sedimentation, and domestic runoff. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended; for this freshwater mollusk. The Service seeks relevant data and comments from the pubic.

DATES: Comments from all interested parties must be received by June 23, 1987. Public hearing requests must be received by June 8, 1987.

ADDRESS: Comments and materials concerning this proposal should be sent to the Endangered Species Field Station,

U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan at the above address (601/965–4900 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 (LNHP 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 (LNHP 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 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 LNHP 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 has not taken any action on this species previous to this proposed rule.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to 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 Castor Creek and Bayou Clear drainages, both 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 LNHP 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 erosin 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 propose this rule. Based on this evaluation, the preferred action is to list the Louisiana pearlshell as endangered. Endangered status is proposed because of the very limited range, small population size, and vulnerability owing to small stream habitat of 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 any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. 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 will be 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 the **ADDRESSES** section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibition against certain practices. Recognition through listing encourages and results in conservation actions by Federal, States 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 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 confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

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 and 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. If this rule is made final, the above agencies would 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.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Endangered Species Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the

Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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 10(1):1–56.

Conrad, T.A. 1838. Monography of the family Unionidae, or naiades of Lamarck (Fresh water bivalve shells) of North America 1:93–94, plate 51.

Johnson, R.I. 1983. *Margaritifera marrianae*, a new species of Unionacea (Bivalvia: Margaritiferidae) from the Mobile-Alabama-Coosa and Escambia river systems, Alabama. Occasional Papers on Mollusks (Museum of Comparative Zoology, Harvard University) 4(62):299–304.

Lea, 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 proposed 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).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchpater B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.11(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		NA	NA

Dated: March 24, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–9031 Filed 4–23–87; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Solidago albopilosa (White-haired Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for a plant, *Solidago albopilosa* (white-haired goldenrod). It is known only from rockhouses and beneath overhanging ledges primarily in the Daniel Boone National Forest, Red River Gorge Area of Menifee, Powell, and Wolfe Counties, Kentucky. All known populations of the species are threatened by trampling from recreational use of their specific habitat within the National Forest. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended. The Service seeks relevant data and comments from the public on this proposal.

DATE: Comments from all interested parties must be received by June 23, 1987. Public hearing requests must be received by June 8, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Solidago albopilosa E. L. Braun (white-haired goldenrod) is an upright-to-slightly-arching herbaceous plant that attains a height of 3 to 10 decimeters (12 to 39 inches). Braun (1942) described this species based on specimens discovered in the summer of 1940 in the Red River Gorge area of Menifee and Powell Counties, Kentucky. The leaves of *Solidago albopilosa* are prominently veined with a dark green upper surface and a pale underside. They vary in length from 6 to 10 centimeters (2.5 to 4.0 inches) with the large leaves closer to the base of the stem. The stem is cylindrical and densely covered with fine white hairs. Clusters of small, yellow flowers begin blooming in late August. Pale brown, pubescent, oblong achenes (dry single-seed fruits) appear in October. *Solidago albopilosa* can be distinguished from its close relative *Solidago flexicaulis* by its generally downy appearance in contrast to the slick, smooth appearance of *S. flexicaulis* (Medley 1980).

The species is endemic to outcroppings of Pottsville sandstone found in the Red River Gorge area of Menifee, Powell, and Wolfe Counties, Kentucky. Usually it is found in rockhouses (natural, shallow, cave-like formations) and beneath overhanging ledges. The plants grow behind the dripline in loose sand, on the floor, in crevices, and on ledges along the walls of rockhouses. Associated rockhouse species include round-leaved catchfly (*Silene rotundifolia*) and alumroot (*Heuchera parviflora*). Associated overstory species of the mixed mesophytic forest are oaks (*Quercus* spp.), maples (*Acer* spp.), and mountain-laurels (*Kalmia* spp.) (kral 1983).

Solidago albopilosa is only found within Kentucky's Red River Gorge.

Most of this small area is within the Daniel Boone National Forest and has been designated a National Geological Area (36 CFR 294.1). Although there are several small, private inholdings within the Gorge, the Forest Service is planning to acquire the most significant of these in the future. One population segment of *Solidago albopilosa* occurs within one of these private inholdings. The geological features (rockhouses) with which the species is associated are common within the Red River Gorge; however, only a small percentage of these rockhouses currently support the species (Andreasen and Eshbaugh 1973; Don Figg, Daniel Boone National Forest, personal communication, 1986).

The unique features and habitat of *Solidago albopilosa* have made this plant an object of great interest to botanists. Thorough searches of suitable habitat in areas adjacent to the Gorge and in other parts of the State have failed to reveal the presence of any additional populations (Marc Evans, Kentucky Nature Preserves Commission, personal communication, 1986). *Solidago albopilosa's* unique habitat is subject to intensive disturbance by recreational visitors to the Gorge (Medley 1980). Rockhouses, including those which support *Solidago albopilosa*, are very popular destinations or sites for hiking, camping, climbing, picnicking, building campfires, and digging for Indian artifacts. These activities have, in the past, endangered and continue to endanger *Solidago albopilosa*.

Federal government actions on this 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 (40 FR 27823), which formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Solidago albopilosa* was included in the Smithsonian report and the July 1, 1975, notice of review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act; *Solidago albopilosa* was included in in this proposal.

The 1978 amendments to the Endangered Species Act required that all proposals over two years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. On December 15, 1980, the Service published a revised notice of review for native plants (45 FR 82480). *Solidago albopilosa* was included in that notice as a Category 1 species. Category 1 includes those species for which the Service has sufficient biological data to propose to list them as endangered or threatened species.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. 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 *Solidago albopilosa* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983; October 12, 1984; October 11, 1985; and October 10, 1986, the Service found that the petitioned listing of *Solidago albopilosa* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Publication of this proposal constitutes the next one-year finding as required by section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regualtions (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Solidago albopilosa* E. L. Braun (white-haired goldenrod) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Solidago albopilosa* is only known for a small number of rockhouses in the Red River Gorge of Menifee, Powell, and Wolfe Counties, Kentucky. The species has been extirpated from some of these sites and is being adversely impacted by human activities at most other sites (Medley 1980). A census taken by Medley (1980) resulted in a population estimate of 10,500 individuals. Field work since that time by Forest Service personnel (B. Knowles, personal communication, 1986) has revealed the presence of several additional population segments. These additional segments are located in the more remote and inaccessible portions of the Gorge. Medley (1980) states that all but two of the sites he visited showed some disturbance by recreational use of the gorge. He further reports that J. Varner, a local botanist who observed the species over several years, believes that *Solidago albopilosa* has beeen extirpated from numerous rockhouse sites. Recreational activities that directly impact rockhouses and *Solidago albopilosa* include hiking, picnicking, rappelling, camping, and climbing. The presence of Indian artifacts within the area, and the damage caused by collectors pursuing them, subjects even the most remote rockhouses to human disturbance (Marc Evans, Kentucky Nature Preserves Commission, personal communication, 1984; D. Figg, personal communication, 1986). Due to its vulnerable position on the floors and walls, *Solidago albopilosa* is especially susceptible to visitor damage. Recreational use of the Red River Gorge is currently about 240,000 recreational visitor days per year. Management practices designed to reduce recreational use of the rockhouses are needed to ensure the continued existence of the the plant.

Solidago albopilosa would also be affected by the proposed Red River Lake project. Though no longer being pursued as a viable project by the U.S. Army Corps of Engineers, the project, if implemented, could adversely affect the species through associated construction and recreational activities. Although the proposed high water level would not inundate the plant's hibitat, the project would need to be planned and completed with the protection of *Solidago albopilosa* being a primary consideration.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Solidago albopilosa* is subject to taking and vandalism due to the accessibility of most of the rockhouses and the high rate of visitor use in the gorge, especially at the rockhouses.

C. *Disease or Predation.* No such threats currently face *Solidago albopilosa*.

D. *The inadequacy of existing regulatory mechanisms.* Endangered, threatened, and unique plants found on National Forest property are protected from damage and taking by Federal regulation (36 CFR 261.9). However, limited manpower makes enforcement of this regulation difficult. *Solidago albopilosa* is included as an endangered species on Kentucky's unofficial list of endangered, threatened, and rare

species, but receives no additional protection from this recognition (Branson *et al.* 1981).

