Vol. 53 No. 196
Pages 39583-39738

federal register

Tuesday
October 11, 1988

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

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

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

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

Contents

Federal Register

Vol. 53, No. 196

Tuesday, October 11, 1988

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

1 CFR
305 39585

3 CFR
Administrative Orders:
Presidential Determinations:
No. 88-24 of September 13, 1988 39583

12 CFR
Proposed Rules:
614 39609
620 39609
621 39609

14 CFR
Proposed Rules:
Ch. I 39611

15 CFR
Proposed Rules:
303 39612

22 CFR
7 39588

24 CFR
Proposed Rules:
201 39613

26 CFR
1 39589
602 39589

29 CFR
Proposed Rules:
2610 (2 documents) 39613, 39718

33 CFR
165 39604

37 CFR
100 39734
501 39734

40 CFR
264 39720

47 CFR
73 39605
Proposed Rules:
73 (9 documents) 39614-39617

50 CFR
663 39606
675 39718
Proposed Rules:
17 (3 documents) 39617-29626
651 39627

Federal Register
Vol. 53, No. 196
Tuesday, Oct. 11, 1988

Presidential Documents

Title 3—

The President

Presidential Determination 88–24 of September 13, 1988

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601(c)(1)), in order to meet unexpected urgent refugee and migration needs of Soviet and Eastern European refugees, I hereby determine that it is important to the national interest that $6 million be made available from the United States Emergency Refugee and Migration Assistance Fund for the admission of refugees from the Soviet Union and Eastern Europe.

You are requested to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority.

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

Ronald Reagan

THE WHITE HOUSE,
Washington, September 13, 1988.

[FR Doc. 88–23431
Filed 10–6–88; 12:17 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 53, No. 196
Tuesday, October 11, 1988

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure and Correction

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States, at its Thirty-seventh Plenary Session, adopted three recommendations.

Recommendation 88–6, Judicial Review of Preliminary Challenges to Agency Action, addresses the proper forum for judicial review where an agency has not issued a final order, but agency action or inaction is, nevertheless, considered reviewable by a court. The Recommendation urges that preliminary challenges generally should be heard by the court that will ultimately review final agency action, but it further suggests the need for special handling by reviewing courts of challenges alleging unlawful delay by an agency.

Recommendation 88–7, Valuation of Human Life in Regulatory Decisionmaking, calls on agencies to reveal publicly the processes through which they determine the value of human life in making policy decisions. It also urges the Office of Management and Budget to revise its guidance on use of a discount rate in the valuation of costs and benefits and to serve as the government's central clearinghouse for research and information on life valuation issues.

Recommendation 88–8, Resolution of Claims Against Savings Receiverships, concerns the appropriate locus for adjudication of claims against failed savings and loan institutions. The authority of the Federal Home Loan Bank Board (FHLBB) and the Federal Savings and Loan Insurance Corporation (FSLIC) to adjudicate such claims, to the exclusion of federal courts, currently is the subject of litigation before the U.S. Supreme Court. The Recommendation takes no position on the statutory and constitutional questions at issue in the litigation but, instead, urges Congress to examine the issues involved and proposes procedures that should be followed if Congress determines that an administrative adjudication process is the more desirable approach to resolve such disputes.

Recommendations of the Administrative Conference are published in full text in the **Federal Register** upon adoption. Complete lists of recommendations, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR Parts 305).

DATES: These recommendations were adopted September 16, 1988, and issued October 6, 1988.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Lubbers, Research Director (202–254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

At its Thirty-seventh Plenary Session, held September 16, 1988, the Assembly of the Administrative Conference of the United States adopted three recommendations, the texts of which are set out below. These texts will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference of the United States has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street, NW., Washington, DC.

List of Subjects in 1 CFR Part 305

Administrative practice and procedure, Judicial review, Regulatory decisionmaking, Financial services regulation.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 305 continues to read as follows:

Authority: 5 U.S.C. 571–576

2. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

Sec.
305.88–6 Judicial Review of Preliminary Challenges to Agency Action (Recommendation No. 88–6).
305.88–7 Valuation of Human Life in Regulatory Decisionmaking (Recommendation No. 88–7).
305.88–8 Resolution of Claims Against Savings Receiverships (Recommendation No. 88–8).

3. New §§ 305.88–6 through 305.88–8 are added to Part 305, to read as follows:

§ 305.88–6 Judicial review of preliminary challenges to agency action (Recommendation No. 88–6).

The Administrative Conference of the United States has long had an interest in forum allocation in administrative cases. In Recommendation No. 75–3, "The Choice of Forum for Judicial Review of Administrative Action" (1975), the Conference stated criteria for determining the appropriate judicial forum for the review of final administrative action. The Recommendation urged that agency actions taken on the basis of a formal evidentiary record should normally be directly reviewable by courts of appeals, and that rules and other informal orders issued by agencies whose formal orders are subject to review in the courts of appeals should be reviewable by those same courts.

Building upon the principles underlying that recommendation, the Conference now addresses the proper forum for judicial review where an agency has issued no final order, but agency action (or inaction) is nevertheless considered reviewable by a court.[1] For example, a party may allege that

[1] The Administrative Conference takes no position in this recommendation on whether and under what circumstances such preliminary actions should be deemed judicially reviewable before issuance of a final order by an agency.

agency action has been "unlawfully withheld or unreasonably delayed" within the meaning of 5 U.S.C. 706. What level of court—trial or appellate—should have jurisdiction over such a preliminary challenge? Most direct review statutes do not specifically address this question, and difficult jurisdictional questions have arisen as a result.

The leading decision on this subject is *Telecommunications Research and Action Center v. FCC*, 750 F.2d 70 (D.C. Cir. 1984) (*TRAC*), a case involving a challenge to allegedly unreasonable agency delay. In *TRAC*, the United States Court of Appeals for the District of Columbia Circuit concluded that when the relevant statute assigns review of final agency action (when and if it occurs) exclusively to the court of appeals, then a preliminary challenge also will be subject to exclusive appellate review so long as relief in relation to it might affect the court's ultimate jurisdiction. Based on a court's authority to issue writs in aid of its jurisdiction under the All Writs Act, *TRAC*'s holding strongly favors consolidating preliminary challenges in the courts of appeals even when the agency's organic statute does not settle the point.

However, some confusion has followed the *TRAC* decision. Subsequent opinions have grappled at length with the question of what "might affect" the court's jurisdiction and, in some cases, have carved out exceptions to the *TRAC* doctrine. Some district courts, for example, have distinguished certain constitutional claims, for which they have upheld district court jurisdiction.

In addition, some problems have remained because *TRAC* cannot readily be applied to situations in which the agency's final action might take different forms, with different jurisdictional consequences. For example, in some cases the Occupational Safety and Health Administration may decide to issue "standards", which are reviewable in the courts of appeals, or "regulations", which are reviewable in district court. Jurisdictional uncertainty can also occur in preliminary challenges involving Food and Drug Administration approval of new drug applications under the Food, Drug and Cosmetic Act, 21 U.S.C. 355. When the FDA refuses to approve an application, the statute authorizes the applicant to appeal directly to the courts of appeals; this special review provision does not apply, however, to parties challenging FDA approval of a new drug application, who thus must proceed in district court. In cases like these, the *TRAC* rule may require courts to make premature jurisdictional analyses based on speculation about the nature of the action the agency may ultimately take in order to determine whether they can hear the preliminary challenge.

The Conference believes that there is a need for greater clarity in this area. Unless Congress has reason to believe otherwise in a specific statute, jurisdiction over all such preliminary challenges should follow the principle of *TRAC*. The requirement that preliminary challenges be heard exclusively by the court that will ultimately review final agency action may influence a litigator's decision whether to raise an issue preliminarily and thus discourage the bringing of preliminary review proceedings that have little merit but offer some potential for creating delay. In addition, the courts that review final agency action may be more familiar with the substantive programs adminstered by an agency, and thus better able to evaluate the issues raised in preliminary challenges. To avoid further confusion over proper jurisdiction, the *TRAC* rule should be interpreted to include all cases in which final action would be reviewable in the courts of appeals, and the exceptions that have been carved out by the district courts should be rejected. Where jurisdiction over the final action is unclear, however, preliminary challenges should be cognizable in either the district courts or the courts of appeals.

Some special consideration may be necessary where preliminary challenges involve allegedly unlawful delay by an agency. For these challenges, by definition, time is generally of the essence; moreover, they usually do not require elaborate analysis of the relevant facts or applicable law. Frequently these claims may be resolved more easily and expeditiously through the use of simpler or less formal approaches than through the ordinary course of briefing and oral argument. The courts of appeals should develop techniques for dealing with these cases promplty and practically when they arise. While the most effective measures may vary depending upon the procedural rules applicable in individual courts, possible approaches might include rules permitting, in appropriate cases, decision on the briefs without oral argument, the filing of petitioners' briefs simultaneously with the notice of appeal, expedited calendaring of delay cases, informal status or settlement conferences involving a single judge, and, where the record may require expansion through factfinding, prompt assignment to a district court, magistrate, or other official for that purpose.

Accordingly, the Conference offers the following recommendation.

Recommendation

1. In considering legislation that would assign jurisdiction to review agency action to either district courts or courts of appeals, Congress should:

(a) Follow the principles stated in ACUS Recommendation 75–3, *The Choice of Forum for Judicial Review of Agency Action;* and

(b) Take special care to consider where preliminary challenges to agency decisionmaking should be brought, specifying whether the district courts or the courts of appeals or both have jurisdiction over such challenges. As a general rule, jurisdiction over reviewable preliminary challenges should be assigned to the forum that would have jurisdiction if an appeal were taken from final agency action growing out of the proceeding.

(c) Provide that when the proper forum for judicial review of final agency action may be either the district courts or the courts of appeals, depending upon matters such as the form the agency's action will eventually take or the outcome of the proceeding, any of the courts that might have jurisdiction over final agency action should have jurisdiction over reviewable challenges to the agency's preliminary action (or inaction).

2. In the absence of Congressional direction, the principles identified in paragraph 1 (b) and (c) of this recommendation should govern the choice of forum for otherwise reviewable preliminary challenges to agency action.

3. Where jurisdiction over claims involving unlawful delay by an agency lies in the courts of appeals, those courts should assure that their procedures provide adequately for prompt and efficient disposition of such claims.

§ 305.88–7 Valuation of Human Life in Regulatory Decisionmaking (Recommendation No. 88–7).

Regulations intended to lessen risks of accidents and illness ordinarily impose compliance costs on regulated entities and on rulemaking agencies. In return, society gains numerous benefits, most notably the avoidance of fatalities, injuries and disease, and in some instances a reduction in property damage. Promulgation of such regulations is a multi-faceted process, and this recommendation addresses one set of issues frequently encountered in agency decisionmaking—the valuation of human life.

Agencies often make reasoned estimates of the reduction in fatalities likely to follow implementation of a particular regulation, or of alternative regulations. It is rarely if ever possible to eliminate risk altogether, and it is nearly always the case that greater risk reduction raises compliance costs. Faced with such situations, agencies cannot avoid placing a value—either explicitly or implicitly—on the societal benefits of risk reduction. Although similar issues are obviously involved when agencies seek to evaluate the benefit of avoiding illnesses or injuries, this recommendation is limited to agency practices and constraints in benefits valuation when the benefit at issue is future lives saved.

Placement of a dollar value on human life is controversial and complex, and a wide array of approaches may be employed. A broad range of dollar values per life saved can be observed in regulatory outcomes across programs and departments. In part, this reflects differing views about what explicit value is suitable for a given type of hazard, and in part it reflects judgments that, for reasons of policy or legal constraints, decisions should take no account of the value of life implict in those decisions. Some agencies reject all explicit efforts to place a monetary value on human life, while others routinely build such estimates into their regulatory proposals. This diversity can be sharp even within the same department. Those agencies that are willing to utilize explicit normative benchmarks for the value

of life appear to be moving toward reliance on the same basic estimation technique, generally referred to as "willingness-to-pay." This technique is premised on the assumption that by examination of marketplace behavior, e can roughly ascertain how much dividuals would be willing to pay in order to reduce the probability of death from a particular hazard or cause, or how much they would require in the form of salary increases or other payments to be willing to accept the increased probability. While willingness-to-pay provides the most inclusive analysis currently available for evaluating the benefits derived from regulatory reduction of fatalities, it falls far short of an ideal process and can produce results that are misleading because the analysis often fails to take into account all relevant variables.

The Conference recognizes the rudimentary state of knowledge on this issue, and realizes that both methodologies and results are likely to continue to vary among agencies. In this environment, however, it would be useful for agencies to take measures that would reveal publicly the processes through which they have determined the valuation of life incorporated in policy decisions.[1] Such a procedure would provide useful clarification and exposition of the unavoidable trade-offs in regulating hazards, and would also assist in drawing attention to those hazards where further protection may be feasible at acceptable cost.

In this way, agency practice may also be measured against developments in the valuation techniques and evaluated for consistency with other agencies as well as with other regulations in the same agency. The Office of Management and Budget (OMB), in its oversight of executive branch regulatory activities, could facilitate consistency by providing a central clearinghouse for research and information on life valuation issues. OMB should also assist agencies by updating its guidance concerning discount rates used by agencies in deriving present value equivalents of future effects. The current government-wide general guidance on discounting is contained in OMB Circular A-94 which has not been updated since 1972.

Recommendation

1. When an agency adopts a regulation that is intended to reduce the risk to human life, based on a judgment that the associated compliance costs are justified, the agency should disclose the dollar value per statistical life used for the purposes of that determination. Such statements and disclosures should also set forth the human life valuation implications of alternative levels of regulatory stringency considered by the agency. Exceptions to this principle may be appropriate where empirical information about either the costs or benefits of the regulation is highly conjectural, or where the benefits include values which cannot be quantified in market terms, *e.g.*, aesthetic gains. In such cases, agencies should explain the nature and degree of imprecision in the valuation process so that the public will not be misled. When an agency declines to adopt a regulation due to these considerations, it should provide similar information.

2. In implementing paragraph 1, agencies that develop and use methodologies for placing a monetary value on human life should recognize that there remain substantial limitations of current methodology to incorporate all the variables that affect societal valuations of human life. An agency should explain the factors included or considered in its valuation. The agency also should explain how it weighs such factors.

3. Whenever agencies choose to discount costs and benefits in implementing paragraph 1, they should clearly and fully disclose what rates they are using, the methodology that generated those rates, and the sensitivity of outcomes to the particular rates applied. The Office of Management and Budget (OMB) should revise its guidance concerning the use of a discount rate in the valuation of costs and benefits to reflect recent learning on the subject, either through updating OMB Circular A-94 or by other means. Such guidance should articulate the various methods by which a discount rate can be derived and the scope of subjects to which it can be applied.

4. OMB should serve federal agencies as a central clearinghouse for research and information on life valuation issues. To this end, OMB should continue and expand its discussion of agency practices in the life valuation area, initiated in the 1987-88 edition of the annual Regulatory Program of the United States Government.

§ 305.88-8 Resolution of Claims Against Savings Receiverships (Recommendation 88-8).