E. *Other natural or manmade factors affecting its continued existence.* Due to its unique topographic structure, the Red River Gorge experiences different climatic conditions than those found on the Cumberland plateau and landscapes to the east and west (Martin 1976). *Solidago albopilosa* is adapted to the unique combination of climatic, geologic, and topographic conditions present within the Gorge. Even seemingly minor changes in the surrounding forest could impact this shade-tolerant plant directly through drying and erosion and indirectly by increasing competition with less shade-tolerant species (Kral 1983). Although no such operations currently threaten the plant, management planning designed to take into account the requirements of the species is needed to ensure its continued existence.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Solidago albopilosa* as endangered. Threatened status is not deemed appropriate for this species because of the severity of the threats to its continued existence. Critical habitat is not being proposed for the species for the reasons given below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time 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. *Solidago albopilosa* only occurs in rockhouses, where the species is vulnerable to taking and vandalism. Publication of a critical habitat description in the **Federal Register** would draw attention to the remaining populations of *Solidago albopilosa*, making the species more vulnerable, and would increase law enforcement problems. Since almost all of the known plants occur on Federal land, any activity that could affect the continued existence of the species will be brought to the attention of the Service through the section 7 consultation process. The private landowners on whose land the species occurs have been notified of the presence of *Solidago albopilosa* and of the importance of protecting its habitat. Protection of this species' habitat will be addressed through the recovery process and through provisions of section 7 of the Act. Therefore, it would not be prudent to determine critical habitat for *Solidago albopilosa* 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 confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Effects upon management practices of the U.S. Forest Service would be minimal, consisting of the development and implementation of management practices designed to reduce visitor impacts to the most important rockhouses which support the plant and the careful planning of any future timber removal operations so that the continued existence of *Solidago albopilosa* is ensured. Involvement of the U.S. Army Corps of Engineers would only occur if the suspension of the Red River Lake project is lifted. Development of plans designed to reduce the impacts of reservoir construction activities and recreational development, the construction of the dam, and the subsequent recreation activity would be needed if the project is reauthorized. Because of the geographical and biological significance of the Red River Gorge and the official objection to the project by the Commonwealth of Kentucky, it is not anticipated that the project will be reauthorized.

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. 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 commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in the wild or in cultivation. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Solidago albopilosa;*

(2) The location of any additional populations of *Solidago albopilosa* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Solidago albopilosa.*

Final promulgation of the regulation on *Solidago albopilosa* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

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

References Cited

Andreasen, M.L., and W.H. Eshbaugh. 1973. *Solidago albopilosa* Braun, a little known goldenrod from Kentucky. Castanea 38(2):117–132.

Branson, B.A., D.F. Harker, Jr., J.M. Baskin, M.E. Medley, D.L. Batch, M.L. Warren, Jr., W.H. Davis, W.C. Houtcouper, B. Monroe, Jr., L.R. Phillippe, and P. Cupp. 1981. Endangered, threatened and rare animals and plants of Kentucky. Transactions of the Kentucky Academy of Science 42:77–89.

Braun, E.L. 1942. A new species and a new variety of *Solidago* from Kentucky. Rhodora 44:1–4.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. Vol II. Technical Publication R8–TP2, U.S. Forest Service, Atlanta, Georgia. Pp. 1252–1255.

Martin, W.H. 1976. The Red River Gorge controversy in Kentucky: a case study in preserving a natural area. Association of Southeastern Biologists Bulletin 23(3):163–167.

Medley, M.E. 1980. Endangered and threatened plant status surveys. Unpublished report to the Southeastern Region of the U.S. Fish and Wildlife Service under Contract No. 14–16–0004–79–105, 24 pp.

Authors

The primary authors of this proposed rule are Laurance S. Torok, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975), and Robert R. Currie, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Solidago albopilosa	White-haired goldenrod	U.S.A. (KY)	E		NA	NA

Dated: March 24, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–9032 Filed 4–23–87; 8:45am]

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federal register

Friday
April 24, 1987

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 910, etc.

Federal Surface Coal Mining and Reclamation Operations, Georgia et al., Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, and 947

Surface Coal Mining and Reclamation Operations Under Federal Programs in Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is updating Federal programs promulgated under the Surface Mining Control and Reclamation Act of 1977 (the Act) to reflect section numbering changes and rule content revisions made in OSMRE's permanent program rules during regulatory reform. Because of these changes, certain incorrect Federal program cross-reference citations are corrected. The rule corrects those inaccurate cross-reference and revises all Federal programs except that for Tennessee to include those changes made during regulatory reform. The Tennessee Federal program was promulgated after regulatory reform and already includes the changes cited here.

EFFECTIVE DATE: May 26, 1987.

ADDRESSES: For updated copies of the regulatory notebook contact: Office of Surface Mining Regulations and Enforcement, 1951 Constitution Ave., NW., Room 139, Washington, DC 20240. Telephone (202) 343–5587 (FTS 343–5587). (Subscription price is $40 per year for quarterly updates. Check made payable to OSMRE.)

FOR FURTHER INFORMATION CONTACT: James Kress, Branch of Environmental and Economic Analysis, Room 5401 L, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–7953 (FTS 343–5587).

SUPPLEMENTARY INFORMATION:

I. Background

On March 13, 1979, OSMRE promulgated permanent program regulations to implement the requirements of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, 44 FR 14902.

On May 16, 1980, OSMRE published a general notice of intent to promulgate Federal programs. 45 FR 32328. The notice stated that each Federal program would implement the permanent program regulations and environmental protection provisions of the Act and that each Federal program would be specific to the State for which it was promulgated. 45 FR 32329 (May 16, 1980).

In the winter and spring of 1982, OSMRE published numerous proposed changes to its permanent program rules. See 47 FR 30266 (July 13, 1982). On July 13, 1982, a notice concerning both the proposed and final permanent program rules appeared in the **Federal Register.** 47 FR 30266. The notice advised the public that any change in a permanent program rule would result in a corresponding change in the Federal programs. The notice invited comments on whether changes were necessary to accommodate unique or unusual aspects of surface mining in any Federal program State so that OSMRE could tailor the Federal program for each State as necessary.

OSMRE subsequently promulgated Federal programs for nine States. OSMRE promulgated these Federal programs using cross-references to the permanent program regulations which set the substantive standards.

Sections on various topics cross-reference the counterpart permanent program rules on those topics. The cross-referencing system made repeating the full text of the permanent regulations in each Federal program unnecessary. Where any permanent program regulations needed to be modified for use in a particular Federal program, an additional paragraph was added to change or supplement the permanent program requirement applicable to that State. Where changes were made, the changes were needed to list other State laws with which OSMRE would coordinate permit reviews, and to accommodate the State's unique terrain, climate, biological, chemical, and physical conditions.

On September 8, 1983, OSMRE revised its permanent program regulations on requirements for coal exploration. 48 FR 40622. On September 28, 1983, OSMRE revised its permanent program rules on: (1) Permit processing for surface coal mining operations, (2) general content requirements for permit applications, and (3) legal, financial, compliance, and related information requirements for permit applications. 48 FR 44344. The changes in OSMRE's permanent program rules were needed to clarify requirements and procedures for permit applications. In addition, OSMRE removed Parts 818 and 826 during regulatory reform. 48 FR 24638 (June 1, 1983); 48 FR 23356 (May 24, 1983). Because of these changes, however, some of the Federal program cross-reference citations became incorrect.

This rule corrects those inaccurate cross-references and revises the Federal programs to include changes made during regulatory reform that are indicated in the regulatory notebook. A copy of this notebook can be obtained from OSMRE at the location shown above in **ADDRESSES.** This notebook is updated quarterly and shows both old, proposed and new text for all rules that have or are being changed.

II. General Discussion and Response to Public Comments

This rule affects nine of the ten Federal program States; it is not necessary to amend the most recently promulgated Federal program (Tennessee), published on October 1, 1984, because it cross-references the revised permanent program regulations. To streamline the explanation of this rule, one preamble has been written which explains the changes in all nine Federal programs. Nine separate rules follow the preamble, with variations for each State. In addition, a redesignation table, which serves as a reader's aid to the changes made, precedes those nine rules. This table permits the reader to readily follow the extensive renumbering and other changes that are being made by this rulemaking action.

Rather than repeating the section numbers for each State every time a section is cited in the preamble. OSMRE has used two blank spaces in the citation to signify that the citation refers to all nine Federal program States discussed here. For example, the preamble discussion of § 9—.770 refers to §§ 910.770, 912.770, 921.770, 922.770, 933.770, 937.770, 939.770, 941.770, and 947.770.

The nine rules following the preamble differ from each other in minor ways. For example, only six of the nine programs contained a § 9—.818, which is removed by this rule. Since the other three Federal programs never contained § 9—.818, it is unnecessary to remove it from them.

Another difference between the programs occurs in § 9—.773, since the State statutes listed there are specific to each State.

The reader should also be aware that the index listing the section in each part for each State is revised to reflect the changes in titles and section numbers in this rule.

The following is an explanation, first of those revisions which affect all nine Federal program states, and second an explanation of revisions specific to one or more Federal program States.

General Revisions Affecting All States

1. One commenter suggested that OSMRE should prepare updated pages for the Regulation Notebook (*Office of Surface Mining Permanent Program Regulations*). This commenter further suggested that OSMRE has violated item 1 of the settlement agreement reached between the Washington Irrigation and Development Company (WIDCO) and Secretary of the Interior James G. Watt in litigation of certain parts of 30 CFR 947 by not providing those updated pages when changes have occurred in the permanent program regulations.

OSMRE does not agree. Item 1 of the settlement agreement states that OSMRE will ". . .provide to the Company a copy of the full text of all rules comprising the Washington Federal program. This will contain all Federal program rules which are in effect as of the effective date of the program.

The Company shall have a period of 30 days after receipt of the copy to notify OSM of any errors or omissions and OSM will have a period of 15 days from receipt of any notification to respond to the Company to make corrections."

OSMRE was not obligated in any way by the agreement to continue to provide WIDCO with updated pages for the regulatory notebook, unless WIDCO voluntarily subscribed to receive those pages. Updated pages for the regulatory notebook can be obtained from OSMRE by contacting the office shown in "ADDRESSES" above. It is because changes have occurred in the permanent regulations creating a disparity in cross-referenced material that OSMRE is now publishing a final updated rule to correct all Federal programs so that when a subject is cross-referenced, the material in the permanent regulations addresses that subject.

2. Related to this issue two commenters continue to express reservations to the general use of cross-referencing in the Washington Federal program. OSMRE has adopted the cross-referencing approach because it ensures that changes to OSMRE's permanent program rules will be effectively adopted in Federal program States. Together, with particularized rules for each State, it ensures consistent regulation while tailoring each program to the circumstances in each State.

Sections 9—.770 and 9—.771

Sections 9—.770 and 9—.771 are removed under this rule because they cross-reference superseded permanent program regulations. When OSMRE revised its permanent program rules, Parts 770 and 771 were removed and their provisions were consolidated into a new Part 773. 48 FR 44334 (September 28, 1983).

Although § 9—.770 is removed by this rule, the applicable State statutes cited in Paragraphs (b), (c), and (d) (where they occur) are moved intact to § 9—.773. The paragraphs are given different letter designations, if necessary, to maintain alphabetical order within the new section. Any references within these paragraphs to Part 770 are corrected to cite Part 773. There is no change in substance due to this citation change. For further explanation, see the discussion in this preamble of changes in § 9—.773.

Paragraph (b) of § 9—.771 is removed because it references § 736.25, a section that was never promulgated. OSMRE proposed § 736.25, 50 FR 7522, on February 22, 1985. If § 736.25 is adopted, it will apply to all Federal programs. The permit fee provision referred to in § 9—.771(b) is now found in § 777.17, and is included in each Federal program by this rule through a cross-reference at § 9—.777.

Section 9—.772

Section 9—.772, which contains requirements for coal exploration, is added in this rule. Part 772 contains some of the provisions previously found in Part 776, which was removed during regulatory reform. 48 FR 40622 (September 8, 1983). Paragraphs (a) and (b) and Paragraph (c), where it occurs, of § 9—.776 are redesignated as Paragraphs (a), (b), and (c) of § 9—.772 and cross reference Part 772. There is no change in the content or meaning of these paragraphs.

Section 9—.773

Section 9—.773 is added to cross-reference Part 773 of the permanent program regulations. Section 9—.773(b) added to the requirements under the corresponding permanent program rules providing additional guidance to the permit applicant. The section also establishes procedures for handling permit applications, as 30 CFR Part 773 requires. The procedures provide guidelines for handling applications which are grossly deficient, for obtaining additional information, and for determining administrative completeness. These permit application procedures were promulgated in the Tennessee Federal program. 49 FR 38874 (October 1, 1984).

3. One commenter suggested that coordination efforts between Federal, State, and local agencies, and private groups have been minimal. They noted particular concerns in the State of Washington. The commenter suggested that OSMRE should develop guidelines outlining what effort must be made to ensure full cooperation and exchange of information among the affected Federal, State, and local agencies when mine applications are received.

OSMRE makes every effort to ensure that the public and governmental agencies are fully informed and have a chance to participate in all surface coal mine application and permit actions. This requirement was strengthened through proposed § 9—.773 found at 50 FR 31674 (August 5, 1985). The requirements of § 9—.773 were further strengthened to include instances where a permit was revised or renewed and where permit rights were transferred, assigned, or sold with the concurrent proposal of § 9—.774 50 FR 31674; (August 5, 1985). The inclusion of these two sections in the Federal programs to supplement 30 CFR 773.13, cross-reference here, strengthens the participation and coordination roles that citizen groups and other governmental agencies play during the permitting process in Federal Program States.

4. The same commenter suggested that the regulations set a maximum amount of time that OSMRE has to declare a permit application administratively complete. The commenter was concerned that a potential exists for an abuse of the system if OSMRE has unlimited time to declare such a permit administratively complete.

OSMRE disagrees. The period of time that it would take to make this decision is affected by at least two variables which are not under the control of OSMRE. The first is the size and complexity of the permit application. It would obviously be a longer and more involved process to review an application for a large, complex mine than it would be for a smaller, less complex mine. The second variable depends on the applicant. If OSMRE needs more information from the applicant, it is dependent upon the applicant to respond as quickly as he/she can. Again, however, if the information that is required of the applicant is substantial, more time would be needed to respond.

OSMRE does not agree with the commenter that response dates are negotiable. OSMRE realizes, however, that the preparation of responses to

some questions may require more effort than others and takes this fact into consideration when setting a response date. OSMRE, as the regulatory authority, retains the right to require a reasonable response time for any required additional data. On the other hand, response times would not be arbitrarily imposed, but to avoid protracted periods for completion of the permitting process, it must retain the authority to set response dates.

6. Two commenters objected to the requirement in § 9—.816 that "boundaries, topsoil storage areas, sediment control structures, roads, and other significant factors contained in the application [be] marked by flags." The commenters suggested wording that would leave to the discretion of the applicant whether to mark areas. The applicant would still be required to be able to show OSMRE's visiting representative the location of all pertinent features contained in the application.

OSMRE does not accept this suggestion. The presence of markers is a requirement of the permanent regulatory program and all Federal programs and was not proposed for deletion. § 9—.816 cross-references 30 CFR Part 816 of the permanent regulations which requires signs and markers to be "maintained during the conduct of all activities to which they pertain," and that the "perimeter of a permit area shall be clearly marked before the beginning of surface mining activities." Further, the act specifically requires such signs in § 517(d) and 701(17).

7. One commenter suggested that the words "and the National Historic Preservation Act, 16 U.S.C. sections 470 et seq." (NHPA) be inserted between "National Environmental Policy Act, 12 U.S.C. 4322," (NEPA) and the word "shall" in proposed § 947.773(b)(6).

OSMRE generally agrees with the commenter. However, because there are laws in addition to NEPA and NHPA with which coordination and compliance are required, and because proposed § 947.773(b)(6) seemingly limited the coordination and compliance requirements to NEPA, adding NHPA would be inadequate to meet the full requirements of coordination and compliance with those additional laws. Therefore, OSMRE is deleting proposed § 9—.773(b)(6), and relying on § 9—.773(a) to include all the required laws through cross-referencing.

8. Two commenters objected to the requirement that applicants are required to submit data needed for the preparation of an environmental assessment (EA) or impact statement (EIS) and, therefore, requested that OSMRE delete from the section the provision that failure to submit such data could result in disapproval of the application.

OSMRE rejects this suggestion.

Proposed § 9—.773(c) authorizes the Office to obtain permit information beyond that specified in 30 CFR Part 773. The Office may need the additional information in order to meet its obligations under the Federal laws identified in 30 CFR § 773.12. The provision would also allow the Office to obtain information needed to comply with the National Environmental Policy Act. It would, therefore, be to the applicant's advantage to provide as much data as are needed for the application process that could also be used in the NEPA compliance process. This provision was incorporated into the Tennessee Federal program. 49 FR 38894 (October 1, 1984). Because proposed § 9—.773(b)(6) is deleted (see comment 7 above), the proposed disapproval option is also deleted.

As noted above, the State statutes listed in § 9—.770 are moved to § 9—773, since § 9—.770 is removed under this rule. The paragraphs are redesignated to maintain alphabetical order within the new section. Any references within these paragraphs to Part 770 are replaced with references to Part 773. For example, in Massachusetts, § 921.770(b) is redesignated § 921.773(d). No change in meaning is intended. The paragraph's internal reference to Part 770 is changed to Part 773. Section 921.770(c) now becomes § 921.773(e), and its internal reference to Part 770 is changed to Part 773. The existing requirement in §§ 933.786(b) and 947.786(b) that OSMRE notify certain North Carolina and Washington State agencies of permit decisions remains substantively unchanged. However, these sections are redesignated as §§ 933.773(f) and 947.773(g) respectively.

9. Two applicants expressed concern that the requirements of proposed § 947.773(c) would be used to encompass the whole range of Federal law. The commenters want assurance that the data required will only be those applicable to the environmental and reclamation focus of SMCRA.

OSMRE is obligated to comply or to ensure compliance with numerous federal laws other than the Act. All major Federal actions, for example, are subject to NEPA. Federal undertakings are subject to the National Historic Preservation Act. OSMRE must also comply with the Endangered Species Act. Other Federal laws may apply in specific circumstances. Section 9—.773 ensures that OSMRE will have enough information to meet its obligations under those laws.

10. Two commenters believe that proposed § 947.773(e) directs the Secretary to carry out State and local regulatory activities. The commenters suggest alternative wording that would clarify the Secretary's role in coordinating Federal law with State law.

The Secretary will not enforce State and local law; therefore, OSMRE is adopting a commenter's suggested wording for § 947.773(e). The final wording reads, "The Secretary shall coordinate the SMCRA permit with appropriate State and regional or local agencies, to the extent possible, to avoid duplication with the following State and regional or local regulations: . . ."

11. OSMRE is also adopting one commenter's suggestion that the heading for proposed § 947.773(e)(8) be changed to read: "(8) Cities, Counties and Regional Agencies:"

Section 9—.774

Section 9—.774 provides procedures and requirements for permit revisions, renewals, and transfer, assignment or sale of permit rights.