When a federally insured savings and loan institution ("thrift") fails, the Federal Home Loan Bank Board (FHLBB) exercises overall regulatory control. The Federal Savings and Loan Insurance Corporation (FSLIC), under the direction of the FHLBB, ordinarily acts as receiver for federally insured thrifts, and, in that capacity, must pay the valid credit obligations of the failed thrift. In the process of accepting, settling or rejecting a diverse and complex range of creditor claims, the FSLIC attempts to resolve disputes informally. If this cannot be done, claimants may resort to an adjudicative process. The locus of this adjudication—agency or court—and its elements are the concerns of this recommendation.

Exclusivity of the Agency Adjudication Process. The FHLBB and its sister agency, the FSLIC, have asserted exclusive jurisdiction to adjudicate creditor claims against thrift receiverships. To establish and enforce its asserted power as receiver to adjudicate creditor claims, the FSLIC has adopted the practice of seeking to have claims litigation that has been initiated in state courts removed to the federal courts, where the FSLIC then moves for dismissal for want of subject matter jurisdiction. The agency has sometimes moved to override court judgments granted to creditors that were entered before a thrift was place in receivership.

The FSLIC's argument is that, as receiver, it has been vested with exclusive power to determine the validity of creditor claims, and that the jurisdiction of the courts to make independent determinations has been precluded. It is further argued by the FHLBB and FSLIC that their final administrative determinations are subject not to *de novo* judicial review, but only to the limited judicial review provided under the Administrative Procedure Act. This agency position has become known as the *Hudspeth* doctrine, after the Fifth Circuit decision in which it was first accepted (*North Mississippi Savings and Loan Association* v. *Hudspeth*, 756 F.2d 1096 (5th Cir. 1985)). But other courts have declined to follow *Hudspeth*. See e.g., *Morrison-Knudsen Co., Inc.* v. *CHG International, Inc.*, 811 F.2d 1209 (9th Cir. 1987), holding that the FSLIC has no statutory authority to adjudicate claims to the exclusion of the courts. The U.S. Supreme Court has granted *certiorari* to resolve the differences. See *Coit Independence Joint Venture* v. *FirstSouth, F.A.*, 829 F.2d 563 (5th Cir. 1987), *cert. granted*, 108 S. Ct. 1105 (1988).

Because of the considerable adjudicatory power that the *Hudspeth* doctrine potentially grants to the FSLIC, the doctrine has provoked controversy concerning the fairness, efficiency, and legal and constitutional validity of the administrative procedures. In fact, the position of the Solicitor General in its brief for the Government in the *Coit* case does not endorse the FHLBB's argument that it is statutorily empowered to "adjudicate" these claims. The Solicitor General maintains that, while Congress could have provided for administrative adjudication in this context, it has simply (and appropriately) provided for a claims review step in the process that must be exhausted by claimants before they seek judicial resolution of claims.

The Conference takes no position on the statutory and constitutional power of the FHLBB to resolve these claims. Unless the Supreme Court finds administrative adjudication in this context to be constitutionally impermissible, Congress should examine the need for agency adjudication of such claims, as an alternative to, or at least a required prelude to, *de novo* resolution of such claims in state and federal courts. For this reason, the Conference has examined the fairness and efficiency of the current administrative procedure for determining creditor claims against thrift receiverships.

[1] In 1979, the Conference made a similar recommendation about cost-benefit analyses, Recommendation 79-4, *Public Disclosure Concerning the Use of Cost-Benefit and Similar Analyses in Regulation*, 1 C.R.F. § 305.79-4 (1988).

Current Claims Procedures. Claims against failed thrifts are institutionally and procedurally separated at the FSLIC. Those made by insured depositors on the one hand, and uninsured depositors and other creditors on the other, are handled by separate divisions within the FSLIC. Although many claims are resolved at the division level (so-called "receiver's determinations"), rejected claimants may seek administrative review by the Adjudication Division of the FHLBB's Office of General Counsel, with final administrative review by the Board itself in complex cases. Though the case law is unsettled, *de novo* judicial review has been allowed in the case of insured depositor claims and, under the *Hudspeth* decision, limited judicial review under the Administrative Procedure Act was contemplated in the case of non-insured and general creditor claims.

Need for Congressional Attention. As thrift receiverships proliferate, the Conference urges Congress to consider whether it is more appropriate for disputes over claims filed against such receiverships to be decided by the FHLBB, or whether it is better to leave them to *de novo* resolution in state and federal courts—with or without a prior administrative claims review step at the FHLBB.

If Congress does determine that an administrative adjudication process (coupled with appropriate judicial review) is the preferable approach, it should clarify the FHLBB's statutory authority. It should provide for an adjudicative system that makes clear that claimants have an opportunity to have their claims heard by adjudicators who are completely independent of other offices of the FHLBB or FSLIC, which may be perceived to have a financial interest in the outcome of such claims. To that end, a bifurcated hearing process should be established, offering claimants who can demonstrate that an issue of material fact is genuinely presented an opportunity for an on-the-record APA hearing presided over by an administrative law judge. An alternative, simplified procedure should be authorized for other cases or where parties agree to use it.

The FHLBB's current program of adjudicating claims against receiverships requires two additional improvements. First, final rules of practice need to be issued,[1] and time limits should be established. Second, the agency should refrain from attempting to override prereceivership judgments entered in federal or state courts.

Recommendation

1. Congress should determine whether disputes over claims filed against thrift receiverships are better decided by the Federal Home Loan Bank Board (FHLBB) in an administrative adjudication process (coupled with judicial review) or by the judiciary through *de novo* resolution in state or federal courts (with or without a prior administrative claims review step at the FHLBB).[2]

2. If Congress does determine that an administrative adjudication process is the more desirable approach, it should clarify the FHLBB's statutory authority by providing for an FHLBB adjudicative process along the lines set forth below:

(a) A bifurcated process should be established for adjudicating claimant appeals from determinations of thrift receivers. Where the claimant affirmatively demonstrates that an issue of material fact is genuinely presented, the FHLBB should offer an opportunity for an on-the-record APA hearing, presided over by an administrative law judge. In all other cases, or where the parties voluntarily agree, the FHLBB should be authorized to use simplified, less formal procedures, presided over by persons who need not be ALJs but who should be institutionally separate from the receiver.[3] All parties, including receivers, should be encouraged to engage in alternative means of dispute resolution.[4]

(b) Final FHLBB decision on such claims should be based on the administrative record and subject to direct judicial review in accordance with the principles stated in ACUS Recommendation 75–3 ("The Choice of Forum for Judicial Review of Administrative Action").

3. The FHLBB should publish, after a notice-and-comment rulemaking procedure, final rules setting forth its rules of practice for claims determinations. The rules should provide for strict, albeit reasonable, time limits [5] applicable not only to claimants but also to receivers and their agents.

4. The FHLBB (and FSLIC as receiver) should not override prereceivership judgments entered in federal and state courts. The agenies' power to adjudicate claims should not encompass judgments in favor of creditors that have been entered by a court of competent jurisdiction before the thrift was placed in receivership. The FSLIC as receiver should either acquiesce in these judgments or pursue post-trial remedies.

5. Congress should include in any legislation responsive to this recommendation a requirement that the FHLBB adopt appropriate regulations and policies as set out in paragraphs 3 and 4.

4. *Correction.*

In FR Doc. 88–15458 beginning on page 26025 in the issue of Monday, July 11, 1988 (regarding Indemnification of Government Contractors) make the following corrections:

§ 305.88–2 [Corrected]

On page 26027, in the third column, in footnote *, replace "56 U.S.L.W. 4792 (U.S. June 27, 1988)" with "108 S. Ct. 2510 (1988)".

On page 26028, in the third column, the twenty-seventh line should read "to grant an indemnity clause, but the contracting office does". The entire sentence, as corrected, should read, "Where an agency is considering whether to grant an indemnity clause, but the contracting office does not have sufficient technical expertise to assess the degree of risk, the extent of the hazard, or the availability of insurance, these questions should be referred to an office of the agency that does have the requisite expertise to assist the contracting office in making such decisions."

Jeffrey S. Lubbers,

Research Director.

Dated: October 6, 1988.

[FR Doc. 88–23268 Filed 10–7–88; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF STATE

22 CFR Part 7

[108.875]

Board of Appellate Review; Technical Amendments

AGENCY: Board of Appellate Review, State.

ACTION: Final rule.

SUMMARY: This document corrects omissions and typographical errors in 22 CFR Part 7.

EFFECTIVE DATE: October 11, 1988.

ADDRESS: Board of Appellate Review, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Alan G. James, Chairman, Board of Appellate Review, Telephone (202) 653–5090.

---

[1] On November 6, 1985 the FHLBB published proposed rules governing its claims adjudication process (see 50 Fed. Reg. 48970). On April 21, 1988 the FHLBB published interim procedures pending the adoption of final regulations, giving notice that the interim procedures that have been in effect in practice since July 1, 1986 will remain in effect pending the adoption of final regulations. See 53 Fed. Reg. 13105.

[2] The Conference, at this time, does not intend to express an opinion on which of these alternatives is preferable.

[3] See ACUS Statement, "Dispute Resolution Procedure in Reparations and Similar Cases", 1 CFR 310.13 (1988).

[4] See ACUS Recommendation 86–3, "Agencies' Use of Alternative Means of Dispute Resolution", 1 CFR 305.86–3 (1988).

[5] See ACUS Recommendation 78–3, "Time Limits on Agency Action," 1 CFR 305.78–3 (1988).

SUPPLEMENTARY INFORMATION:

List of Subjects in 22 CFR Part 7

Administrative practice and procedure, Citizenship and naturalization, Organization and functions (Government).

Accordingly, 22 CFR Part 7 is amended as follows:

PART 7—BOARD OF APPELLATE REVIEW

1. Section 7.6 Hearings is amended as follows:

§ 7.6 [Amended]

In § 7.6(a), *Notice of place hearing*, in the first sentence, after "hearing", remove "or", and insert "on".

§7.7 [Amended]

2. Section 7.7 Passport cases is amended as follows:

In § 7.7(b), *Admissibility of evidence*, in the first sentence, after "evidence", remove "of", and insert "or".

§ 7.8 [Amended]

3. Section 7.8 South African Fair Labor Standards Cases is amended as follows:

In § 7.8(a) *Scope of review*, in the first line after "from", insert "decisions of".

Alan G. James,

Chairman, Board of Appellate Review, Department of State.

September 12, 1988.

[FR Doc. 88-23130 Filed 10-7-88; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8233]

Income Tax; Taxable Years Beginning After December 31, 1953 and Control Numbers Under the Paperwork Reduction Act; Investment Tax Credit for Qualified Rehabilitation Expenditures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 46, 48 and 191 relating to an investment tax credit for qualified rehabilitation expenditures to qualified rehabilitated buildings. Changes to the applicable law were made by the Economic Recovery Tax Act of 1981, the Technical Corrections Act of 1982, the Tax Reform Act of 1984, and the Tax Reform Act of 1986. These regulations would provide the public with the guidance needed to comply with the law as amended by these Acts.

DATE: The amendments are generally effective for rehabilitation expenditures incurred after December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave, NW., Washington, DC 20224 (Attention: CC:LR:T), (202-566-3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-0155. The estimated average burden per respondent/recordkeeper varies from 30 to 70 minutes, depending on individual circumstances, with an estimated average of 45 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to The Internal Revenue Service, Washington, DC 20224, Attention: IRS Reports Clearance Officer TR:FP, and to the Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for the Internal Revenue Service.

Background

Proposed amendments to the Income Tax Regulations (26 CFR Part 1) were published in the **Federal Register** (50 FR 26794) on June 28, 1985. Those amendments were proposed to conform the regulations to section 212 of the Economic Recovery Tax Act of 1981 (95 Stat. 235), section 102(f) of the Technical Corrections Act of 1982 (96 Stat. 2371), and section 31(c), 111(e)(8), and 1043(a) of the Tax Reform Act of 1984 (98 Stat. 518, 631, and 1044).

Approximately 30 written comments were received in response to the proposed regulations. A public hearing was held on November 15, 1985. Six speakers spoke at the public hearing.

Subsequently, the provisions of the Code dealing with the rehabilitation tax credit were amended by section 251 of the Tax Reform Act of the 1986 (100 Stat. 2183). This Treasury decision reflects the revisions made to section 46(b)(4) and 48(g) by that Act.

In General

Section 38 of the Internal Revenue Code provides for a credit against tax in the case of investment in certain depreciable property (*i.e.*, section 38 property). Section 48(a)(1)(E) of the Code defines section 38 property so as to include the portion of the basis of a qualified rehabilitated building that is attributable to qualified rehabilitation expenditures. Section 48(g) and § 1.48-12 define the terms "qualified rehabilitated building" and "qualified rehabilitation expenditure". Section 46(b)(4)(A) provides rules for determining the rehabilitation percentage that is to be applied to qualified rehabilitation expenditures in order to determine the amount of the investment tax credit that is allowable under section 38 to a taxpayer.

Rehabilitation Percentage

The rehabilitation percentage has been substantially amended by the Tax Reform Act of 1986. As a result of these amendments, there is now a 20 percent credit for rehabilitations of certified historic structures and a 10 percent credit for rehabilitations of other buildings first placed in service before 1936. These percentages apply to property placed in service after December 31, 1986, unless such property qualifies under the transitional rules, in which case the rehabilitation percentage in the case of a certified historic structure remains at 25 percent, and the percentages for rehabilitations of 30-year buildings and 40-year buildings are 10 and 13 percent, respectively. Prior to this amendment, section 46(b)(4) provided for a three-tier rehabilitation percentage in the case of qualified rehabilitation expenditures. In general, section 46(b)(4)(A) provided that the rehabilitation percentage was 15 percent in the case of a 30-year building, 20 percent in the case of 40-year building, and 25 percent in the case of a certified historic structure. These percentages still apply to property placed in service before Janaury 1, 1987. Section 46(b)(4)(C), prior to its repeal in the Tax Reform Act of 1986, provided definitions relating to the three types of buildings. In general, a 30-year building was a building where 30 years have elapsed between the date the building was first placed in service and the date physical work on the rehabilitation began. A 40-year building was a building where 40 years have elapsed between these dates. The final regulations provide for an allocation rule in certain cases where additions have been made to a building.

Section 46(b)(4) provides that the regular percentages and the energy percentages do not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

Property Used for Lodging

In general, section 48(a)(3) provides that section 38 property does not include property which is used predominantly to furnish lodging. The Economic Recovery Tax Act amended section 48(a)(3) to provide an exception to this exclusion in the case of certified historic structures.

Qualified Rehabilitated Buildings

The term "qualified rehabilitated building" is defined in section 48(g)(1) and § 1.48–12(b). In order to qualify as a qualified rehabilitated building, four requirements must be met. First, the building must have been placed in service before the beginning of the rehabilitation. Second, the building must meet an existing external wall or internal structural framework retention test. Third, the building must meet an age requirement unless it is a certified historic structure. Fourth, the building must have been substantially rehabilitated.

The final regulations contain additional restrictions that apply in the cases of buildings that have been moved. Rehabilitation is distinguished from new construction in these final regulations. A quantitative test for substantial rehabilitation is provided in section 48(g)(1)(C) and § 1.48–12(b)(2). In general, the qualified rehabilitation expenditures during the appropriate measuring period must exceed the greater of $5,000 or the adjusted basis of the property. The final regulations provide rules for applying the test in various contexts.