12. One commenter expressed concern that even though § 9—.774 gives OSMRE the authorization it needs to carefully consider permit revisions, proposed § 9—.774 lacked requirements that provide for adequate public notice and opportunity to comment on major permit revisions.

OSMRE disagrees. Proposed § 9—.774(a) cross-references 30 CFR Part 774 which in turn cross-references §§ 773.13, Public Participation in Permit Procesing § 773.19(b)(1) and (3), Permit Issuance and Right of Renewal, and 778.21, Proof of Publication. OSMRE believes that these rules adequately provide for public notice and participation in permit revisions. Therefore, proposed § 9—.774 remains unchanged in the final rule.

Section 9—.774(b) specifies that any revision to the approved permit is subject to review and approval by OSMRE. Section 9—.774(b)(1) further specifies that significant revisions are to be processed in accordance with the public notice and hearing provisions listed in § 774.13(b)(2) of the permanent program rules.

Section 774.13(b)(2) of the permanent program rules directs the regulatory authority to develop guidelines establishing the scale or extent of permit revisions for which all the permit application information requirements and procedures of Subchapter G, including notice, public participation, and notice of decision requirements of §§ 773.13, 773.19(b)(1) and (3), and 778.21

shall apply. The regulation further provides that such procedures shall apply at a minimum to all significant permit revisions. OSMRE has not adopted the guidelines proposed at § 9—.774(b)(2). OSMRE has reopened the comment period for that section. OSMRE, received a petition for rulemaking to establish guidelines for permit revisions in the permanent program. The consideration of this petition, therefore, potentially affects OSMRE's final decision on the guidelines proposed for the nine Federal program States included in the August 5, 1985, notice.

To effectively respond to public comments, OSMRE has taken three actions. (1) Because the scope had been clarified by the petitioners, OSMRE reopened the comment period on the petition for a 30 day period beginning on August 1, 1986. (51 FR 27559, August 1, 1986). (2) In order to avoid conflict with the efforts of the Division of Tennessee Permitting, OSMRE has removed § 9—.774(b)(2) from this final renumbering rule. (3) Because applications for significant permit revisions have specific requirements in SMCRA and the existing regulations, OSMRE reopened regulations, OSMRE reopened the comment period on the portion of these proposed rules pertaining to guidelines in determining the scale or extent of proposed permit revisions and in determining whether the proposed revision is significant. The comment period for this section was reopened for 30 days (51 FR 27559, August 1, 1986).

The proposed guidelines, for which the comment period was reopened, had been listed under §§ 910.774(b)(2), 912.774(b)(2), 921.774(b)(2), 922.774(b)(2), 933.774(b)(2), 937.774(b)(2), 939.774(b)(2), 941.774(b)(2), and 947.774(b)(2) in the 1985 notice. OSMRE is reconsidering those proposed guidelines in its consideration of the petition for rulemaking.

13. Two commenters requested clarification of the meaning of the statement found in proposed § 947.774(b)(3), published as final § 947.774(b)(2), that OSMRE will act on a permit revision request within 60 days. It was unclear to the commenters if "act" meant review and final approval or disapproval or merely an action to determine if the proposed revision is significant. The proposed section also has certain provisions for time extensions, and the commenters asked whether an extension is appealable under the Administrative Procedure Act (APA).

OSMRE will make every effort to approve or disapprove a permit revision application within 60 days and has changed the rule accordingly. It should be noted, however, that where a significant environmental impact is found, an EIS would be required, which could not be completed within 60 days. If, for that or other reasons, additional time is required, OSMRE will follow the procedures set forth in proposed § 9—.774(b)(3), published as final § 9—.774(b)(2). The decision that more than 60 days are needed to make a final decision on an application is not appealable under APA, nor are there any other provisions to appeal decisions to extend the time needed to act upon a revision request.

Section 9—.774(c) specifies a 30-day period within which to submit written comments on an application for approval of a transfer, assignment, or sale of a permit. There is no period set in 30 CFR 774.17. This provision is added to give commenters guidance on a reasonable time frame. A provision similar to § 9—.774(b) and (c) of this proposed rule was promulgated in the Tennessee Federal program. 49 FR 38894 (October 1, 1984).

Section 9—.775

Section 9—.775 is added to cross-reference Part 775, which was added during OSMRE's regulatory reform. Part 775, which addresses administrative and judicial review of decisions on permits, contains some provisions previously found in Part 787, which was removed during regulatory reform.

Section 9—.776

OSMRE has removed §9—.776 because it cross-referenced a superseded permanent program regulation. Requirements for coal exploration are now found in § 9—.772.

Section 9—.777

Part 777 was added during OSMRE's regulatory reform and is cross-referenced to the Federal programs in this rule. Part 777 contains general content requirements for permit applications. Portions of previous Part 771 were incorporated into Part 777 during regulatory reform.

Section 9—.778

OSMRE has revised § 9—.778 in the Federal programs to reflect 30 CFR Part 778 as revised during regulatory reform. Part 778 contains rules on the legal, financial, and compliance information required in permit applications. Previous 30 CFR 782, which originally was cross-referenced at § 9—.782, addressed underground mines and was incorporated into Part 778 during regulatory reform.

Sections 9—.782, 9—.786, 9—.787, 9—.788, 9—.818, 9—.826

OSMRE has removed these sections because they cross-reference superseded permanent program regulations. During regulatory reform, the requirements of previous Part 782 were incorporated into Part 778. Most of the requirements of previous Part 786 were incorporated into Part 773. The requirements of previous Part 787 were incorporated into Part 775, and requirements from previous Part 778 were included in Part 774. See 48 FR 44344 (September 28, 1983).

It is not necessary to remove § 9—.818 in Massachusetts, North Carolina, or Rhode Island, because Part 818 was not cross-referenced in these Federal programs. This rule removes § 9—.818 from the other six Federal programs, because Part 818 was removed during regulatory reform. 48 FR 24638 (June 1, 1983).

OMSRE has removed § 9—.826 from all nine Federal programs because it cross-referenced Part 826, which was removed during regulatory reform. 48 FR 23356 (May 24, 1983).

Revisions Specific to One or More Federal Program States

Sections 910.700, 912.700, 921.700, 922.700, 937.700, and 941.700

OSMRE had made minor editorial revisions in the titles of §§ 910.700, 922.700, and 937.700. OSMRE has also made minor editorial revisions to § 9—.700(d) in the Idaho, Massachusetts, and South Dakota Federal programs to improve clarity.

OSMRE has revised § 9—.700(g) in the Massachusetts, North Carolina, South Dakota and Washington Federal programs. These paragraphs incorrectly cross-referenced §§ 9—.770 through 9—.778. They have been changed to correctly cross-reference §§ 9—.772 through 9—.775, and 9—.777 through 9—.785.

OSMRE has amended §§ 910.773(e), 922.773(e), and 933.773(d) to remove OSMRE from the responsibility of enforcing State laws and regulations that are more stringent than or are in addition to regulations promulgated in the Federal programs, which do not interfere with the achievement of the purposes and requirements of the Act. The revised language provides for the coordination of review and issuance of permits for surface mining and reclamation operations with the requirements of certain laws and regulations of the three States.

Sections 910.816 and 910.817

OSMRE has removed references to 30 CFR 816.49(a), 816.89(b), and 816.112(d) from § 910.816 of the Georgia Federal program. OSMRE has also removed these references to 30 CFR 817.49(a), 817.89(b), and 817.112(d) from § 910.817. This revision removes specific references which were rendered inaccurate during regulatory reform, and is not substantive. No change is made in the content or meaning of these sections since §§ 910.816 and 910.817 continue to cross-reference Parts 816 and 817 respectively.

III. Procedural Matters

Federal Paperwork Reduction Act

The recordkeeping and reporting requirements of Federal programs are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The DOI has examined this proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it does not constitute a major rule and does not require a regulatory impact analysis. No major economic impact would occur if this rule were adopted, because the rule would affect only a small number of mining operations.

Regulatory Flexibility Act

The DOI has examined this proposed rule according to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and determined that it will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

Section 702(d) of the Act provides that promulgation of Federal programs does not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4332. This provision has been interpreted to include revisions to Federal programs. Thus, no environmental assessment is required for this rule.

Author

The author of this regulation is James M. Kress, Division of Permit and Environmental Analysis, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC. 20240; Telephone (202) 343-7953.

List of Subjects in 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, and 947

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting and recordkeeping requirements.

Accordingly, 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, and 947 are amended as follows:

Dated: March 3, 1987.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

Subchapter T—[Amended]

1. In Title 30 CFR, Chapter VII, Subchapter T the following sections are removed.

Section and Action	
910.770	Removed.
910.771	Removed.
910.776	Removed.
910.786	Removed.
910.787	Removed.
910.788	Removed.
910.818	Removed.
910.826	Removed.
912.770	Removed.
912.771	Removed.
912.776	Removed.
912.782	Removed.
912.786	Removed.
912.787	Removed.
912.788	Removed.
912.818	Removed.
912.826	Removed.
921.770	Removed.
921.771	Removed.
921.776	Removed.
921.782	Removed.
921.786	Removed.
921.787	Removed.
921.788	Removed.
921.826	Removed.
922.770	Removed.
922.771	Removed.
922.776	Removed.
922.782	Removed.
922.787	Removed.
922.788	Removed.
922.818	Removed.
922.826	Removed.
933.770	Removed.
933.771	Removed.
933.776	Removed.
933.782	Removed.
933.786	Removed.
933.787	Removed.
933.788	Removed.
937.770	Removed.
937.771	Removed.
937.776	Removed.
937.782	Removed.
937.786	Removed.
937.787	Removed.
937.788	Removed.
937.818	Removed.
937.826	Removed.
939.776	Removed.
939.782	Removed.
939.786	Removed.
939.787	Removed.
939.788	Removed.
939.826	Removed.
941.770	Removed.
941.771	Removed.
941.776	Removed.
941.782	Removed.
941.786	Removed.
941.787	Removed.
941.788	Removed.
941.818	Removed.
941.826	Removed.
947.770	Removed.
947.771	Removed.
947.776	Removed.
947.782	Removed.
947.786	Removed.
947.787	Removed.
947.788	Removed.
947.818	Removed.
947.826	Removed.

PART 910—GEORGIA

2. The authority citation for Part 910 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

3. Section 910.700 is amended by revising the heading to read:

§ 910.700 Georgia Federal program.

4. Section 910.772 is added to read as follows:

§ 910.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such reviews, setting forth the reasons and the additional time that is needed.

5. Section 910.773 is added to read as follows:

§ 910.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, "Requirements for Permits and Permit Processing", shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 910.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Issuance of permits shall also be coordinated with permits issued pursuant to the Georgia Water Quality Control Act, section 17–501; the Georgia Solid Waste Management Act, section 43–1681; the Georgia Air Quality Act of 1973; the Georgia Hazardous Waste Management Act of 1979; the Georgia Groundwater Use Act; and the rules of the Georgia Fire Safety Commission on blasters' permits.

(e) The Secretary shall provide for coordination of review and issuance of permits for surface mining and reclamation operations with applicable requirements of the Georgia Wildflower Preservation Act of 1973, section 43–1801 *et seq.;* the Georgia Endangered Wildlife Act of 1973, section 43–2101 *et seq.;* the Georgia Heritage Trust Act of 1975, section 43–2301 *et seq.;* and the Georgia Cave Protection Act of 1977, section 43–2501 *et seq.*

6. Section 910.774 is added to read as follows:

§ 910.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (2), and 778.21 and of Part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever, is later.

7. Section 910.775 is added to read as follows:

§ 910.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

8. Section 910.777 is added to read as follows:

§ 910.777 General content requirements for permit applications.

Part 777 of this chapter, "General Content Requirements for Permit applications", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

9. Section 910.778 is revised to read as follows:

§ 910.778 Permit applications-minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, "Permit applications-minimum requirements for legal, financial, compliance, and related information", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

10. Paragraph (b) of § 910.816 is revised to read as follows:

§ 910.816 Performance standards-surface mining activities.

* * * * *

(b) No person shall conduct surface coal mining operations except in compliance with the Georgia Safe Dams Act and Rules for Safety of the Natural Resources, Environmental Protection Division; the Solid Waste Management Rules of the Georgia Department of Natural Resources, Environmental Protection Division, Chapter 391–3–4; and the Georgia Seed Laws and Regulation 4.

Paragraph (b) of § 910.817 is revised to read as follows:

§ 910.817 Performance standards-underground mining activities.

* * * * *

(b) No person shall conduct surface coal mining operations except in compliance with the Georgia Safe Dams Act and Rules for Safety of the Natural Resources, Environmental Protection Division; the Solid Waste Management Rules of the Georgia Department of Natural Resources, Environmental Protection Division, Chapter 391–3–4; and the Georgia Seed Laws and Regulation 4.

PART 912—IDAHO

12. The authority citation for Part 912 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

13. Section 912.700(d) is revised to read as follows:

§ 912.700 Idaho Federal program.

* * * * *

(d) The recordkeeping and reporting requirements of this part are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507.

* * * * *

14. Section 912.772 is added to read as follows:

§ 912.772 Requirements for coal exploration.

(a) Part 772 of this chapter, "Requirements for coal exploration", shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

15. Section 912.773 is added to read as follows:

§ 912.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, "Requirements for permits and permit processing", shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings:

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 912.773(b)(2)(ii) by the specified date, the office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued and/or certificates required by the State of Idaho, pursuant to Idaho Code sections 47–704, 47–1317, 47–1318, 47–1319, 47–1317 (Supp.), and 39–101 *et seq.* (Suppl).

16. Section 912.774 is added to read as follows:

§ 912.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, "Revision; renewal; and transfer, assignment, or sale of permit rights", shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they were new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b)(1) and (b)(2), and 778.21 and of Part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirement of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

17. Section 912.775 is added to read as follows:

§ 912.775 Administrative and judicial review of decisions.

Part 775 of this chapter, "Administrative and Judicial review of decisions", shall apply to all decisions on permits.

18. Section 912.777 is added to read as follows:

§ 912.777 General content requirements for permit applications.

Part 777 of this chapter, "General content requirements for permit applications", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

19. Section 912.778 is revised to read as follows:

§ 912.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, "Permit applications—minimum requirements for legal, financial, compliance and related information", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

PART 921—MASSACHUSETTS

20. The authority citation for Part 921 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

21. Paragraphs (d) and (g) of § 921.700 are revised to read as follows:

§ 921.700 Massachusetts Federal program.

* * * * *

(d) The recordkeeping and reporting requirements of this part are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507.

* * * * *

(g) The Secretary may grant a limited variance from the performance standards of §§ 921.815 through 921.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 921.772 through 921.785 demonstrates in the application that:

(1) Such a variance is necessary because of the nature of Massachusetts' terrain, climate, biological, chemical or other relevant physical conditions; and

(2) The proposed variance is not less effective than the environmental protection requirements of the regulations in this program and is consistent with the Act.

22. Section 921.772 is added to read as follows:

§ 921.772 Requirements for coal exploration.

(a) Part 772 of this chapter, "Requirements for coal exploration", shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

23. Section 921.773 is added to read as follows:

§ 921.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, "Requirements for permits and permit processing", shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the applications to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 921.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) No person shall conduct coal exploration which results in the removal of more than 250 tons of coal nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 773 and applicable permits issued pursuant to the laws of the State of Massachusetts, including: the Historic and Scenic Rivers Act, Mass. Ann. Laws Ch. 21, Sections 8–17B; Massachusetts Register of Historic Places, Mass. Ann. Laws Ch. 152 and the regulations (950 CMR 71); Historical Preservation Statutes, Mass. Ann. Laws Ch. 9, Sections 26–27(D); real property statutes. Mass Ann. Laws Ch. 184, Sections 31–32; statutes governing State forests and parks, Mass. Ann. Laws Ch. 132, Sections 40–46; of the Wetlands Protection Act Ch. 131, Sections 40–46; statutes and rules governing dredging permits, Mass. Ann. Laws Ch. 21A; Section 14, 310 CMR 9.01 *et seq.;* the Massachusetts Hazardous Waste Management Act Ch. 21C, Sections 1–14; the Massachusetts Clean Water Act Ch. 21, Sections 26–53; statutes governing the construction of roads, drains, or ditches, Mass. Ann. Laws Ch. 252, Sections 15–18; statutes governing drilling or removal of sand or any minerals, Mass. Ann. Laws Ch. 132A, Sections 13–181 and statutes governing use, storage, and handling of explosives, Mass. Ann. Laws Ch. 148, Sections 9–19.

(e) The Secretary shall provide for coordination of review and issuance of a coal exploration or surface coal mining and reclamation permit with the review and issuance of other Federal and State permits listed in this subpart and Part 773 of this chapter.

24. Section 921.774 is added to read as follows:

§ 921.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, "Revision; renewal; and transfer, assignment, or sale of permit rights", shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (2), and 778.21 and of Part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

25. Section 921.775 is added to read as follows:

§ 921.775 Administrative and judicial review of decisions.

Part 775 of this Chapter, "Administrative and judicial review of decisions", shall apply to all decisions on permits.

26. Section 921.777 is added to read as follows:

§ 921.777 General content requirements for permit applications.

Part 777 of this chapter, "General content requirements for permit applications", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

27. Section 912.778 is revised to read as follows:

§ 921.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, "Permit applications—minimum requirements for legal, financial, compliance and related information", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

PART 922—MICHIGAN

28. The authority citation for Part 922 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

29. The heading for § 922.700 is revised to read:

§ 922.700 Michigan Federal Program.

30. Section 922.772 is added to read as follows:

§ 922.772 Requirements for coal exploration.