Qualified Rehabilitation Expenditure

The term "qualified rehabilitation expenditure" is defined in section 48(g)(2) and § 1.48–12(c). In general, the expenditures must be for property chargeable to capital account and must be incurred after December 31, 1981, for depreciable real property in connection with the rehabilitation of a qualified rehabilitated building. Section 48(g)(2)(B) and § 1.48–12(c) exclude certain expenditures from the definition of qualified rehabilitation expenditures. The final regulations clarify that the term "qualified rehabilitation expenditures" is not limited to those expenditures incurred during the relevant measuring period used for purposes of the substantial rehabilitation test. In the case of rehabilitated property placed in service in a taxable year, if the building qualified as a qualified rehabilitated building for that year, the taxpayer can claim as qualified rehabilitation expenditures the expenditures incurred before the beginning of the measuring period, during the measuring period, and after the measuring period but before the end of the taxable year.

Certified Historic Structure

The term "certified historic structure" is defined in section 48(g)(3) and § 1.48–12(d). In general, a certified historic structure is a building (and its structural components) which is listed in the National Register, or which is located in a registered historic district and is certified by the Secretary of the Interior as being of historic significance to the district. Although procedures for obtaining a National Register listing or a certification of significance are generally within the authority of the Department of Interior, (and therefore outside the scope of the Internal Revenue Code), these final regulations to address the issue of when an investment tax credit can be claimed in the case of a pending application for certification by the Department of Interior.

Adjustments To Basis

Section 48(q) and § 1.48–12(e) provides rules concerning an adjustment to the basis of a qualified rehabilitated building. In general, the increase in the basis of the building that would result from the qualified rehabilitation expenditures must be reduced by the amount of the credit allowed under section 38 (50 percent of the credit in the case of property attributable to a certified historic structure that is either placed in service before January 1, 1987, or qualifies under the transitional rules).

Coordination With Other Provisions

Section 1.48–12(f) provides rules relating to the coordination between section 48(g) and various other provisions of the Internal Revenue Code of 1986. Rules and cross-references to other provisions of the Code are provided.

Section 191

Section 191, relating to amortization of rehabilitation expenditures for certified historic structures, was repealed by the Economic Recovery Tax Act of 1981 for expenditures incurred after December 31, 1981. These final regulations reflect the repeal.

Public Comments and Changes in Response To Public Comments Moved Buildings

A number of commentators questioned the rule in the proposed regulations concerning buildings other than certified historic structures that have been moved within the last thirty or forty years. Some of these commentators asked for limited exceptions in the case of certain relocations. The Treasury Department continues to believe that the nonhistoric credit provisions were specifically intended to stimulate rehabilitations of buildings at their existing locations. Therefore, no change was made.

Substantial Rehabilitation Determination with Respect to Acquiring Taxpayer

Several commentators asked that the regulations be modified to provide that a transferor who substantially rehabilitated a building be allowed to transfer the building to an acquiring taxpayer without the acquiring taxpayer making a substantial rehabilitation determination based on his cost basis at the time of transfer. The final regulations require that, in certain cases, an acquiring taxpayer is treated as having incurred the rehabilitation expenditures actually incurred by a transferor. However, section 48(g)(1)(C) requires the taxpayer to determine the adjusted basis of the building for purposes of the substantial rehabilitation test at the beginning of his holding period if he holds the building for less than 24 months. Given this statutory requirement, the Treasury Department continues to believe that the substantial rehabilitation test must be applied with respect to the transferee rather than being simply carried over from the transferor. A limited exception is provided, however, in the case of lessees who rehabilitate buildings that are transferred by the lessor during the rehabilitation project.

Late Certification of Building's Status as Certified Historic Structure

A number of commentators asked that the regulations be clarified to provide that in the case of the credit for certified historic structures a building need not have been determined to be a certified historic structure at the time the expenditures were incurred, at the time the rehabilitated expenditures were placed in service, or at the time the credit was claimed so long as there was a pending application for certification at such time which was later approved. Since this was the intent of the proposed rule dealing with late certifications, this clarifying change has been made.

Construction Period Interest Incurred in Connection With Acquisition of Building or Land

A commentator questioned the rule in the proposed regulations that treated interest incurred on a loan to acquire the building shell or the land on which the building rests as a disqualifying cost of

acquisition. The Treasury Department gave careful consideration to this comment, and continues to believe that interest incurred on a loan to acquire or carry the land or shell should not be treated as a qualified rehabilitation expenditure. However, interest incurred on a construction loan used to finance the rehabilitation can be treated as a qualified rehabilitation expenditure if such interest is properly capitalized and added to basis of the building.

Other Comments

Numerous other comments were received that asked for clarification of the proposed rules. In general, these final regulations provide that clarification.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these final regulations is John G. Schmalz of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of style and substance.

List of Subjects

26 CFR 1.0–1–1.58–8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR 1.61–1–1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 1.48–12(b)(2) also issued under 26 U.S.C. 48(g)(1)(C) (i) and (iii).

Par. 2. Section 1.46–1 is amended by revising paragraphs (a)(2) and (d), by adding a new paragraph (e)(5), and by adding a new paragraph (q) at the end thereof, to read as follows:

§ 1.46–1 Determination of amount.

(a) *Effective dates.* * * *

(2) *Acts covered.* This section reflects changes made by the following Acts of Congress:

Act and Section
Tax Reduction Act of 1975, section 301.
Tax Reform Act of 1976, sections 802, 1701, 1703.
Revenue Act of 1978, sections 311, 312, 315.
Energy Tax Act of 1978, section 301.
Economic Recovery Tax Act of 1981, section 212.
Technical Corrections Act of 1982, section 102(f).
Tax Reform Act of 1986, section 251.

* * * * *

(d) *Credit earned.* The credit earned for the taxable year is the sum of the following percentages of qualified investment (as determined under section 46 (c) and (d))—

(1) The regular percentage (as determined under section 46),

(2) For energy property, the energy percentage (as determined under section 46), and

(3) For the portion of the basis of a qualified rehabilitated building (as defined in § 1.48–12(b)) that is attributable to qualified rehabilitation expenditures (as defined in § 1.48–12(c)), the rehabilitation percentage (as determined under section 46(b)(4)).

(e) *Designation of credits.* The credit available for the taxable year is designated as follows:

* * * * *

(5) The credit attributable to the rehabilitation percentage for qualified rehabilitation expenditures is the rehabilitation investment credit.

* * * * *

(q) *Rehabilitation percentage*—(1) *General rule*—(i) *In general.* Due to amendments made by the Tax Reform Act of 1986, different rules apply depending on when the property attributable to the qualified rehabilitated expenditures (as defined in § 1.48–12(c)) is placed in service. Paragraph (q)(1)(ii) of this section contains the general rule relating to property placed in service after December 31, 1986. Paragraph (q)(1)(iii) of this section contains rules relating to property placed in service before January 1, 1987. Paragraph (q)(1)(iv) of this section contains rules relating to property placed in service after December 31, 1986, that qualifies for a transition rule.

(ii) *Property placed in service after December 31, 1986.* Except as otherwise provided in paragraph (q)(1)(iv) of this section, in the case of section 38 property described in section 48(a)(1)(E) placed in service after December 31, 1986, the term "rehabilitation percentage" means—

(A) 10 percent in the case of qualified rehabilitation expenditures with respect to a qualified rehabilitated building other than a certified historic structure, and

(B) 20 percent in the case of qualified rehabilitation expenditures with respect to a certified historic structure.

(iii) *Property placed in service before January 1, 1987.* For qualified rehabilitation expenditures (as defined in § 1.48–12(c)) with respect to property placed in service before January 1, 1987, section 46(b)(4)(A) as in effect prior to the enactment of the Tax Reform Act of 1986 provided for a three-tier rehabilitation percentage. The applicable rehabilitation percentage for such expenditures depends on whether the qualified rehabilitated building is a "30-year building," a "40-year building," or a certified historic structure (as defined in section 48(g)(3) and § 1.48–12(d)(1)). The rehabilitation percentage for such qualified rehabilitation expenditures incurred with respect to a qualified rehabilitated building is 15 percent to the extent that the building is a 30-year building (*i.e.*, at least 30 years, but less than 40 years, has elapsed between the date the physical work on the rehabilitation began and the date the building was first placed in service), 20 percent to the extent that the building is a 40-year building (*i.e.*, at least 40 years has so elapsed), and 25 percent for certified historic structures, regardless of age. See paragraph (q)(2)(ii) of this section for rules concerning buildings to which additions have been added.

(iv) *Property placed in service after December 31, 1986, that qualifies under the transition rules.* In the case of section 38 property described in section 48(a)(1)(E) placed in service after December 31, 1986, and to which the amendments made by section 251 of the Tax Reform Act of 1986 do not apply because the transition rules in section 251(d) of that Act and § 1.48–12(a)(2)(iv) (B) or (C) apply, the rehabilitation percentage for a "30-year building" (within the meaning of paragraph

(q)(1)(iii) of this section) shall be 10 percent, the rehabilitation percentage for a "40-year building" (within the meaning of paragraph (q)(1)(iii) of this section) shall be 13 percent, and the rehabilitation percentage for a certified historic structure shall be 25 percent.

(2) *Special rules*—(i) *Moved buildings.* With respect to paragraph (q)(1)(ii) of this section, § 1.48–12(b)(5) provides that a building (other than a certified historic structure) is not a qualified rehabilitated building unless it has been at the location where it is being rehabilitated since January 1, 1936. In addition, for purposes of paragraph (q)(1) (iii) and (iv) of this section, a building is not a "30-year building" unless it has been at the location where it is being rehabilitated for the thirty-year period immediately preceding the beginning of the rehabilitation process, and is not a "40-year building" unless it has been at the location where it is being rehabilitated for the forty-year period immediately preceding the beginning of the rehabilitation process.

(ii) *Building to which additions have been added*—(A) *Property placed in service after December 31, 1986.* For purposes of paragraph (q)(1)(ii) of this section, if part of a building meets the definition of a qualified rehabilitated building, and part of the building does not meet the definition of a qualified rehabilitated building because such part is an addition that was placed in service after December 31, 1935, the qualified rehabilitation expenditures made to the building must be allocated to the pre-1936 portion of the building and the post-1935 portion of the building using the principles in § 1.48–12(c)(10)(ii). Qualified rehabilitation expenditures attributable to the post-1935 addition shall not qualify for the 10 percent rehabilitation percentage.

(B) *Property placed in service before January 1, 1987, and property qualifying for a transitional rule.* For purposes of paragraph (q)(1) (iii) and (iv) of this section, if part of a building meets the definition of a "40-year building" and part of the building is an addition that was placed in service less than forty years before physical work on the rehabilitation began but more than thirty years before such date, then the qualified rehabilitation expenditures made to the building shall be allocated between the forty year old portion of the building and the thirty year old portion of the building, and a 20 percent rehabilitation percentage shall be applied to the forty year old portion of the building and a 15 percent rehabilitation percentage shall be applied to the thirty year old portion. This allocation shall be made using the principles in § 1.48–12(c)(10)(ii). If an allocation cannot be made between the expenditures to the forty year old portion of the building and the thirty year old portion of the building, then the building will be considered to be a 30-year building. Furthermore, for purposes of this paragraph (q), a building (other than a certified historic structure) is not a qualified rehabilitated building to the extent of that portion of the building that is less than 30 years old. If rehabilitation expenditures are incurred with respect to an addition to a qualified rehabilitated building, but the addition is not considered to be part of the qualified rehabilitated building because the addition does not meet the age requirement in section 48(g)(1)(B) (as in effect prior to its amendment by the Tax Reform Act of 1986) and § 1.48–12(b)(4)(i)(B), then no rehabilitation percentage will be applied to the expenditures attributable to the rehabilitation of the addition. Thus, for purposes of paragraph (q)(1) (iii) and (iv) of this section, it may be necessary to allocate rehabilitation expenditures incurred with respect to a building between the original portion of the building and the addition.

(iii) *Mixed-use buildings.* If qualified rehabilitation expenditures are incurred for property that is excluded from section 38 property described in section 48(a)(1)(E) (because, for example, they are made with respect to a portion of the building used for lodging within the meaning of section 48(a)(3) and § 1.48–1(h)), an allocation of the expenditures must be made between the expenditures that result in an addition to basis that is section 38 property and the expenditures that result in an addition to basis that is excluded from the definition of section 38 property since the rehabilitation percentage is applicable only to section 38 property. These allocations should be made using the principles contained in § 1.48–12(c)(10)(ii).

(3) *Regular and energy percentages not to apply.* The regular percentage and the energy percentage shall not apply to that portion of the basis of any building that is attributable to qualified rehabilitation expenditures (as defined in § 1.48–12(c)).

(4) *Effective date.* The rehabilitation percentage is applicable only to qualified rehabilitation expenditures (as defined in § 1.48–12(c)). For rules relating to applicability of the regular percentage to qualified rehabilitation expenditures (as defined in § 1.48–11(c)), see § 1.48–11.

Par. 3. Section 1.48–1 is amended by adding new paragraphs (h)(1)(iii) and (h)(2)(iv) to read as follows:

§ 1.48–1 Definition of section 38 property.

* * * * *

(h) *Property used for lodging*—(1) *In general.* * * *

(iii) Notwithstanding any other provision of this paragraph (h), in the case of a qualified rehabilitated building (within the meaning of section 48(g)(1) and § 1.48–12(b)), expenditures for property resulting in basis described in section 48(a)(1)(E) shall not be treated as section 38 property to the extent that such property is attributable to a portion of the building that is used for lodging or in connection with lodging. For example, if expenditures are incurred to rehabilitate a five story qualified rehabilitated building, three floors of which are used for apartments and two floors of which are used as commercial office space, the portion of the basis of the building attributable to qualified rehabilitated expenditures attributable to the commercial part of the building shall not be considered to be expenditures for property, or in connection with property, used predominantly for lodging. Allocation of expenditures between the two portions of the building are to be made using the principles contained in § 1.48–12(C)(10)(ii).

(2) *Exceptions.* * * *

(iv) *Certified historic structures.* For purposes of this paragraph (h), regardless of the actual use of a certified historic structure, that portion of the basis of such certified historic structure which is attributable to qualified rehabilitation expenditures (as defined in § 1.48–12(c)) shall not be considered as property which is either used predominantly to furnish lodging or predominantly in connection with the furnishing of lodging. Accordingly, such portion of the basis may qualify as section 38 property. (For the definition of "certified historic strucutre," see section 48(g)(3) and § 1.48–12(d).)

Par. 4. There is inserted immediately after § 1.48–11 a new § 1.48–12 to read as follows:

§ 1.48–12 Qualified rehabilitated building; expenditures incurred after December 31, 1981.

(a) *General rule*—(1) *In general.* Under section 48(a)(1)(E), the portion of the basis of a qualified rehabilitated building that is attributable to qualified rehabilitation expenditures (within the meaning of section 48(g) and this section) is section 38 property. Property that is section 38 property by reason of

section 48(a)(1)(E) is treated as new section 38 property and, therefore, is not subject to the used property limitation in section 48(c). Section 48(g)(1) and paragraph (b) of this section define the term "qualified rehabilitated building." Section 48(g)(2) and paragraph (c) of this section define the term "qualified rehabilitation expenditure." Section 48(g)(2)(B)(iv) and (3) and paragraph (d) of this section describe the rules applicable to "certified historic structures." Section 48(q) and paragraph (e) of this section provide rules concerning an adjustment to the basis of the rehabilitated building. Paragraph (f) of this section provides guidance for coordination of these provisions with other sections of the Code, including rules for determining when the rehabilitation credit may be claimed.

(2) *Effective dates and transition rules*—(i) *In general.* Except as otherwise provided in this paragraph (a)(2)(i), this section applies to expenditures incurred after December 31, 1981, in connection with the rehabilitation of a qualified rehabilitated building. (See paragraph (c)(3)(i) of this section for rules concerning the determination of when an expenditure is incurred.) If, however, physical work on the rehabilitation began before January 1, 1982, and the building does not meet the requirements of paragraph (b) of this section, the rules in § 1.48–11 shall apply to the expenditures incurred after December 31, 1981, in connection with such rehabilitation. (See paragraph (b)(6)(i) of this section for rules determining when physical work on a rehabilitation begins.)

(ii) *Transition rules concerning ACRS lives.* (A) For property placed in service before March 16, 1984, and any property subject to the exception set forth in section 111(g)(2) of Pub. L. 98–369 (Deficit Reduction Act of 1984), the references to "19 years" in paragraph (c)(4)(ii) and (7)(v) shall be replaced with "15 years" and the reference to "19-year real property" in paragraph (c)(4)(ii) shall be replaced with "15-year real property."

(B) Except as otherwise provided in paragraph (a)(2)(ii)(A) of this section, for property placed in service before May 9, 1985, and any property subject to the exception set forth in section 105(b)(2) and (5) of Pub. L. 99–121 (99 Stat. 501, 511), the reference to "19 years" in paragraph (c)(4)(ii) and (7)(v) shall be replaced with "18 years" and the references to "19-years real property" in paragraph (c)(4)(ii) shall be replaced with "18-year real property."

(iii) *Transition rule concerning external wall definition.* Notwithstanding the definition of external wall contained in paragraph (b)(3)(ii) of this section, in any case in which the written plans and specifications for a rehabilitation were substantially completed on or before June 28, 1985, and the building being rehabilitated would fail to meet the requirement of paragraph (b)(1)(iii) of this section if the definition of external wall in paragraph (b)(3)(ii) of this section were used, the term "external wall" shall be defined as a wall, including its supporting elements, with one face exposed to the weather or earth, and a common wall shall not be treated as an external wall. See paragraph (b)(2)(v) of this section for the definition of written plans and specifications.

(iv) *Transition rules concerning amendments made by the Tax Reform Act of 1986*—(A) *In general.* Except as otherwise provided in section 251(d) of the Tax Reform Act of 1986 and this paragraph (a)(2)(iv), the amendments made by section 251 of the Tax Reform Act of 1986 shall apply to property placed in service after December 31, 1986, in taxable years ending after that date, regardless of when the rehabilitation expenditures attributable to such property were incurred. If property attributable to qualified rehabilitation expenditures is incurred with respect to a rehabilitation to a building placed in service in segments or phases and some segments are placed in service before January 1, 1987, and the remaining segments are placed in service after December 31, 1986, the amendments under the Tax Reform Act would not apply to the property placed in service before January 1, 1987, but would apply to the segments placed in service after December 31, 1986, unless one of the transition rules in paragraph (a)(2)(iv) (B) or (C) of this section applies.

(B) *General transition rule.* The amendments made by sections 251 and 201 of the Tax Reform Act of 1986 shall not apply to property that qualifies under section 251(d) (2), (3), or (4) of the Tax Reform Act of 1986. Property qualifies for the general transition rule in section 251(d)(2) of the Act if such property is placed in service before January 1, 1994, and if such property is placed in service as part of—

(*1*) A rehabilitation that was completed pursuant to a written contract that was binding on March 1, 1986, or

(*2*) A rehabilitation incurred in connection with property (including any leasehold interest) acquired before March 2, 1986, or acquired on or after such date pursuant to a written contract that was binding on March 1, 1986, if—

(*i*) Parts 1 and 2 of the Historic Preservation Certificate Application were filed with the Department of the Interior (or its designee) before March 2, 1986, or

(*ii*) The lesser of $1,000,000 or 5 percent of the cost of the rehabilitation is incurred before March 2, 1986, or is required to be incurred pursuant to a written contract which was binding on March 1, 1986.

(C) *Specific rehabilitations.* See section 251(d) (3) and (4) of the Tax Reform Act of 1986 for additional rehabilitations that are exempted from the amendments made by sections 251 and 201 of the Tax Reform Act of 1986.

(b) *Definition of qualified rehabilitated building*— (1) *In general.* The term "qualified rehabilitated building" means any building and its structural components—

(i) That has been substantially rehabilitated (within the meaning of paragraph (b)(2) of this section) for the taxable year,

(ii) That was placed in service (within the meaning of § 1.46–3(d)) as a building by any person before the beginning of the rehabilitation, and

(iii) That meets the applicable existing external wall retention test or the existing external wall and internal structural framework retention test in accordance with paragraph (b)(3) of this section.

The requirement in paragraph (b)(1)(iii) of this section does not apply to a certified historic structure. See paragraph (b) (4) and (5) of this section for additional requirements related to the definition of a qualified rehabilitated building.

(2) *Substantially rehabilitated building*—(i) *Substantial rehabilitation test.* A building shall be treated as having been substantially rehabilitated for a taxable year only if the qualified rehabilitation expenditures (as defined in paragraph (c) of this section) incurred during any 24-month period selected by the taxpayer ending with or within the taxable year exceed the greater of—

(A) The adjusted basis of the building (and its structural components), or (B) $5,000.

(ii) *Date to determine adjusted basis of the building*—(A) *In general.* The adjusted basis of the building (and its structural components) shall be determined as of the beginning of the first day of the 24-month period selected by the taxpayer or the first day of the taxpayer's holding period of the building (within the meaning of section 1250(e)),

whichever is later. For purposes of determining the holding period under section 1250(e), any reconstruction that is part of the rehabilitation shall be disregarded.

(B) *Special rules.* In the event that a building is not owned by the taxpayer, the adjusted basis of the building shall be determined as of the date that would have been used if the owner had been the taxpayer. The adjusted basis of a building that is being rehabilitated by a taxpayer other than the owner shall thus be determined as of the beginning of the first day of the 24-month period selected by the taxpayer or the first day of the owner's holding period, whichever is later. Therefore, if a building that is being rehabilitated by a lessee is sold subject to the lease prior to the date that the lessee has substantially rehabilitated the building, the lessee's adjusted basis is determined as of the beginning of the first day of the new lessor's holding period or the beginning of the first day of the 24-month period selected by the lessee (the taxpayer), whichever is later. If, therefore, the first day of the new lessor's holding period were later than the first day of the 24-month period selected by the lessee (the taxpayer), the lessee's adjusted basis for purposes of the substantial rehabilitation test would be the same as the adjusted basis of the new lessor as determined under paragraph (b)(2)(vii) of this section. If a building is sold after the date that a lessee has substantially rehabilitated the building with respect to the original lessor's adjusted basis, however, the lessee's basis may be determined as of the first day of the 24-month period selected by the lessee or the first day of the original lessor's holding period, whichever is later, and the transfer of the building will not affect the adjusted basis for purposes of the substantial rehabilitation test. The preceding sentence shall not apply, however, if the building is sold to the lessee or a related party within the meaning of section 267(b) or section 707(b)(1).

(iii) *Adjusted basis of the building*—(A) *In general.* The term "adjusted basis of the building" means the aggregate adjusted basis (within the meaning of section 1011(a)) in the building (and its structural components) of all the parties who have an interest in the building.

(B) *Special rules.* In the case of a building that is leased to one or more tenants in whole or inpart, the adjusted basis of the building is determined by adding the adjusted basis of the owner (lessor) in the building to the adjusted basis of the lessee (or lessees) in the leasehold and any leasehold improvements that are structural components of the building. Similarly, in the case of a building that is divided into condominium units, the adjusted basis of the building means the aggregate adjusted basis of all of the respective condominium owners (including the basis of any lessee in the leasehold and leasehold improvements) in the building (and its structural components). If the adjusted basis of a building would be determined in whole or in part by reference to the adjusted basis of a person or persons other than the taxpayer (*e.g.*, a rehabilitation by a lessee) and the taxpayer is unable to obtain the required information, the taxpayer must establish by clear and convincing evidence that the adjusted basis of such person or persons in the building on the date specified in paragraph (b)(2)(ii) of this section is an amount that is less than the amount of qualified rehabilitation expenditures incurred by the taxpayer. If no such amount can be so established, the adjusted basis of the building will be deemed to be the fair market value of the building on the relevant date. For purposes of determining the adjusted basis of a building, the portion of the adjusted basis of a building that is allocable to an addition (within the meaning of paragraph (b)(4)(ii) of this section) to the building that does not meet the age requirement in paragraph (b)(4)(i) of this section shall be disregarded. (See paragraph (b)(2)(vii) of this section for the rule applicable to the determination of the adjusted basis of a building when qualified rehabilitation expenditures are treated as incurred by the taxpayer.)

(iv) *Rehabilitation.* Rehabilitation includes renovation, restoration, or reconstruction of a building, but does not include an enlargement (within the meaning of paragraph (c)(10) of this section) of new construction. The determination of whether expenditures are attributable to the rehabilitation of an existing building or to new construction shall be based upon all the facts and circumstances.

(v) *Special rule for phased rehabilitation.* In the case of any rehabilitation that may reasonably be expected to be completed in phases set forth in written architectural plans and specifications completed before the physical work on the rehabilitation begins, paragraphs (b)(2) (i), (ii), and (vii) of this section shall be applied by substituting "60-month period" for "24-month period." A rehabilitation may reasonably be expected to be completed in phases if it consists of two or more distinct stages of development. The determination of whether a rehabilitation consists of distinct stages and therefore may reasonably be expected to be completed in phases shall be made on the basis of all the relevant facts and circumstances in existence before physical work on the rehabilitation begins. For purposes of this paragraph and paragraph (a)(2)(iii) of this section, written plans that describe generally all phases of the rehabilitation process shall be treated as written architectural plans and specifications. Such written plans are not required to contain detailed working drawings or detailed specifications of the materials to be used. In addition, the taxpayer may include a description of work to be done by lessees in the written plans. For example, where the owner of a vacant four story building plans to rehabilitate two floors of the building and plans to require, as a condition of any lease, that tenants of the other two floors must rehabilitate those floors, the requirements of this paragrpah (b)(2)(v) shall be met if the owner provides written plans for the rehabilitation work to be done by the owner and a description of the rehabilitation work that the tenants will be required to complete. The work required of the tenants may be described in the written plans in terms of minimum specifications (*e.g.*, as to lighting, wiring, materials, appearance) that must be met by such tenants. See paragraph (b)(6)(i) of this section for the definition of physical work on a rehabilitation.

(vi) *Treatment of expenses incurred by persons who have an interest in the building.* For purposes of the substantial rehabilitation test in paragraph (b)(2)(i) of this section, the taxpayer may take into account qualified rehabilitation expenditures incurred during the same rehabilitation process by any other person who has an interest in the building. Thus, for example, to determine whether a building has been substantially rehabilitated, a lessee may include the expenditures of the lessor and of other lessees; a condominium owner may include the expenditures incurred by other condominium owners; and an owner may include the expenditures of the lessees.

(vii) *Special rules when qualified rehabilitation expenditures are treated as incurred by the taxpayer.* In the case where qualified rehabilitation expenditures are treated as having been incurred by a taxpayer under paragraph (c)(3)(ii) of this section, the transferee shall be treated as having incurred the expenditures incurred by the transferor on the date that the transferor incurred

the expenditures with the meaning of paragraph (c)(3)(i) of this section. For purposes of the substantial rehabilitation test in paragrpah (b)(2)(i) of this section, the transferee's adjusted basis in the building shall be determined as of the beginning of the first day of a 24-month period, or the first day of the transferee's holding period, whichever is later, as provided in paragraph (b)(2)(ii) of this section. The transferee's basis as of the first day of the transferee's holding period for purposes of the substantial rehabilitation test in paragraph (b)(2)(i) of this section, however, shall be considered to be equal to the transferee's basis in the building on such date less—

(A) The amount of any qualified rehabilitation expenditures incurred (or treated as having been incurred) by the transferor during the 24-month period that are treated as having been incurred by the transferee under paragraph (c)(3)(ii) of this section, and

(B) The amount of qualified rehabilitation expenditures incurred before the transfer and during the 24-month period by any other person who has an interest in the building (*e.g.*, a lessee of the transferor). The preceding sentence shall not apply, however, unless the transferee's basis in the building is determined with reference to (*1*) the transferee's cost of the building (including the rehabilitation expenditures), (*2*) the transferor's basis in the building (where such basis includes the amount of the expenditures), or (*3*) any other amount that includes the cost of the rehabilitation expenditures. In the event that the transferee's basis is determined with reference to an amount not described above (*e.g.*, transferee's basis in one building is determined with reference to the transferee's basis in another building under section 1031(d)), the amount of the expenditures incurred by the transferor and treated as having been incurred by the transferee are not deducted from the transferee's basis for purposes of the substantial rehabilitation test. If a transferee's basis is determined under section 1014, any expenditures incurred by the decedent within the measuring period that are treated as having been incurred by the transferee under paragraph (c)(3)(ii) of this section shall decrease the transferee's basis for purposes of the substantial rehabilitation test.

(viii) *Statement of adjusted basis, measuring period, and qualified rehabilitation expenditures.* In the case of any tax return filed after August 27, 1985, on which an investment tax credit for property, described in section 48(a)(1)(E) is claimed, the taxpayer shall indicate by way of a marginal notation on, or a supplemental statement attached to, Form 3468—

(A) The beginning and ending dates for the measuring period selected by the taxpayer under section 48(g)(1)(C)(i) and paragraph (b)(2) of this section,

(B) The adjusted basis of the building (within the meaning of paragraph (b)(2)(iii) or (vii) of this section) as of the beginning of such measuring period, and

(C) The amount of qualified rehabilitation expenditures incurred, and treated as incurred, respectively, during such measuring period.

Furthermore, for returns filed after August 27, 1985, if the adjusted basis of the building for purposes of the substantial rehabilitation test is determined in whole or in part by reference to the adjusted basis of a person, or persons, other than the taxpayer (*e.g.*, a rehabilitation by a lessee), the taxpayer must attach to the Form 3468 filed with the tax return on which the credit is claimed a statement addressed to the District Director, signed by such third party, that states the first day of the third party's holding period and the amount of the adjusted basis of such third party in the building at the beginning of the measuring period or the first day of the holding period, whichever is later. If the taxpayer is unable to obtain the required information, that fact should be indicated and the taxpayer should state the manner in which the adjusted basis was determined and, if different, the fair market value of the building on the relevant date.