(a) Part 772 of this chapter, "Requirements for coal exploration", shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

31. Section 922.773 is added to read as follows:

§ 922.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, "Requirements for permits and permit processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 912.773(b)(2)(ii) by the specified date, the office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued pursuant to the: Michigan Construction and Maintenance Act, MCL section 254.25, pertaining to the alteration of watercourses; Michigan Dams in Streams or Rivers Act of 1963, MCL section 281.131; Michigan Explosives Act of 1970, MCL section 29.41, pertaining to the use of explosives (permit is issued by an officer of a local police or sheriff's department or a designated officer of the State police); Michigan Hazardous Waste; Management Act of 1980, MCL section 299.501; Michigan Inland Lake and Streams Act of 1972, MCL section 281. 951; Michigan Mineral Wells Act of 1969, MCL section 319.211; Michigan Sand Dune Protection and Management Act of 1976, MCL section 281.651; Michigan Solid Waste Management Act of 1978, MCL section 299.401; Michigan Water Resources Commission Act, MCL section 323.1; Michigan Water Resources Commission General Rules, R–323.1001 et seq.; Michigan Water Quality Standards, R–323.1041; the Michigan Wetland Protection Act of 1969, MCL section 281.701; Michigan Aboriginal Records and Antiquities Act, MCL section 299.51; Michigan Great Lakes Submerged Lands Act, MCL section 322.701 and the Michigan Historical Activities Act, MCL section 399.201.

(e) The Secretary shall provide for the coordination of review and issuance of permits for surface mining and reclamation operations with applicable requirements of the Michigan Air Pollution Act of 1965, MCL section 336.11 and the Michigan Administrative Rules for Air Pollution Control, R–336.1101 et seq.; the Michigan Control and Eradication of Noxious Weeds Act, MCL section 247.61; the Michigan Endangered Species Act of 1974, MCL section 299.221 and the Michigan Hazardous Waste Management Act of 1980. The Secretary shall further coordinate review of permits, where applicable, with the appropriate State agencies concerning compliance with the Michigan Farmland and Open Space Preservation Act, MCL section 554.71.

32. Section 922.774 is added to read as follows:

§ 922.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; renewal; and transfer, assignment, or sale of permit rights", shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (2), and 778.21 and of Part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

33. Section 922.775 is added to read as follows:

§ 922.775 Administrative and judicial review of decisions.

Part 775 of this chapter, "Administrative and judicial review of decisions", shall apply to all decisions on permits.

34. Section 922.777 is added to read as follows:

§ 922.777 General content requirements for permit applications.

Part 777 of this chapter, "General content requirements for permit applications", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

35. Section 922.778 is revised to read as follows:

§ 922.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, "Permit applications—minimum requirements for legal, financial, compliance, and related information", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

PART 933—NORTH CAROLINA

36. The authority citation for Part 933 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

37. Paragraph (g) of § 933.700 is revised to read as follows:

§ 933.700 North Carolina Federal program.

* * * * *

(g) The Secretary may grant a limited variance from the performance standards of §§ 933.815 through 933.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 933.772 through 933.785 demonstrates in the application that: (1) Such variance is necessary because of the unique nature of North Carolina's terrain, climate, biological, chemical, or other relevant physical conditions; and (2) the proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

38. Section 933.772 is added to read as follows:

§ 933.772 Requirements for coal exploration.

(a) Part 772 of this chapter, "Requirements for coal exploration", shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

39. Section 933.773 is added to read as follows:

§ 933.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, "Requirements for permits and permit processing", shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 912.773(b)(2)(ii) by the specified date, the office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) The issuance of permits shall be coordinated, to the extent practicable, with the issuance of the following permits, leases and/or certificates required by the State of North Carolina: Water discharge permit (NCGS 143–215.1); water use permits in capacity use area (NCGS 143–215.5); an approval of dam construction (NCGS 143–215.108), an air pollution control permit (NCGS 143–215.26, Title 15, North Carolina Administrative Code, Subchapter 2K); air and water quality reporting systems (NCGS 143–215.63—143–215.69); a geophysical exploration permit (Title 15, North Carolina Administrative Code, Subchapter 5C); a development permit for operations in an area of environmental concern designated pursuant to the Coastal Area Management Act (NCGS 113A–100—113A–128); a dredging or filing permit issued by the Department of Natural Resources and Community Development (NCGS 113–229); a permit for dumping of toxic substances (NCGS 14–284.2); compliance with any applicable land use regulations adopted in a soil conservation district (NCGS 139–9); and compliance with any county ordinance regarding explosives (NCGS 153A–128).

(e) No person shall be granted a permit to conduct exploration which results in the removal of more than 250 tons of coal or shall conduct surface coal mining unless that person has acquired all required permits, leases, and/or certificates listed in paragraph (d) of this section.

(f) The Secretary shall provide to the North Carolina Department of Natural Resources and Community Development a copy of each decision to grant or deny a permit application.

40. Section 933.774 is added to read as follows:

§ 933.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, "Revision; renewal; and transfer, assignment, or sale of permit rights", shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (2), and 778.21 and of Part 775.

(2) OSMRE shall make every effort to approve or disappove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

41. Section 933.775 is added to read as follows:

§ 933.775 Administrative and judicial review of decisions.

Part 775 of his chapter, "Administrative and judicial review of decisions", shall apply to all decisions on permits.

42. Section 933.777 is added to read as follows:

§ 933.777 General content requrements for permit applications.

Part 777 of this chapter, "General content requirements for permit applications", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

43. Section 933.778 is revisd to read as follows:

§ 933.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, "Permit applications—minimum requirements for legal, financial, compliance and related information", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

PART 937—OREGON

44. The authority citation for Part 937 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

45. The title of § 937.700 is revised to read:

§ 937.700 Oregon Federal program.

46. Section 937.772 is added to read as follows:

§ 937.772 Requirements for coal exploration.

(a) Part 772 of this Chapter, "Requirements for coal exploration," shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) Where coal exploration is to occur on State lands or the minerals to be explored are owned by the State, a mineral lease issued by the Oregon Division of Lands authorizing the coal exploration is required to be filed with the permit application.

47. Section 937.773 is added to read as follows:

§ 937.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, "Requirements for permits and permit processing," shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the application of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 937.773(b)(2)(ii) by the specified date, the office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued and/or certificates required by the State of Oregon, including compliance with Oregon's Statewide Planning Goals (ORS 197.180) and any relevant Country Comprehensive Land Use Plans (ORS 197.005–ORS 197.775); license from the Division of State Lands where mines or exploration are on State lands (ORS 273.005–273.815); Solid Waste Disposal Permits, Hazardous Waste Transportation and Disposal Permits, Industrial Waste Disposal Permits issued by the Department of Environmental Quality (ORS 459.005–ORS 459–850); leases issued by the county where county designated forest lands are involved (ORS 275.340); noise restrictions enforced by the Department of Environmental Quality (ORS 467.010–467.990); Air Contaminant Discharge Permits (ORS 468.005–ORS 468.997), Water Pollution Control Facilities Permits, Waste Discharge Permits (ORS 468.900–ORS 468.997), Energy Facility Site Certificates (ORS 469.300–ORS 469.570, ORS 469.990, ORS 469.992) issued by the Energy Facilities Siting Council; Department of Fish and Wildlife issues permits for dam use

(ORS 509.600), for use of explosives used to construct dams or similar structures (ORS 509.140); the State Fire Marshall issues Certificates of Possession for persons having or using explosives (ORS 480.210); the Division of State Lands issues license for use of dredging machines (ORS 517.611–ORS 517.700); the Department of water Resources issues permits with respect to the use, appropriation or diversion of State waters (ORS 537.130, ORS 537.135) and surface waters (ORS 537.135, ORS 537.140 and ORS 537.800), and permits relative to the design, construction and maintenance of dams, dikes or other hydraulic structures or works (ORS 540.350, ORS 540.400); matter may be removed from the beds and banks of State waters and fill may be deposited in State waters once a permit is obtained from the Division of State Lands (ORS 541.605–ORS 541.990).

48. Section 937.774 is added to read as follows:

§ 937.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, "Revision; renewal; and transfer, assignment, or sale of permit rights," shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (2), and 778.21 and of Part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstance. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

49. Section 937.775 is added to read as follows:

§ 937.775 Administrative and judicial review of decisions.

Part 775 of this chapter, "Administrative and judicial review of decisions", shall apply to all decisions on permits.

50. Section 937.777 is added to read as follows:

§ 937.777 General content requirements for permit applications.

Part 777 of this chapter, "General content requirements for permit applications", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

51. Section 937.778 is revised to read as follows:

§ 937.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, "Permit applications—minimum requirements for legal, financial, compliance and related information", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

PART 939—RHODE ISLAND

52. The authority citation for Part 939 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

53. Section 939.772 is added to read as follows:

§ 939.772 Requirements for coal exploration.

(a) Part 772 of this chapter, "Requirements for coal exploration", shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, any person who intends to conduct coal exploration shall, prior to conducting the exploration, file with the regulatory authority a written notice of intention to explore including:

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(3) A precise description and map, at a scale of 1:24,000 or larger, of the exploration area;

(4) A statement of the period of intended exploration;

(5) If the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person who will explore claims the right to enter such area for the purpose of conducting exploration and reclamation; and

(6) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities.