(ix) *Partnerships and S corporations.* If a building is owned by a partnership (*i.e.*, the building is partnership property) or an S corporation, the substantial rehabilitation test shall be determined at the entity level. Thus, the entity shall compare the amount of qualified rehabilitation expenditures incurred during the measuring period against its basis in the building at the beginning of its holding period or the beginning of its measuring period, whichever is later. (See section 1223(2) for rules concerning the determination of a partnership's holding period in the case of a contribution of property to the partnership meeting the requirements of section 721.) The adjusted basis of the building to a partnership shall be determined by taking into account any adjustments to the basis of the building made under section 743 and section 734. Any adjustments to the building's basis that are made under section 743 or section 734 after the beginning of the partnership's holding period, but before the end of the measuring period, shall be deemed for purposes of the substantial rehabilitation test to have been made on the first day of the partnership's holding period. However, in such case, the partnership's basis in the building shall be reduced by the amount of qualified rehabilitation expenditures incurred by the partnership. In the case of any tax return filed after January 9, 1989 on which a credit is claimed by a partner or a shareholder of an S corporation for rehabilitation expenditures incurred by a partnership or an S corporation, the partner or shareholder shall indicate on the Form 3468 on which the credit is claimed the name, address, and identification number of the partnership or S corporation that incurred the rehabilitation expenditures, and the partnership or S corporation shall, by way of a marginal notation on or a supplemental statement attached to the entity's return, provide the information required by paragraph (b)(2)(viii) of this section.

(x) *Examples.* The following examples illustrate the application of the substantial rehabilitation test in this paragraph (b)(2):

Example (1). Assume that A, a calendar year taxpayer, purchases a building for $140,000 on January 1, 1982, incurs qualified rehabilitation expenditures in the amount of $48,000 (at the rate of $4,000 per month) in 1982, $100,000 in 1983, and $20,000 (at the rate of $2,000 per month) in the first ten months of 1984, and places the rehabilitated building in service on October 31, 1984. Assume that A did not have written architectural plans and specifications describing a phased rehabilitation within the meaning of paragraph (b)(2)(v) of this section in existence prior to the beginning of physical work on the rehabilitation. For purposes of the substantial rehabilitation test in paragraph (b)(2) of this section, A may select any 24-consecutive-month measuring period that ends in 1984, the taxable year in which the rehabilitated building was placed in service. Assume that on A's 1984 return, A selects a measuring period beginning on February 1, 1982, and ending on January 31, 1984, and specifies that A's basis in the building (within the meaning of section 1011(a)) was $144,000 on February 1, 1982 ($140,000 + $4,000). (The $4,000 of rehabilitation expenditures incurred during January 1982 are included in A's basis under section 1011 even though such property has not been placed in service.) The amount of qualified rehabilitation expenditures incurred during the measuring period was $146,000 ($44,000 from February 1 to December 31, 1982, plus $100,000 in 1983, plus $2,000 in January 1984). The building shall be treated as "substantially rehabilitated" within the meaning of this paragraph (b)(2) for A's 1984 taxable year because the $146,000 of expenditures incurred by A during the measuring period exceeded A's adjusted basis of $144,000 at the beginning of the

period. If the other requirements of section 48(g)(1) and this paragraph are met, the building is treated as a qualified rehabilitated building, and A can treat as qualified rehabilitation expenditures the amount of $168,000 (*i.e.*, $146,000 of expenditures incurred during the measuring period, $4,000 of expenditures incurred prior to the beginning of the measuring period as part of the rehabilitation process, and $18,000 of expenditures incurred after the measuring period during the taxable year within which the measuring period ends (See paragraph (c)(6) of this section.)). The result would generally be the same if the property attributable to the rehabilitation expenditures was placed in service as the expenditures were incurred, but A would have $148,000 of qualified rehabilitation expenditures for 1983 and $20,000 of qualified rehabilitation expenditures for 1984. (See paragraph (f)(2) of this section).

Example (2). Assume the same facts as in example (1), except that additional rehabilitation expenditures are incurred after the portion of the basis of the building attributable to qualified rehabilitation expenditures was placed in service on October 31, 1984. Such expenditures are incurred through the end of 1984 and in 1985 when the portion of the basis attributable to the additional expenditures is placed in service. The fact that the building qualified as a substantially rehabilitated building for A's 1984 taxable year has no effect on whether the building is a qualified rehabilitated building for property placed in service in A's 1985 taxable year. In order to determine whether the building is a qualified rehabilitated building for A's 1985 taxable year, A must select a measuring period that ends in 1985 and compare the expenditures incurred within that period with the adjusted basis as of the beginning of the period. Solely for the purpose of determining whether the building was substantially rehabilitated for A's 1985 taxable year, expenditures incurred during 1983 and 1984, even though considered in determining whether the building was substantially rehabilitated in 1984, may also be used to determine whether the building was substantially rehabilitated for A's 1985 taxable year, provided the expenditures were incurred during any 24-month measuring period selected by A that ends in 1985.

Example (3). (i) Assume the B purchases a building for $100,000 on January 1, 1982, and leases the building to C who rehabilitates the building. Assume that C, a calendar year taxpayer, places the property with respect to which rehabilitation expenditures were made in service in 1982 and selects December 31, 1982, as the end of the measuring period for purposes of the substantial rehabilitation test. The beginning of the measuring period is January 2, 1982, the beginning of B's holding period under section 1250 (e), and the adjusted basis of the building is $100,000. Accordingly, if C incurred more than $100,000 of qualified rehabilitation expenditures during 1982, the building would be substantially rehabilitated within the meaning of paragraph (b)(2)(i) of this section.

(ii) Assume the facts of example (3)(i), except that after C begins physical work on the rehabilitation, but before C incurs $100,000 of expenditures, D acquires the building, subject to C's lease, from B for $200,000. D's holding period under section 1250(e) begins on the day after D acquired the building, and C's adjusted basis for purposes of the substantial rehabilitation test is $200,000, less the the amount of expenditures incurred by C before the transfer. (See paragraph (b)(2) (ii) and (vii) of this section.) Accordingly, if C incurred more than $200,000 (less the amount of expenditures incurred prior to the transfer) of qualified rehabilitation expenditures during 1982, the building would be substantially rehabilitated within the meaning of paragraph (b)(2) of this section. Under paragraph (b)(2)(ii)(B) of this section, however, C's adjusted basis for purposes of the substantial rehabilitation test would be $100,000 if C had substantially rehabilitated the building (*i.e.*, incurred more than $100,000 in rehabilitation expenditures) prior to B's sale to D.

Example (4). E owns a building with a basis of $10,000 and E incurs $5,000 of rehabilitation expenditures. Before completing the rehabilitation project, E sells the building to F for $30,000. Assume that F is treated under paragraph (c)(3)(ii) of this section as having incurred the $5,000 of rehabilitation expenditures actually incurred by E. Because F's basis in the building is determined under section 1011 with reference to F's $30,000 cost of the building (which includes the property attributable to E's rehabilitation expenditures), F's basis for purposes of the substantial rehabilitation test is $25,000 ($30,000 cost basis less $5,000 rehabilitation expenditures treated as if incurred by F). (See paragraph (b)(2)(vii) of this section.) F would thus be required to incur more than $20,000 of rehabilitation expenditures (in addition to the $5,000 incurred by E and treated as having been incurred by F) during a measuring period selected by F to satisfy the substantial rehabilitation test.

Example (5). G owns Building I with a basis of $10,000 and a fair market value of $20,000. H owns Building II with a basis of $5,000 and a fair market value of $20,000, with respect to which H has incurred $1,000 of rehabilitation expenditures. G and H exchange their buildings in a transaction that qualifies for nonrecognition treatment under section 1031. Assume that G is treated under paragraph (c)(3)(ii) of this section as having incurred $1,000 of rehabilitation expenditures. G's basis in Building II, computed under section 1031(d), is $10,000. G's basis in Building II is not determined with reference to (A) the cost of Building II, (B) H's basis in Building II (including the cost of the rehabilitation expenditures) or (C) any other amount that includes the cost of expenditures, but is instead determined with reference to G's basis in other property (Building I). Therefore, G's basis in Building II for purposes of the substantial rehabilitation test is not reduced by the $1,000 of rehabilitation expenditures treated as if incurred by G. (See paragraph (b)(2)(vii) of this section.) Accordingly, G's basis in Building II for purposes of the substantial rehabilitation test is $10,000, and G must incur additional rehabilitation expenditures in excess of $9,000 within a measuring period selected by G to satisfy the test.

(3) *Retention of existing external walls and internal structural framework*—(i) *In general*—(A) *Property placed in service after December 31, 1986.* Except in the case of property that qualifies for the transition rules in paragraph (a)(2)(iv) (B) and (C) of this section, in the case of property that is placed in service after December 31, 1986, a building (other than a certified historic structure) meets the requirement in paragraph (b)(1)(iii) of this section only if in the rehabilitation process—

(*1*) 50 percent or more of the existing external walls of such building are retained in place as external walls;

(*2*) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

(*3*) 75 percent or more of the internal structural framework of such building (as defined in paragraph (b)(3)(iii) of this section) is retained in place.

(B) *Expenditures incurred before January 1, 1984, for property placed in service before January 1, 1987.* With respect to rehabilitation expenditures incurred before January 1, 1984, for property that is either placed in service before January 1, 1987, or that qualifies for the transition rules in paragraph (a)(2)(iv) (B) or (C) of this section, a building meets the requirement in paragraph (b)(1)(iii) of this section only if 75 percent or more of the existing external walls of the building are retained in place as external walls in the rehabilitation process. If an addition to a building is not treated as part of a qualified rehabilitated building because it does not meet the 30-year requirement in paragraph (b)(4)(i)(B) of this section, then the external walls of such addition shall not be considered to be existing external walls of the building for purposes of section 48(g)(1)(A)(iii) (as in effect prior to enactment of the Tax Reform Act of 1986), and this section.

(C) *Expenditures incurred after December 31, 1983, for property placed in service before January 1, 1987.* With respect to expenditures incurred after December 31, 1983, for property that is either placed in service before January 1, 1987, or that qualifies for the transition rules in paragraph (a)(2)(iv) (B) or (C) of this section, the requirement of paragraph (b)(1)(iii) of this section is satisfied only if in the rehabilitation process either the existing external wall retention requirement in paragraph (b)(3)(i) (B) of this section is satisfied, or:

(*1*) 50 percent or more of the existing external walls of the building are retained in place as external walls,

(2) 75 percent or more of the existing external walls are retained in place as internal or external walls, and

(3) 75 percent or more of the existing internal structural framework of such building is retained in place.

(D) *Area of external walls and internal structural framework.* The determinations required by paragraph (b)(3)(i) (A), (B), and (C) of this section shall be based upon the area of the external walls or internal structural framework that is retained in place compared to the total area of each prior to the rehabilitation. The area of the existing external walls and internal structural framework of a building shall be determined prior to any destruction, modification, or construction of external walls or internal structural framework that is undertaken by any party in anticipation of the rehabilitation.

(ii) *Definition of external wall.* For purposes of this paragraph (b), a wall includes both the supporting elements of the wall and the nonsupporting elements, *(e.g.,* a curtain, windows or doors) of the wall. Except as otherwise provided in this paragraph (b)(3), the term "'external wall" includes any wall that has one face exposed to the weather, earth, or an abutting wall of an adjacent building. The term "external wall" also includes a shared wall *(i.e.,* a single wall shared with an adjacent building), generally referred to as a "party wall," provided that the shared wall has no windows or doors in any portion of the wall that does not have one face exposed to the weather, earth, or an abutting wall. In general, the term "external wall" includes only those external walls that form part of the outline or perimeter of the building or that surround an uncovered courtyard. Therefore, the walls of an uncovered internal shaft, designed solely to bring light or air into the center of a building, which are completely surrounded by external walls of the building and which enclose space not designated for occupancy or other use by people (other than for maintenance or emergency), are not considered external walls. Thus, for example, a wall of a light well in the center of a building is not an external wall. However, walls surrounding an outdoor space which is usable by people, such as a courtyard, are external walls.

(iii) *Definition of internal structural framework.* For purposes of this section, the term "internal structural framework" includes all load-bearing internal walls and any other internal structural supports, including the columns, girders, beams, trusses, spandrels, and all other members that are essential to the stability of the building.

(iv) *Retained in place.* An existing external wall is retained in place if the supporting elements of the wall are retained in place. An existing external wall is not retained in place if the supporting elements of the wall are replaced by new supporting elements. An external wall is retained in place, however, if the supporting elements are reinforced in the rehabilitation, provided that such supporting elements of the external wall are retained in place. An external wall also is retained in place if it is covered (*e.g.,* with new siding). Moreover, an external wall is retained in place if the existing curtain is replaced with a new curtain, provided that the structural framework that provides for the support of the existing curtain is retained in place. An external wall is retained in place notwithstanding that the existing doors and windows in the wall are modified, eliminated, or replaced. An external wall is retained in place if the wall is disassembled and reassembled, provided the same supporting elements are used when the wall is reassembled and the configuration of the external walls of the building after the rehabilitation is the same as it was before the rehabilitation process commenced. Thus, for example, a brick wall is considered retained in place even though the original bricks are removed (for cleaning, *etc.*) and replaced to form the wall. The principles of this paragraph (b)(3)(iv) shall also apply to determine whether internal structural framework of the building is retained in place.

(v) *Effect of additions.* If an existing external wall is converted into an internal wall (*i.e.,* a wall that is not an external wall), the wall is not retained in place as an external wall for purposes of this section.

(vi) *Examples.* The provisions of this paragraph (b)(3) may be illustrated by the following examples:

Example (1). Taxpayer A rehabilitated a building all of the walls of which consisted of wood siding attached to gypsum board sheets (which covered the supporting elements of the wall, *i.e.,* studs). A covered the existing wood siding with aluminum siding as part of a rehabilitation that otherwise qualified under this subparagraph. The addition of the aluminum siding does not affect the status of the existing external walls as external walls and they would be considered to have been retained in place.

Example (2). Taxpayer B rehabilitated a building, the external walls of which had a masonry curtain. The masonry on the wall face was replaced with a glass curtain. The steel beam and girders supporting the existing masonry curtain were retained in place. The walls of the building are considered to be retained in place as external walls, notwithstanding the replacement of the curtain.

Example (3). Taxpayer C rehabilitated a building that has two external walls measuring 75' x 20' and two other external walls measuring 100' x 20'. C demolished one of the larger walls, including its supporting elements and constructed a new wall. Because one of the larger walls represents more than 25 percent of the area of the building's external walls, C has not satisfied the requirements that 75 percent of the existing external walls must be retained in place as either internal or external walls. If however, C had not demolished the wall, but had converted it into an internal wall (*e.g.,* by building a new external wall), the building would satisfy the external wall requirements.

Example (4). The facts are the same as in example (3), except that C does not tear down any walls, but builds an addition that results in one of the smaller walls becoming an internal wall. In addition, C enlarged 8 of the existing windows on one of the larger walls, increasing them from a size of 3' x 4' to 6' x 8'. Since the smaller wall accounts for less than 25 percent of the total wall area, C has satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls in the rehabilitation process. The enlargement of the existing windows on the larger wall does not affect its status as an external wall.

Example (5). Taxpayer D rehabilitated a building that was in the center of a row of three buildings. The building being rehabilitated by D shares its side walls with the buildings on either side. The shared walls measure 100' x 20' and the rear and front walls measure 75' x 20'. As part of a rehabilitation, D tears down and replaces the front wall. Because the shared walls as well as the front and back walls are considered external walls and the front wall accounts for less than 25 percent of the total external wall area (including the shared walls), D has satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls in the rehabilitation process.

(4) *Age requirement*—(i) *In general*—(A) *Property placed in service after December 31, 1986.* Except in the case of property that qualifies for the transition rules in paragraph (a)(2)(iv) (B) or (C) of this section, a building other than a certified historic structure shall not be considered a qualified rehabilitated building unless the building was first placed in service (within the meaning of § 1.46–3(d)) before January 1, 1936.

(B) *Property placed in service before January 1, 1987, and property qualifying under a transition rule.* In the case of property placed in service before January 1, 1987, and property that qualifies under the transition rules in paragraph (a)(2)(iv) (B) or (C) of this section, a building other than a certified historic structure is considered a qualified rehabilitated building only if a period of at least 30 years has elasped

between the date physical work on the rehabilitation of the building began and the date the building was first placed in service (within the meaning of § 1.46–3(d)) as a building by any person.

(ii) *Additions.* A building that was first placed in service before 1936 in the case described in paragraph (b)(4)(i)(A) of this section, or at least 30 years before physical work on the rehabilitation began in the case described in paragraph (b)(4)(i)(B) of this section, will not be disqualified because additions to such building have been added since 1936 in the case described in paragraph (b)(4)(i)(A) of this section, or are less than 30 years old in the case described in paragraph (b)(4)(i)(B). Such additions, however, shall not be treated as part of the qualified rehabilitated building. The term "addition" means any construction that resulted in any portion of an external wall becoming an internal wall, that resulted in an increase in the height of the building, or that increased the volume of the building.

(iii) *Vacant periods.* The determinations required by paragraph (b)(4)(i) of this section include periods during which a building was vacant or devoted to a personal use and is computed without regard to the number of owners or the identify of owners during the period.

(5) *Location at which the rehabilitation occurs.* A building, other than a certified historic structure is not a qualified rehabilitated building unless it has been located where it is rehabilitated since before 1936 in the case described in paragraph (b)(4)(i)(A) of this section. Similarly, in the case described in paragraph (b)(4)(i)(B) of this section, a building, other than a certified historic structure, is not a qualified rehabilitation building unless it has been located where it is rehabilitated for the thirty-year period immediately preceding the date physical work on the rehabilitation began in the case of a "30-year building" or the forty-year period immediately preceding the date physical work on the rehabilitation began in the case of a "40-year building." (See > § 1.46–1(q)(1)(iii) for the definitions of "30-year building" and "40-year building.")

(6) *Definition and special rule*—(i) *Physical work on a rehabilitation.* For purposes of this section, "physical work on a rehabilitation" begins when actual construction, or destruction in preparation for construction, begins. The term "physical work on a rehabilitation," however, does not include preliminary activities such as planning, designing, securing financing, exploring, researching, developing plans and specifications, or stabilizing a building to prevent deterioration (*e.g.*, placing boards over broken windows).

(ii) *Special rule for adjoining buildings that are combined.* For purposes of this paragraph (b), if as part of a rehabilitation process two or more adjoining buildings are combined and placed in service as a single building after the rehabilitation process, then, at the election of the taxpayer, all of the requirements for a qualified rehabilitated building in section 48(g)(1) and this section may be applied to the constituent adjoining buildings in the aggregate. For example, if such requirements are applied in the aggregate, any shared walls or abutting walls between the constituent buildings that would otherwise be treated as external walls (within the meaning of paragraph (b)(3) of this section) would not be treated as external walls of the building, and the substantial rehabilitation test in paragraph (b)(2) of this section would be applied to the aggregate expenditures with respect to all of the constituent buildings and to the aggregate adjusted basis of all of the constituent buildings. A taxpayer shall elect the special rule of this paragraph (b)(6)(ii) for adjoining buildings by indicating by way of a marginal notation on, or a supplemental statement attached to, the Form 3468 on which a credit is first claimed for qualified rehabilitation expenditures with respect to such buildings that such buildings are a single qualified rehabilitated building because of the application of the special rule in this paragraph (b)(6)(ii).

(c) *Definition of qualified rehabilitation expenditures*—(1) *In general.* Except as otherwise provided in paragraph (c)(7) of this section, the term "qualified rehabilitation expenditure" means any amount that is—

(i) Properly chargeable to capital account (as described in paragraph (c)(2) of this section),

(ii) Incurred by the taxpayer after December 31, 1981 (as described in paragraph (c)(3) of this section),

(iii) For property for which depreciation is allowable under section 168 and which is real property described in paragraph (c)(4) of this section, and

(iv) Made in connection with the rehabilitation of a qualified rehabilitated building (as described in paragraph (c)(5) of this section).

(2) *Chargeable to capital account.* For purposes of paragraph (c)(1) of this section, amounts are chargeable to capital account if they are properly includible in computing basis of real property under § 1.46–3(c). Amounts treated as an expense and deducted in the year they are paid or incurred or amounts that are otherwise not added to the basis of real property described in paragraph (c)(4) of this section do not qualify. For purposes of this paragraph (c), amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction related costs, satisfy the requirement of this paragraph (c)(2) if they are added to the basis of real property that is described in paragraph (c)(4) of this section. Construction period interest and taxes that are amortized under section 189 (as in effect prior to its repeal by the Tax Reform Act of 1986) do not satisfy the requirement of this paragraph (c)(2). If, however, such interest and taxes are treated by the taxpayer as chargeable to capital account with respect to property described in paragraph (c)(4) of this section, they shall be treated in the same manner as other costs described in this paragraph (c)(2). Any construction period interest or taxes or other fees or costs incurred in connection with the acquisition of a building, any interest in a building, or land, are subject to paragraph (c)(7)(ii) of this section. See paragraph (c)(9) of this section for additional rules concerning interest.

(3) *Incurred by the taxpayer*—(i) *In general.* Qualified rehabilitation expenditures are incurred by the taxpayer for purposes of this section on the date such expenditures would be considered incurred under an accrual method of accounting, regardless of the method of accounting used by the taxpayer with respect to other items of income and expense. If qualified rehabilitation expenditures are treated as having been incurred by a taxpayer under paragraph (c)(3)(ii) of this section, the taxpayer shall be treated as having incurred the expenditures on the date such expenditures were incurred by the transferor.

(ii) *Qualified rehabilitation expenditures treated as incurred by the taxpayer*—(A) Where rehabilitation expenditures are incurred with respect to a building by a person (or persons) other than the taxpayer and the taxpayer subsequently acquires the building, or a portion of the building to which some or all of the expenditures are allocable (*e.g.*, a condominium unit to which rehabilitation expenditures have been allocated), the taxpayer acquiring such property shall be treated as having incurred the rehabilitation expenditures actually incurred by the transferor (or treated as incurred by the transferor under this paragraph (c)(3)(ii)) allocable to the acquired property, provided that—

(*1*) The building, or the portion of the building, acquired by the taxpayer was not used (or, if later, was not placed in service (as defined in paragraph (f)(2) of this section)) after the rehabilitation expenditures were incurred and prior to the date of acquisition, and

(*2*) No credit with respect to such qualified rehabilitation expenditures is claimed by anyone other than the taxpayer acquiring the property. For purposes of this paragraph (c)(3)(ii), use shall mean actual use, whether personal or business. In the case of a building that is divided into condominium units, expenditures attributable to the common elements shall be allocable to the individual condominium units in accordance with the principles of paragraph (c)(10)(ii) of this section. Furthermore, for purpose of this paragraph (c)(3)(ii), a condominium unit's share of the common elements shall not be considered to have been used (or placed in Service) prior to the time that the particular condominium unit is used.

(B) The amount of rehabilitation expenditures described in paragraph (c)(3)(ii)(A) of this section treated as incurred by the taxpayer under this paragraph shall be the lesser of—

(*1*) The amount of rehabilitation expenditures incurred before the date on which the taxpayer acquired the building (or portion thereof) to which the rehabilitation expenditures are attributable, or

(*2*) The portion of the taxpayer's cost or other basis for the property that is properly allocable to the property resulting from the rehabilitation expenditures described in paragraph (c)(3)(ii)(B)(*1*) of this section.

(C) For purposes of this paragraph (c)(3)(ii), the amount of rehabilitation expenditures treated as incurred by the taxpayer under this paragraph (c) shall not be treated as costs for the acquisition of a building. The portion of the cost of acquiring a building (or an interest therein) that is not treated under this paragraph as qualified rehabilitation expenditures incurred by the taxpayer is not treated as section 38 property in the hands of the acquiring taxpayer. (See paragraph (c)(7)(ii) of this section.) (See paragraph (b)(2)(vii) for rules concerning the application of the substantial rehabilitation test when expenditures are treated as incurred by the taxpayer.)

(iii) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). In 1981, A, a taxpayer using the cash receipts and disbursements method of accounting, commenced the rehabilitation of a 30-year old building. In June 1981, A signed a contract with a plumbing contractor for replacement of the plumbing in the building. A agreed to pay the contractor as soon as the work was completed. The work was completed in December 1981, but A did not pay the amount due until January 15, 1982. The expenditures for the plumbing are not qualified rehabilitation expenditures (within the meaning of this paragraph (c)) because they were not incurred under an accrual method of accounting after December 31, 1981.

Example (2). B incurred qualified rehabilitation expenditures of $300,000 with respect to an existing building between January 1, 1982, and May 15, 1982, and then sold the building to C on June 1, 1982. The portion of the building to which the expenditures were allocable was not used by B or any other person during the period from January 1, 1982, to June 1, 1982, and neither B nor any other person claimed the credit. Consequently, C will be treated as having incurred the expenditures on the dates that B incurred the expenditures.

Example (3). D, a taxpayer using the cash receipts and disbursements method of accounting, begins the rehabilitation of a building on January 11, 1982. Prior to May 1, 1982, D makes rehabilitation expenditures of $16,000. On May 3, 1982, D sells the building, the land, and the property attributable to the rehabilitation expenditures to E for $35,000. The purchase price is properly allocable as follows:

Land	$5,000
Existing building	11,000
Property attributable to rehabilitation expenditures	19,000
Total purchase price	35,000

The property attributable to the rehabilitation expenditures is placed in service by E on September 5, 1982. E may treat a portion of the $35,000 purchase price as rehabilitation expenditures paid or incurred by him. Since the rehabilitation expenditures paid by D ($16,000) are less than the portion of the purchase price properly allocable to property attributable to these expenditures ($19,000), E may treat only $16,000 as rehabilitation expenditures paid or incurred by him. The excess of the purchase price allocable to rehabilitation expenditures ($19,000) over the rehabilitation expenditures paid by D ($16,000), or $3,000, is treated as the cost of acquiring an interest in the building and is not a qualified rehabilitation expenditure treated as incurred by E.

Example (4). The facts are the same as in example (3), except that the purchase price properly allocable to the property attributable to rehabilitation expenditures is $15,000. Under these circumstances, E may treat only $15,000 of D's $16,000 expenditures as rehabilitation expenditures paid by D. The excess of the rehabilitation expenditures paid by D ($16,000) over the purchase price allocable to rehabilitation expenditures ($15,000), or $1,000, is treated as the cost of acquiring an interest in the building and is not a qualified rehabilitation expenditure treated as incurred by E.

(4) *Incurred for depreciable real property*—(i) *Property placed in service after December 31, 1986.* Except as otherwise provided in paragraph (c)(4)(ii) of this section (relating to certain property that qualifies under a transition rule), in the case of property placed in service after December 31, 1986, an expenditure is incurred for depreciable real property for purposes of paragraph (c)(1)(iii) of this section, only if it is added to the depreciable basis of depreciable property which is—

(A) Nonresidential real property,

(B) Residential rental property,

(C) Real property which has a class life of more than 12.5 years, or

(D) An addition or improvement to property described in paragraph (c)(4)(i)(A), (B), or (C) of this section.

For purposes of this paragraph (c)(4)(i), the terms "nonresidential real property", "residential rental property", and "class life" have the respective meanings given to such terms by section 168 and the regulations thereunder.

(ii) *Property placed in service before January 1, 1987, and property that qualifies under a transition rule.* In the case of property placed in service before January 1, 1987, and property placed in service after December 31, 1986, that qualifies for the transition rules in paragraph (a)(2)(iv) (B) or (C) of this section, an expenditure attributable to such property shall be a qualified rehabilitation expenditure only if such expenditure is incurred for property that is real property (or additions or improvements to real property) with a recovery period (within the meaning of section 168 as in effect prior to its amendment by the Tax Reform Act of 1986) of 19 years (15 years for low-income housing) and if the other requirements of this paragraph (c) are met. For purposes of this section, an expenditure is incurred for recovery property having a recovery period of 19 years only if the amount of the expenditure is added to the basis of property which is 19-year real property or 15-year real property in the case of low-income housing. For purposes of this section, the term "low-income housing" has the meaning given such term by section 168(c)(2)(F) (as in effect prior to the amendments made by the Tax Reform Act of 1986).

(5) *Made in connection with the rehabilitation of a qualified rehabilitated building.* In order for an expenditure to be a qualified rehabilitation expenditure, such expenditure must be incurred in connection with a rehabilitation (as defined in paragraph (b)(2)(iv) of this section) of a qualified rehabilitated

building. Expenditures attributable to work done to facilities related to a building (*e.g.*, sidewalk, parking lot, landscaping) are not considered made in connection with the rehabilitation of a qualified rehabilitated building.

(6) *When expenditures may be incurred.* An expenditure is a qualified rehabilitation expenditure only if the building with respect to which the expenditures are incurred is substantially rehabilitated (within the meaning of paragraph (b)(2) of this section) for the taxable year in which the property attributable to the expenditures is placed in service (*i.e.*, the building is substantially rehabilitated during a measuring period ending with or within the taxable year in which a credit is claimed). (See paragraph (f)(2) of this section for rules relating to when property is placed in service.) Once the substantial rehabilitation test is met for a taxable year, the amount of qualified rehabilitation expenditures upon which a credit can be claimed for the taxable year is limited to expenditures incurred:

(i) Before the beginning of a measuring period during which the building was substantially rehabilitated that ends with or within the taxable year, provided that the expenditures were incurred in connection with the rehabilitation process that resulted in the substantial rehabilitation of the building;

(ii) Within a measuring period during which the building was substantially rehabilitated that ends with or within the taxable year, and

(iii) After the end of a measuring period during which the building was substantially rehabilitated but prior to the end of the taxable year with or within which the measuring period ends.

(7) *Certain expenditures excluded from qualified rehabilitation expenditures.* The term "qualified rehabilitation expenditures" does not include the following expenditures:

(i) Except as otherwise provided in paragraph (c)(8) of this section, any expenditure with respect to which the taxpayer does not use the straight line method over a recovery period determined under section 168 (c) and (g).

(ii) The cost of acquiring a building, any interest in a building (including a leasehold interest), or land, except as provided in paragraph (c)(3)(ii) of this section.

(iii) Any expenditure attributable to an enlargement of a building (within the meaning of paragraph (c)(10) of this section).

(iv) Any expenditure attributable to the rehabilitation of a certified historic structure or a building located in a registered historic district, unless the rehabilitation is a certified rehabilitation. (See paragraph (d) of this section which contains definitions and special rules applicable to rehabilitations of certified historic structures and buildings located in registered historic districts.)

(v) Any expenditure of a lessee of a building or a portion of a building, if, on the date the rehabilitation is completed with respect to property placed in service by such lessee, the remaining term of the lease (determined without regard to any renewal period) is less than the recovery period determined under section 168(c) (or 19 years in the case of property placed in service before January 1, 1987, and property placed in service that qualifies under the transition rules in paragraph (a)(2)(iv) (B) or (C) of this section).