(d) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

54. Section 938.773 is added to read as follows:

§ 939.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, "Requirements for permits and permit processing", shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptablity for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the application of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by

§ 939.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons of coal nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 773 and permits issued pursuant to State law, including: the Wetlands Protection Act (R.I. General Laws Section 2–1–22); Chapter 20 of the Waters and Navigation Act (petitions for ditches and drains) (R.I. General Laws Section 46–20–1 *et seq.*); the Coastal Resources Management Council Act of 1971 (R.I. General Laws Section 46–23–6); the Rhode Island Hazardous Waste Management Act of 1978 (R.I. General Laws Section 23–19.1–11 *et seq.*); the Rhode Island Act for Inspection of Dams and Reservoirs (R.I. General Laws Section 46–19–1 *et seq.*) and Chapter 23–28.28 of Rhode Island's Health and Safety Code (R.I. General Laws Section 23–28.28–1 *et seq.*, permits for blasting), and an order of approval authorizing discharge of sewage into waterways within the State and modification or operation of sewage disposal systems if applicable (R.I. General Laws Sections 46–12–1 to 46–12–37). The permit issued by the Secretary shall incorporate the requirements of the Rhode Island Historical Zoning Act of 1954, as amended (R.I. General Laws Section 45–24.1–1 *et seq.*) and the Rhode Island Antiquities Act of 1974 (R.I. General Laws Section 42–45.1–1 *et seq.*).

(e) The Secretary shall coordinate review and issuance of a coal exploration or surface coal mining permit with the review and issuance of other Federal and State permits listed in this Section and 30 CFR Part 773.

55. Section 939.774 is added to read as follows:

§ 939.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, "Revision; renewal; and transfer, assignment, or sale of permit rights", shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (2), and 778.21 and of Part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

56. Section 939.775 is added to read as follows:

§ 939.775 Administrative and judicial review of decisions.

Part 775 of his chapter, "Administrative and judicial review of decisions", shall apply to all decisions on permits.

57. Section 939.777 is added to read as follows:

§ 939.777 General content requirements for permit applications.

Part 777 of this chapter, "General content requirements for permit applications", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

58. Section 939.778 is revised to read as follows:

§ 939.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, "Permit applications—minimum requirements for legal, financial, compliance and related information", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

PART 941—SOUTH DAKOTA

59. The authority citation for Part 941 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

60. Paragraphs (d) and (g) of § 941.700 are revised to read as follows:

§ 941.700 South Dakota Federal program.

* * * * *

(d) The recordkeeping and reporting requirements of this part are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507.

* * * * *

(g) The Secretary may grant a limited variance from the performance standards of §§ 941.815 through 941.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 941.772 through 941.785 demonstrates in the application that:

(1) Such variance is necessary because of the unique nature of South Dakota's terrain, climate, biological, chemical, or other relevant physical conditions; and

(2) The proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

61. Section 941.772 is added to read as follows:

§ 941.772 Requirements for coal exploration.

(a) Part 772 of this chapter, "Requirements for coal exploration", shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the

applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

62. Section 941.773 is added to read as follows:

§ 941.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, "Requirements for permits and permit processing", shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the application of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 941.773(b)(2)(ii) by the specified date, the office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons of coal, nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 773, and permits, leases and certificates required by the State of South Dakota including compliance with: (1) Air pollution control, S.D. Comp. Laws Ann. Chap. 34A–1; (2) water pollution control, S.D. Comp. Laws Ann. Chap. 34A–2; and (3) solid waste disposal, S.D. Comp. Laws Ann. Chap. 34A–6.

(e) No person shall be granted a permit to conduct exploration which results in the removal of more than 250 tons of coal or shall conduct surface coal mining unless that person has acquired all required permits, leases, and certificates listed in paragraph (d) of this section.

63. Section 941.774 is added to read as follows:

§ 941.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, "Revision; renewal; and transfer, assignment, or sale of permit rights", shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b)(1) and (2), and 778.21 and of Part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

64. Section 941.775 is added to read as follows:

§ 941.775 Administrative and judicial review of decisions.

Part 775 of this chapter, "Administrative and judicial review of decisions", shall apply to all decisions on permits.

65. Section 941.777 is added to read as follows:

§ 941.777 General content requirements for permit applications.

Part 777 of this chapter, "General content requirements for permit applications", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

66. Section 941.778 is revised to read as follows:

§ 941.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, "Permit applications—minimum requirements for legal, financial, compliance and related information", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

PART 947—WASHINGTON

67. The authority citation for Part 947 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

68. Paragraph (g) of § 947.700 is revised to read as follows:

§ 947.700 Washington Federal program.

* * * * *

(g) The Secretary may grant a limited variance from the performance standards of §§ 947.815 through 947.828 of this part if the applicant for coal exploration approval or a surface coal mining reclamation permit submitted pursuant to §§ 947.772 through 947.785 of this part demonstrates in the application: (1) That such a variance is necessary because of the nature of the terrain, climate, biological, chemical, or other relevant physical conditions in the area of the mine; and (2) if applicable, that the proposed variance is no less effective than the environmental protection requirements of the regulations in this program and is consistent with the Act.

69. Section 947.772 is added to read as follows:

§ 947.772 Requirements for coal exploration.

(a) Part 772 of this chapter, "Requirements for coal exploration", shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

70. Section 947.773 is added to read as follows:

§ 947.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the application of the findings:

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 947.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the applicant is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) The Secretary shall coordinate, to the extent practicable, his responsibilities under the following Federal laws with the relevant Washington State laws to avoid duplication:

Federal law	Washington law
(1) Clean Water Act, as amended 33 U.S.C. 1251 *et seq.*	Water Pollution Control Act, Chapter 90.48 RCW
(2) Clean Air Act, as amended 42 U.S.C. 7401 *et seq.*	Washington Clean Air Act, Chapter 70.94 RCW.
(3) Resource Conservation and Recovery Act, 42 U.S.C. 3251.	Solid Waste Management, Chapter 70.95 RCW: Hazardous Waste Disposal Act, Chapter 70.105 RCW.
(4) National Historic Preservation Act, RCW, 16 U.S.C. 470 *et seq.*	Indian Graves and Records, Chapter 27.44.
(5) Archeological and Historic Preservation Act, 16 U.S.C. 469 *et seq.*	Archeological Sites and Resources, Chapter 27.53 RCW, Office of Archeology and Historic Preservation, Chapter 43.51A, RCW.
(6) National Environmental Policy 42 U.S.C. 4321 *et seq.*	State Environmental Policy Act, Chapter 43.21C RCW.
(7) Coastal Zone Management Act 16 U.S.C. 1451, 1453–1464.	Shoreline Management Act, Chapter 90.58, RCW.
(8) Section 208 of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*	Water Pollution Control Act, Chapter 90.48 RCW: Washington Forest Practices Act, Chapter 76.09 RCW.
(9) Endangered Species Act, 16 U.S.C. 1531 *et seq.*	Natural Area Preserves Act (Plants), Chapter 79.70, RCW: Department of Game, Chapter 43.17 RCW: Game Commission, Chapter 77.08, RCW.
(10) Fish and Wildlife Coordination Act 16 U.S.C. 661–667.	Water Resources Act of 1971, Chapter 90.54 RCW: Minimum Water Flows and Levels, Chapter 90.22 RCW.
(11) Noise Control Act, 42 U.S.C. 4903.	Noise Control Act of 1974, Chapter 70.107 RCW.
(12) Bald Eagle Protection Act 16 U.S.C. 668–668(d).	

(e) The Secretary shall coordinate the SMCRA permit with appropriate State and regional or local agencies to the extent possible, to avoid duplication with the following state and regional or local regulations:

(1) Department of Ecology:

Surface Water Rights Permit, RCW 90.03.250
Dam Safety Approval, RCW 90.03.350
Reservoir Permit, RCW 90.03.370
Approval of Change of Place or Purpose of Use (water) RCW 90.03.380
Ground Water Permit, RCW 90.44.050
New Source Construction Approval, RCW 79.94.152
Burning Permit, RCW 70.94.650
Flood Control Zone Permit, RCW 86.16.080
Waste Discharge Permit, RCW 90.48.180
National Pollution Discharge Elimination System (NPDES) Permit, RCW 90.48
Approval of Change of Point of Diversion, RCW 90.03.380
Sewage Facilities Approval, RCW 90.48.110
Water Quality Certification, RCW 90.48.160

(2) Department of Natural Resources:

Burning Permit, RCW 77.04.150 & .170
Dumping Permit, RCW 76.04.242
Operating Permit for Machinery, RCW 76.04.275
Cutting Permit, RCW 76.08.030
Forest Practices, RCW 76.09.060
Right of Way Clearing, RCW 76.04.310
Drilling Permit, RCW 78.52.120

(3) Regional Air Pollution Control Agencies:

New Source Construction Approval (RCW 70.94.152)
Burning Permit, RCW 70.94.650

(4) Department of Fisheries:

Hydraulic Permit, RCW 75.20

(5) Department of Game:

Hydraulic Permit, RCW 75.20.100

(6) Department of Social Health Services:

Public Sewage, WAC 248.92
Public Water Supply, WAC 248.54

(7) Department of Labor and Industries:

Explosive license, RCW 70.74.135
Blaster's license, WAC 296.52.040
Purchaser's license, WAC 296.52.220
Storage Magazine license, WAC 296.52.170

(8) Cities and Counties:

New Source Construction Approval. RCW 70.94.152
Burning Permit, RCW 79.94.650
Shoreline Substantial Development Permit, RCW 90.58.140
Zoning and Building Permits, Local Ordinances

(f) Where applicable, no person shall conduct coal exploration operations which result in the removal of more than 250 tons in one location or surface coal mining and reclamation operations without first obtaining permits required by the State of Washington.