(vi) Any expenditure allocable to that portion of a building which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168 and the regulations thereunder), except that the exclusion in this paragraph (c)(7)(vi) shall not apply for purposes of determining whether the building is a substantially rehabilitated building under paragraph (b)(2) of this section.

(8) *Requirement to use straight line depreciation*—(i) *Property placed in service after December 31, 1986.* The requirement in section 48(g)(2)(B)(i) and paragraph (c)(7)(i) of this section to use straight line cost recovery does not apply to any expenditure to the extent that the alternative depreciation system of 168(g) applies to such expenditure by reason of section 168(g)(1) (B) or (C). In addition, the requirement in section 48(g)(2)(B)(i) and paragraph (c)(7)(i) of this section applies only to the depreciation of the portion of the basis of a qualified rehabilitated building that is attributable to qualified rehabilitation expenditures.

(ii) *Property placed in service before January 1, 1987, and property placed in service after December 31, 1986, that qualifies for a transition rule.* In the case of expenditures attributable to property placed in service before January 1, 1987, and property that qualifies for the transition rules in paragraph (a)(2)(iv) (B) or (C) of this section, the term "qualified rehabilitation expenditure" does not include an expenditure with respect to which an election was not made under section 168(b)(3) as in effect prior to its amendment by the Tax Reform Act of 1986, to use the straight line method of depreciation. In such case, the requirement that an election be made to use straight line cost recovery applies only to the cost recovery of the portion of the basis of a qualified rehabilitated building that is attributable to qualified rehabilitation expenditures. See section 168(f)(1), as in effect prior to its amendment by the Tax Reform Act of 1986, for rules relating to the use of different methods of cost recovery for different components of a building. In addition, such requirement shall not apply to any expenditure to the extent that section 168(f)(12) or (j), as in effect prior to the amendments made by the Tax Reform Act of 1986, applied to such expenditure.

(9) *Cost of acquisition.* For purposes of paragraph (c)(7)(ii) of this section, cost of acquisition includes any interest incurred on indebtedness the proceeds of which are attributable to the acquisition of a building, an interest in a building, or land open which a building exists. Interest incurred on a construction loan the proceeds of which are used for qualified rehabilitation expenditures, however, is not treated as a cost of acquisition.

(10) *Enlargement defined*—(i) *In general.* A building is enlarged to the extent that the total volume of the building is increased. An increase in floor space resulting from interior remodeling is not considered an enlargement. The total volume of a building is generally equal to the product of the floor area of the base of the building and the height from the underside of the lowest floor (including the basement) to the average height of the finished roof (as it exists or existed). For this purpose, floor area is measured from the exterior faces of external walls (other than shared walls that are external walls) and from the centerline of shared walls that are external walls.

(ii) *Rehabilitation that includes enlargement.* If expenditures for property only partially qualify as qualified rehabilitation expenditures because some of the expenditures are attributable to the enlargement of the building, the expenditures must be apportioned between the original portion of the building and the enlargement. The expenditures must be specifically allocated between the original portion of the building and the enlargement to the extent possible. If it is not possible to make a specific allocation of the expenditures, the expenditures must be allocated to each portion on some reasonable basis. The determination of a reasonable basis for an allocation depends on factors such as the type of improvement and how the improvement relates functionally to the building. For example, in the case of expenditures for an air-conditioning

system or a roof, a reasonable basis for allocating the expenditures among the two portions generally would be the volume of the building, excluding the enlargement, served by the air-conditioning system or the roof relative to the volume of the enlargement served by the improvement.

(d) *Rules applicable to rehabilitations of certified historic structures*—(1) *Definition of certified historic structure.* The term "certified historic structure" means any building (and its structural components) that is—

(i) Listed in the National Register of Historic Places ("National Register"); or

(ii) Located in a registered historic district and certified by the Secretary of the Interior to the Internal Revenue Service as being of historic significance to the district.

For purposes of this section, a building shall be considered to be a certified historic structure at the time it is placed in service if the taxpayer reasonably believes on that date the building will be determined to be a certified historic structure and has requested on or before that date a determination from the Department of Interior that such building is a certified historic structure within the meaning of this paragraph (d) (1) (i) or (ii) and the Department of Interior later determines that the building is a certified historic structure.

(2) *Definition of registered historic district.* The term "registered historic district" means any district that is—

(i) Listed in the National Register, or

(ii) (A) Designated under a statute of the appropriate State or local government that has been certified by the Secretary of the Interior to the Internal Revenue Service as containing criteria that will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and (B) certified by the Secretary of the Interior as meeting substantially all of the requirements for the listing of districts in the National Register.

(3) *Definition of certified rehabilitation.* The term "certified rehabilitation" means any rehabilitation of a certified historic structure that the Secretary of the Interior has certified to the Internal Revenue Service as being consistent with the historic character of the building and, where applicable, the district in which such building is located. The determination of the scope of a rehabilitation shall be made on the basis of all the facts and circumstances surrounding the rehabilitation and shall not be made solely on the basis of ownership. The Secretary of the Interior shall take all of the rehabilitation work performed as part of a single rehabilitation, including any post-certification work, into account in determining whether the rehabilitation complies with the Department of Interior standards for rehabilitation and whether the certification should be granted, revoked, or otherwise invalidated.

(4) *Revoked or invalidated certification.* If the Department of Interior revokes or otherwise invalidates a certification after it has been issued to a taxpayer, the basis attributable to rehabilitation of the decertified property shall cease to be section 38 property described in section 48 (a) (1) (E). Such cessation shall be effective as of the date the activity giving rise to the revocation or invalidation commenced. See section 47 for the rules applicable to property that ceases to be section 38 property.

(5) *Special rule for certain buildings located in registered historic districts.* The exclusion in paragraph (c) (7) (iv) of this section does not apply to a building in a registered historic district if—

(i) Such building was not a certified historic structure during the rehabilitation process; and

(ii) The Secretary of the Interior certified to the Internal Revenue Service that such building was not of historic significance to the district.

In general, the certification referred to in paragraph (d) (5) (ii) of this section must be requested by the taxpayer prior to the time that physical work on the rehabilitation began. If, however, the certification referred to in paragraph (d) (5) (ii) of this section is requested by the taxpayer after physical work on the rehabilitation of the building has begun, the taxpayer must certify to the Internal Revenue Service that, prior to the date that physical work on the rehabilitation began, the taxpayer in good faith was not aware of the requirement of paragraph (d) (5) (ii) of this section. The certification referred to in the previous sentence must be attached to the Form 3468 filed with the tax return for the year in which the credit is claimed.

(6) *Special rule for certain rehabilitations begun before an area is designated as a registered historic district.* In general, the exclusion from the definition of qualified rehabilitation expenditure in paragraph (c) (7) (iv) of this section applies to any rehabilitation expenditures that are incurred after a building becomes a certified historic structure within the meaning of section 48 (g) (3) (A) and paragraph (d) (1) of this section or the area in which a building is located becomes a registered historic district within the meaning of section 48 (g) (3) (B) and paragraph (d) (2) of this section. Rehabilitation expenditures incurred prior to such date, however, are not disqualified. In addition, rehabilitation expenditures made after the date the area in which a building is located becomes a registered historic district shall not be disqualified under paragraph (c) (7) (iv) of this section in any case in which physical work on the rehabilitation of a building begins prior to the date the taxpayer knows or has reason to know of an intention to nominate the area in which such building is located as a registered historic district. For purposes of this paragraph (d) (6), the taxpayer knows or has reason to know of such an intention if there is (A) a communication (written or oral) to the owner of any building within the district from the Department of the Interior, or any agency or instrumentality of the appropriate state or local government (or a designee of such agency or instrumentality) that the district in which the building is located is being considered for designation as a registered historic district, (B) a legal notice of such consideration published in a newspaper, or (C) a public meeting held to discuss such consideration. In order to take advantage of the special rule of this paragraph (d) (6), the taxpayer must attach to the Form 3468 filed for the taxable year in which the credit is claimed a statement that the taxpayer in good faith did not know, or have reason to know, of an intention to nominate the area in which the building is located as a registered historic district.

(7) *Notice of certification*—(i) *In general.* Except as otherwise provided in paragraph (d)(7)(ii) of this section, a taxpayer claiming the credit for rehabilitation of a certified historic structure (within the meaning of section 48(g)(3) and paragraph (d)(1) of this section) must attach to the Form 3468 filed with the tax return for the taxable year in which the credit is claimed a copy of the final certification of completed work by the Secretary of the Interior, and for returns filed after January 9, 1989, evidence that the building is a certified historic structure.

(ii) *Late certification.* If the final certification of completed work has not been issued by the Secretary of the Interior at the time the tax return is filed for a year in which the credit is claimed, a copy of the first page of the Historic Preservation Certification Application—Part 2—Description of Rehabilitation (NPS Form 10–168a), with an indication that it has been received by the Department of the Interior or its designate, together with proof that the building is a certified historic structure (or that such status has been requested) must be attached to the Form 3468 filed

with the return. A notice from the Department of the Interior or the State Historic Preservation Officer, stating that the nomination or application has been received, or a date-stamped nomination or application shall be sufficient indication that the nomination or application has been received. The building need not be either listed in the National Register or be determined to be of historic significance to a registered historic district at the time the return is filed for the year in which the credit is claimed. (See paragraph (d)(1) of this section.) The taxpayer must submit a copy of the final certification as an attachment to Form 3468 with the first income tax return filed after the receipt by the taxpayer of the certification. If the final certification is denied by the Department of Interior, the credit will be disallowed for any taxable year in which it was claimed. If the taxpayer fails to receive final certification of completed work prior to the date that is 30 months after the date that the taxpayer filed the tax return on which the credit was claimed, the taxpayer must submit a written statement to the District Director stating such fact prior to the last day of the 30th month, and the taxpayer shall be requested to consent to an agreement under section 6501(c)(4) extending the period of assessment for any tax relating to the time for which the credit was claimed. The procedure permitted by the preceding sentence shall be used whenever the entire rehabilitation project is not fully completed by the date that is 30 months after the taxpayer filed the tax return upon which the credit was claimed (*e.g.* a phased rehabilitation) and the Secretary of the Interior has thus not yet certified the rehabilitation.

(e) *Adjustment to basis*—(1) *General rule.* Except as otherwise provided by this paragraph (e), if a credit is allowed with respect to property attributable to qualified rehabilitation expenditures incurred in connection with the rehabilitation of a qualified rehabilitated building, the increase in the basis of the rehabilitated property that would otherwise result from the qualified rehabilitation expenditures must be reduced by the amount of the credit allowed. See section 48(q) and the regulations there under for other rules concerning adjustments to basis in the case of section 38 property.

(2) *Special rule for certain property relating to certified historic structures.* If a rehabilitation investment credit is allowed with respect to property that is placed in service before January 1, 1987, or property that qualifies for the transition rules in paragraph (a)(2)(iv)(B) or (C) of this section, and such property is attributable to qualified rehabilitation expenditures incurred in connection with the rehabilitation of a certified historic structure, the increase in the basis of the rehabilitated property that would otherwise result from the qualified rehabilitation expenditures must be reduced by one-half of the amount of the credit allowed.

(3) *Recapture of rehabilitation investment credit.* If during any taxable year there is a recapture amount determined with respect to any credit that resulted in a basis adjustment under paragraph (e) (1) or (2) of this section, the basis of such building (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term "recapture amount" means any increase in tax (or adjustment in carrybacks or carryovers) determined under section 47(a)(5).

(f) *Coordination with other provisions of the Code*—(1) *Credit claimed by lessee for rehabilitation performed by lessor.* A lessee may take the credit for rehabilitation performed by the lessor if the requirements of this section and section 48(d) are satisfied. For purposes of applying section 48(d), the fair market value of section 38 property described in section 48(a)(1)(E) shall be limited to that portion of the lessor's basis in the qualified rehabilitated building that is attributable to qualified rehabilitation expenditures. In the case of a portion of a building that is divided into more than one leasehold interest, the qualified rehabilitation expenditures attributable to the common elements shall be allocated to the individual leasehold interests in accordance with the principles of paragraph (c)(10)(ii) of this section. Furthermore, a leasehold interest's share of the common elements shall not be considered to have been placed in service prior to the time that the particular leasehold interest is placed in service.

(2) *When the credit may be claimed*—(i) *In general.* The investment credit for qualified rehabilitation expenditures is generally allowed in the taxable year in which the property attributable to the expenditure is placed in service, provided the building is a qualified rehabilitated building for the taxable year. See paragraph (b) of this section and section 46(c) and § 1.46–3(d). Under certain circumstances, however, the credit may be available prior to the date the property is placed in service. See section 46(d) and § 1.46–5 (relating to qualified progress expenditures). Solely for purposes of section 46(c), property attributable to qualified rehabilitation expenditures will not be treated as placed in service until the building with respect to which the expenditures are made meets the definition of a qualified rehabilitated building (as defined in section 48(g)(1) and paragraph (b) of this section) for the taxable year. Accordingly, in the first taxable year for which the building becomes a qualified rehabilitated building, the property described in section 48(a)(1)(E) attributable to expenditures described in paragraph (c) of this section shall be considered to be placed in service, if such property was considered placed in service under section 46(c) and the regulations thereunder without regard to this paragraph (f)(2)(i) in that taxable year or a prior taxable year. For purposes of the preceding sentence, the requirement of section 48(g)(1)(A)(iii) and paragraph (b)(3) of this section relating to the definition of a qualified rehabilitated building shall be deemed to be met if the taxpayer reasonably expects that no rehabilitation work undertaken during the remainder of the rehabilitation process will result in a failure to satisfy the requirements of paragraph (b)(3) of this section. If the requirements of paragraph (b)(3) are not satisfied, however, the credit shall be disallowed for the taxable year in which it was claimed. If a taxpayer fails to complete physical work on the rehabilitation prior to the date that is 30 months after the date that the taxpayer filed a tax return on which the credit is claimed, the taxpayer must submit a written statement to the District Director stating such fact prior to the last day of the 30th month, and shall be requested to consent to an agreement under section 6501(c)(4) extending the period of assessment for any tax relating to the item for which the credit was claimed.

(ii) *Section 38 property described in section 48(a)(1)(E).* In the case of section 38 property described in section 48(a)(1)(E), the section 38 property is not the building. Instead, the section 38 property is the portion of the basis of the building that is attributable to qualified rehabilitation expenditures. Therefore, for example, for purposes of the determination of when such section 38 property is placed in service, a determination must be made regarding when property attributable to the portion of the basis of the building attributable to qualified rehabilitation expenditures is placed in service. The issue of when the building is placed in service is thus not relevant. In fact, under this test, the building itself may never have been taken out of service

during the rehabilitation process. If the building is rehabilitated over several years in stages (*e.g.*, by floors), section 38 property attributable to qualified rehabilitation expenditures to a qualified rehabilitated building placed in service in each taxable year shall, generally, be treated as a separate item of section 38 property.