(g) The Secretary shall provide a copy of the decision to grant or deny a permit application to the Washington Department of Natural Resources, the Department of Ecology and to the County Department of Planning, if any, in which the operation is located.

71. Section 947.774 is added to read as follows:

§ 947.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, "Revision; renewal; and transfer, assignment, or sale of permit rights," shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (2), and 778.21 and of Part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

72. Section 947.775 is added to read as follows:

§ 947.775 Administrative and judicial review of decisions.

Part 775 of this chapter, "Administrative and judicial review of decisions", shall apply to all decisions on permits.

73. Section 947.777 is added to read as follows:

§ 947.777 General content requirements for permit applications.

Part 777 of this chapter, "General content requirements for permit applications", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

74. Section 947.778 is revised to read as follows:

§ 947.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, "Permit applications—minimum requirements for legal, financial, compliance, and related information", shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

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federal register

Friday
April 24, 1987

Part IV

Railroad Retirement Board

20 CFR Part 200

Regulation to Implement the Provisions of the Freedom of Information Act of 1968 Regarding Fees

RAILROAD RETIREMENT BOARD

20 CFR 200

Regulation to Implement the Provisions of the Freedom of Information Reform Act of 1986 Regarding Fees

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board amends its regulation of FOIA fees to comply with the provisions of the Freedom of Information Reform Act of 1986.

EFFECTIVE DATE: May 26, 1987.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act/FOIA Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4548 (FTS 387–4548).

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99–570) requires agencies to amend their regulations of FOIA fees in accordance with OMB guidelines on uniform FOIA fees issued pursuant to this Act. The Railroad Retirement Board promulgated proposed rules at 52 FR 10384–85 (April 1, 1987). These proposed rules were drafted in conformance with OMB's proposed guidelines published at 52 FR 1992–94 (January 16, 1987). No comments were received during the comment period which expired April 13, 1987. OMB published its final guidelines at 52 FR 10012–20 (March 27, 1987). As a result of public comment to its proposed guidelines, OMB revised its guidelines in a number of respects, particularly with respect to definitions of categories of users. These final rules of the Railroad Retirement Board includes the changes OMB made in its final guidelines. It is the opinion of the Railroad Retirement Board that because the OMB final guidelines were made pursuant to public comment the Board may promulgate final rules without allowing for additional public comment.

The Railroad Retirement Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, this part does not impose any requirement for the collection of information within the meaning of the Paperwork Reduction Act of 1980. Because the Freedom of Information Reform Act of 1986 requires that agencies publish final rules of fees, subject to public notice and comment, by April 25, 1987, the Board is claiming an exemption to the OMB prior review provisions of Executive Order 12291. The Board has determined that allowing a 10 day OMB review period before publication in the **Federal Register** would jeopardize the agency's ability to meet the April 25, 1987, statutory deadline.

List of Subjects in 20 CFR Part 200

Railroad retirement, Railroad unemployment insurance, Freedom of Information.

Title 20 CFR Part 200 is proposed to be amended as follows:

1. The authority citation for Part 200 continues to read as follows:

Authority: 45 U.S.C. 231f and 45 U.S.C. 362, unless otherwise noted.

2. The authority citation for § 200.4 continues to read as follows:

(5 U.S.C. 552)

3. Section 200.4(g) is revised to read as follows:

§ 200.4 Protection of privacy of records maintained on individuals.

* * * * *

(g) The RRB may charge the person or persons making a request for records under paragraph (f) of this section a fee in an amount not to exceed the costs actually incurred in complying with the request and not to exceed the cost of processing a check for payment. Depending on the category into which the request falls, a fee may be assessed for the cost of searching for documents, reviewing documents to determine whether any portion of any located documents is permitted to be withheld, and duplicating documents.

(1) *Fee schedule:* To the extent that the following are chargeable, they are chargeable according to the following schedule:

(i) The charge for making a manual search for records shall be $8.00 per hour;

(ii) The charge for reviewing documents to determine whether any portion of any located document is permitted to be withheld shall be $21.00 per hour;

(iii) The charge for making photocopies of any size document shall be $.10 per copy per page.

(iv) The charge for computer generated listings or labels shall include the direct cost to the RRB of analysis and programming, where required, plus the cost of computer operations to produce the listings or labels. The maximum computer search charge shall be $268.00 per hour ($4.50 per minute). Search time shall not include the time expended in analysis or programming where these operations are required.

(2) *Categories of requesters:* For the purpose of assessing fees, requesters shall be classified into one of the following five groups:

(i) *Commercial use requesters:* Commercial use requesters are requesters who seek information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. For such requesters, the RRB will fully charge for the cost of searching, reviewing and copying and shall not consider a request for waiver or reduction of fees based upon an assertion that disclosure would be in the public interest; however, the RRB will not charge a fee if the total cost for searching, reviewing, and copying is less than $10.00.

(ii) *Educational and non-commercial scientific institution requesters:* Educational requesters are educational institutions which operate a program or programs of scholarly research. They may be a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education. Non-commercial scientific requesters are institutions that are not operated on a "commercial" basis and which are operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. For requesters in this category, the RRB shall charge for the cost of reproduction alone, excluding the first 100 pages, for which no charge will be made. If after excluding the cost of the first 100 pages of reproduction, there remain costs to be assessed, the RRB will not charge for such costs if such costs total less than $10.00. If the cost is $10.00 or more, the RRB may waive the charge or reduce it if it determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. To be eligible for free search time, these requesters must reasonably describe the records sought.

(iii) *Requesters who are representatives of the news media.* The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that could be of interest to the public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. For requesters in this category the RRB shall charge for the cost of reproduction alone excluding the cost of the first 100 pages, for which no charge will be made. If, after excluding the cost of the first 100 pages of reproduction, there remain costs to be assessed, the RRB will not charge for such costs if such costs total less than $10.00. If the cost is $10.00 or more, the RRB may waive the charge or reduce it if it determines that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. To be eligible for free search time, these requesters must reasonably describe the record sought.

(iv) *Requests by subjects of records in Privacy Act Systems of Records.* Requests from subject individuals for records about themselves filed in any of the Board's Privacy Act Systems of Records will continue to be treated under the fee provisions of the Privacy Act of 1984 which permit assessing fees only for reproduction.

(v) *All other requesters.* For requesters who do not fall within the purview of paragraphs (g)(2) (i), (ii), (iii), or (iv) of this section, the RRB will charge the full direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be provided without charge. If, after excluding the cost of the first 100 pages of reproduction and the first two hours of search time, there remain costs to be assessed for either or both of these operations, the RRB will not charge for such costs if the total is less than $10.00. If the total cost is $10.00 or more, the RRB may waive the charge or reduce it if it determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(3) *Charges for unsuccessful searches.* Where search time is chargeable, the RRB may assess charges for time spent searching, even if the RRB fails to locate the records, or if located, the records are determined to be exempt from disclosure. If the Board estimates that search charges are likely to exceed $25.00 it will notify the requester of the estimated amount of fees, unless the requester has agreed in advance to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(4) *Aggregating requests.* When the RRB reasonably believes that a requester or group of requesters acting in concert is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the RRB will aggregate any such requests and charge accordingly. One element the RRB will consider in determining whether a belief would be reasonable is the time period in which the requests have been.

(5) *Advance payments.* (i) The RRB will not require a requester to make an advance payment unless:

(A) The RRB estimates or determines that the allowable charges that a requester may be required to pay are likely to exceed $250.00, in which case the RRB will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(B) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case the RRB may require the requester to pay the full amount owed plus any applicable interest as provided below or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(ii) When the Board acts under paragraph (g)(5)(i) of this section, the administrative time limits prescribed in subsection (a)(6) of the Freedom of Information Act (5 U.S.C. 552(a)(6)) (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after the Board has received the fee payments described in said paragraph (g)(5)(i) of this section.

(6) *Charging interest.* Interest may be charged to any requester who fails to pay fees charged within 30 days of the date of billing. Interest will be assessed beginning on the 31st day following the day on which the bill for fees was sent. Interest will be the rate prescribed in section 3717 of Title 31 of the United States Code Annotated and will accrue from the date of the billing.

(7) *Collection of fees due.* Whenever it is appropriate in the judgment of the Board in order to encourage repayment of fees billed in accordance with these regulations, the Board will use the procedures authorized by the Debt Collection Act of 1982 (Public Law 97–365), including disclosure to consumer reporting agencies and use of collection agencies.

* * * * *

By Authority of the Board.

Dated: April 22, 1987.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 87–9504 Filed 4–23–87; 11:15 am]

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This is a continuing list of public bills from the current session of Congress which

have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1783/Pub. L. 100-26

Defense Technical Corrections Act of 1987. (Apr. 21, 1987; 101 Stat. 273; 17 pages) Price: $1.00

H.J Res. 119/Pub. L. 100-27

Designating the week of April 19, 1987, through April 25, 1987, as "National Minority Cancer Awareness Week." (Apr. 21, 1987; 101 Stat. 290; 1 page) Price: $1.00