(iii) *Example.* The application of this paragraph (f)(2) may be illustrated by the following example:

Example. Assume that A, a calendar year taxpayer, purchases a four-story building on January 1, 1983, for $100,000, and incurs $10,000 of qualified rehabilitation expenditures in 1983 to rehabilitate floor one, $50,000 of qualified rehabilitation expenditures in 1984 to rehabilitate floor two, $70,000 of qualified rehabilitation expenditures in 1985 to rehabilitate floor three, and $60,000 of qualified rehabilitation expenditures in 1986 to rehabilitate floor four. Assume further that A places the property attributable to these expenditures in service on the last day of the year in which the respective expenditures were incurred and that the building is never taken out of service since as each floor is rehabilitated, the other three floors are occupied by tenants. Under the rule in this paragraph (f)(2), the portion of the basis of the building that is attributable to qualified rehabilitation expenditures incurred with respect to floor one and two are deemed to be placed in service in 1985, because that is the first year that the substantial rehabilitation test described in paragraph (b) of this section is met ($120,000 of expenditures incurred by A during a measuring period ending on December 31, 1985 is greater than the $110,000 basis at the beginning of the period). Assume that as of December 31, 1985, at least 75 percent of the external walls of the building have been retained during the rehabilitation process and that A has a reasonable expectation that no work during the remainder of the rehabilitation process will result in less than 75 percent of the external walls being retained. A may claim a credit for A's 1985 taxable year on $130,000 of qualified rehabilitation expenditures ($10,000 in 1983, $50,000 in 1984, and $70,000 in 1985). (See paragraph (c)(6) of this section for rules applicable to when qualified expenditures may be incurred. In addition, see section 46 (d) and § 1.46–5 for rules relating to qualified progress expenditures.) The fact that the building was a qualified rehabilitated building for A's 1985 taxable year, however, has no effect on whether the building is a qualified rehabilitated building for A's 1986 taxable year. In order to determine whether A is entitled to claim a credit on A's 1986 return for the $60,000 of qualified rehabilitation expenditures incurred in 1986, A must select a measuring period ending in 1986 and must determine whether the building is a qualified rehabilitated building for that year. Solely for purposes of determining whether the building was substantially rehabilitated, expenditures incurred in 1984 and 1985, even though considered in determining whether the building was substantially rehabilitated for A's 1985 taxable year, may be used in addition to the expenditures incurred in 1986 to determine whether the building was substantially rehabilitated for A's 1986 taxable year, provided the expenditures were incurred during any measuring period selected by A that ends in 1986.

(3) *Coordination with section 47.* If property described in section 48(a)(1)(E) is disposed of by the taxpayer, or otherwise ceases to be "section 38 property," section 47 may apply. Property will cease to be section 38 property, and therefore section 47 may apply, in any case in which the Department of Interior revokes or otherwise invalidates a certification of rehabilitation after the property is placed in service or a building (other than a certified historic structure) is moved from the place where it is rehabilitated after the property is placed in service. If, for example, the taxpayer made modifications to the building inconsistent with Department of Interior standards, the Secretary of the Interior might revoke the certification. In addition, if all or a portion of a substantially rehabilitated building becomes tax-exempt use property (see paragraph (c)(7)(vi) of this section) for the first time within five years after the credit is claimed, the credit will be recaptured under section 47 at that time as if the building or portion of the building which becomes tax-exempt use property had then been sold.

Par. 5. Section 1.191–1 is amended by revising paragraphs (a), (b) (1)(i) and (3), and (c)(2)(iii), and by adding a new paragraph (f) to read as follows:

§ 1.191–1 Amortization of certain rehabilitation costs for certified historic structures.

(a) *In general.* Section 191 allows an owner of a certified historic structure who rehabilitates the structure to elect to amortize over a 60-month period certain expenditures attributable to certified rehabilitation. The election may be made only if the certified historic structure (as defined in § 1.191–1(a)) and the improvements made are otherwise of a character subject to depreciation under section 167. In general, only those rehabilitation expenditures which result in additions to capital account after June 14, 1976, and before January 1, 1984, are eligible for this special amortization procedure. To qualify for the election, the rehabilitation must be certified by the Secretary of the Interior to the Internal Revenue Service as consistent with the historic character of the structure. See § 1.191–2(d) for the definition of certified rehabilitation. Along with the amortization deductions, the taxpayer may continue otherwise allowable depreciation deductions of the basis of the structure, exclusive of rehabilitation costs which are a part of the amortizable basis (as defined in § 1.191–2(e)).

(b) *Allowance of deduction*—(1) *Determination of amortization period*—(i) *General rule.* The taxpayer may elect to begin the 60-month amortization period with the month following the month in which the amortizable basis is acquired, or with the first month of the succeeding taxable year. Generally amortizable basis must be acquired after June 14, 1976, and before January 1, 1984. For purposes of this section, the month in which the amortizable basis is acquired is the latest of the month in which the work (or a component part of the work) is completed, the month in which costs are added to capital account, or the month in which depreciation deductions under section 167 would be first allowable with respect to the structure. See, however, § 1.191–2(e)(8) for special rules for certified rehabilitations in part occurring outside the effective period of section 191. No amortization deduction may be claimed before a building is used (or held for use) in a trade or business or for the production of income.

* * * * *

(3) *Relation to section 167(o) and other provisions.* If an election involving a certified historic structure is made under section 191, no election may be made under section 167(o) either for the same rehabilitation or for any subsequent rehabilitation of the same structure undertaken by the taxpayer making an election under section 191. Additionally, no election is permitted under section 191 if depreciation deductions or credits against tax based upon any part of the costs qualifying for amortization under section 191, are at any time claimed (or allowable) under any depreciation or other provision of the Internal Revenue Code of 1954. However, this limitation with respect to investment tax credits under section 38 applies only to structures placed in service after October 31, 1978. Except as provided in paragraph (f)(3) of this section, if section 191 treatment is timely elected on a structure placed in service after October 31, 1978, the investment tax credit under section 38 is considered not to have been allowable with respect to that structure for the same rehabilitation. However, the rule in the preceding sentence does not preclude a taxpayer from claiming an investment tax credit with respect to a separate and distinct rehabilitation to a structure on

which a section 191 election was previously made.

* * * * *

(c) *Person to claim deduction.* * * *

(2) *Exceptions and special rules.* * * *

(iii) *Certain transferees of historic structures.* If expenditures for certified rehabilitation are in fact made by the owner of a certified historic structure, and if one or more transferees then acquire the ownership of the rehabilitated structure directly from that owner before the structure is placed in service in its rehabilitated use, the transferees, solely for purposes of section 191, may be treated as having incurred the rehabilitation expenditures actually incurred by the transferor on the date that the transferor actually incurred those expenditures. Transferees acquiring structures in transfers occurring after the structure is placed in service after its rehabilitation but before the first day of the following taxable year, are not eligible for section 191 treatment, because depreciation deductions for rehabilitation costs are allowable to the transferor before the transfer. The amount of rehabilitation expenditures treated as made by the transferees under this subdivision (iii) is the lesser amount of—

(A) The rehabilitation expenditures actually made before the date on which the transferee acquired ownership of the structure, or

(B) The portion of the transferee's cost or other basis for the property (determined according to the rules of section 167) which is attributable to rehabilitation expenditures made before the date on which the transferee acquires ownership of the structure.

* * * * *

(f) *Termination*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, section 191, this section, §§ 1.191–2, and 1.191–3 shall not apply to expenditures incurred after December 31, 1981, in taxable years ending after such date.

(2) *Transition rule.* Section 191 and this section shall continue to apply to expenditures incurred after December 31, 1981, and before January 1, 1984, for the rehabilitation of a building if—

(i) The physical work on the rehabilitation began before January 1, 1982, and

(ii) The building does not meet the requirements of § 1.48–12(b).

(3) *Coordination with section 38.* The fact that section 191 has been timely elected with respect to expenditures incurred prior to January 1, 1982, shall not prevent the investment tax credit under section 38 from being allowed with respect to qualified rehabilitation expenditures (within the meaning of section 48(g)(2) and § 1.48–12(c)) incurred after December 31, 1981, as part of the same rehabilitation.

Par. 6. Section 1.191–2 is amended by revising paragraph (e)(8) to read as follows:

§ 1.191–2 Definitions and special rules.

* * * * *

(e) *Amortizable basis.* * * *

(8) *Time when amounts are added to capital account.* Under section 191, expenditures are treated as added to capital account at the time they are actually made (paid or accrued). However, amortizable basis includes only expenditures attributable to component parts of the structure completed before January 1, 1984. Therefore, expenditures for improvements completed after December 31, 1983, are not a part of the taxpayer's amortizable basis even though they may have been paid or accrued prior to that date. In the case of a single and continuous rehabilitation project all of which is certified by the Secretary of the Interior, expenditures for rehabilitation begun before June 14, 1976, but completed and charged thereafter, are a part of the taxpayer's amortizable basis. However, even where there is a single and continuous rehabilitation project, expenditures made for any component part of the improvements completed and charged before June 14, 1976, are not a part of the taxpayer's amortizable basis.

Par. 7. Section 1.191–3 is amended by revising paragraph (b)(4) to read as follows:

§ 1.191–3 Time and manner of making election.

* * * * *

(b) *Special rules.* * * *

(4) *Elections to begin amortization deductions after December 31, 1983.* Notwithstanding the rules of § 1.191–1(b)(1)(i), expenditures for component parts of a rehabilitation project which is not completed and placed in service until after December 31, 1983, are included in amortizable basis if the component parts are completed and the expenditures are added to capital account under § 1.191–2(e)(8) by that date. Amortization deductions for the costs of such component parts are allowable beginning with the month in which the entire rehabilitation would qualify under § 1.191–1(b)(1), but for the expiration of section 191 on December 31, 1983.

PART 602—[AMENDED]

Par. 8. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

§ 602.101 [Amended]

Par. 9. Section 602.101(c) is amended by inserting in the appropriate place in the table:

§ 1.48–12(b)(2)(vii)	1545–0155
§ 1.48–12(b)(6)(ii)	1545–0155
§ 1.48–12(d)(5)	1545–0155
§ 1.48–12(d)(6)	1545–0155
§ 1.48–12(d)(7)	1545–0155

This Treasury decision includes amendments that conform the regulations to the amendments made to sections 46, 48, and 191 of the Internal Revenue Code of 1954 by the Economic Recovery Tax Act of 1981, the Technical Corrections Act of 1982, the Tax Reform Act of 1984, and the Tax Reform Act of 1986. The rules prescribed reflecting these changes are interpretative. For this reason and because there is need for immediate guidance the requirement for notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code and the effective date limitation of subsection (d) of that section are found to be inapplicable.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 19, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–23219 Filed 10–7–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay Regulation SF–88–05]

Safety Zone Regulation: San Francisco Bay, CA

AGENCY: U.S. Coast Guard, Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The U.S. Navy an the City of San Francisco coordinate an annual "Fleetweek" event on San Francisco Bay featuring a parade of ships sailing into the Bay and low level air shows along the San Francisco Waterfront. To ensure the safety of Fleetweek participants and spectators, the Captain of the Port is establishing Safety Zones along the San Francisco Waterfront for certain Fleetweek activities scheduled for October 13, 14, and 15, 1988. Entry into these safety zones is prohibited without the permission of the Captain of the Port.

EFFECTIVE DATES: This regulation is effective on: October 13 and 14, 1988 between 11:30 a.m. and 1:30 p.m. P.D.T., and October 15, 1988 between 10:30 a.m., or when the lead U.S. naval vessel in the Fleetweek '88 parade column first transits under the Golden Gate Bridge, whichever time is earlier, and 1:30 p.m. P.D.T.

FOR FURTHER INFORMATION CONTACT: ENS Keith T. Bradley, Coast Guard Marine Safety Office, San Francisco Bay, CA. 415–437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interst since immediate action is needed to prevent danger to persons and property.

Drafting Information

The drafters of this regulation are ENS Keith Bradley, Project Officer, MSO San Francisco Bay and CDR Samuel Burton, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at approximately 10:30 a.m. P.D.T., October 15, 1988, with a parade of Navy Ships proceeding inbound via the Eastbound San Francisco Bay Traffic Lane. Sailing in a column under the Golden Gate Bridge at approximately 10:30 a.m. P.D.T., the vessels will be spaced approximately 500 yards apart and will proceed at about 10 knots. The parade will sail along the San Francisco waterfront in the Eastbound San Francisco Bay Traffic Lane, to a location near the San Francisco-Oakland Bay Bridge where the ships will disperse to their respective moorings. A moving Safety Zone surrounding the column of vessels will ensure unobstructed waters for safe navigation.

An aerial demonstration by the U.S. Navy Blue Angels will begin after the ship parade clears the San Francisco-Oakland Bay Bridge. In preparation for this demonstration, the Blue Angels will conduct a familiarization flight at 12:00 Noon P.D.T. on October 13, 1988, and a practice flight at 12:00 Noon on October 14, 1988. Safety Zones on all three days will cover the Blue Angels flight line from Fort Point to Blossom Rock. This clear area enables two Coast Guard vessels to serve as reference points along the flight line for the aircraft pilots. Furthermore, the extremely low altitude passes require vessels to keep clear for the safety of the aircraft, vessels, and persons onboard.

The Safety Zone for the Blue Angels' demonstrations will restrict vessels access to some marinas and commercial docks. The short length and minimal size of the Safety Zone will minimize any inconvenience.

Vessels will not be authorized to enter the established Safety Zone areas unless authorized by the Captain of the Port. Fleetweek '88 activities are expected to attract a sizable fleet of vessels, and large vessel operators with transits near Fleetweek '88 activities are encouraged to plan such transits well before or after the Safety Zones are in effect. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority for all of Part 165.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. A new § 165.T1165 is added to read as follows:

§ 165.T1165 Safety Zones, San Francisco Bay Fleetweek Activities.

(a) *Location and Effective Dates:* The following areas are Safety Zones:

(1) *Fixed Safety Zone for U.S. Navy Blue Angels Activities.* The waters of San Francisco Bay bounded by the following coordinates beginning at:

37° 48′ 53″N Lat 122° 24′ 08″W Long north to 37° 49′ 32″N Lat 122° 24′ 16″W Long then west to 37° 48′ 56″N Lat 122° 27′ 58″W Long then south to 37° 48′ 21″N Lat 122° 27′ 44″W Long then east to

the starting coordinates. This Safety Zone will be in effect from 11:30 a.m. to 1:30 p.m. p.d.t. on Thursday, October 13, 1988, and Friday, October 14, 1988, and Saturday, October 15, 1988.

(2) *Moving Safety Zone for U.S. Navy Parade of Ships.* The waters surrounding the column of U.S. Naval ships proceeding inbound at 10 knots from the Golden Gate Bridge in the Eastbound San Francisco Bay Traffic Lane to mooring locations near the San Francisco-Oakland Bay Bridge. The moving Safety Zone extends from 400 yards ahead of the lead vessel to 200 yards astern of the last vessel, and 200 yards on either side of all the parade vessels. This safety zone will be in effect on Saturday, October 15, 1988 from 10:30 a.m. p.d.t., or when the lead U.S. naval vessel in the column transits under the Golden Gate Bridge, whichever time is earlier, to 12:30 p.m. p.d.t., or when the last U.S. naval vessel in the column is safely moored, whichever time is later.

(b) *Regulations:* In accordance with the general regulations in §165.23 of this part, entry into these zones is prohibited unless authorized by the Captain of the Port.

Dated: September 27, 1988.

David Zawadzki,

Captain, U.S. Coast Guard, Captain of the Port San Francisco Bay.

[FR Doc. 88–23393 Filed 10–7–88; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNCATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–270; RM–6348]

Radio Broadcasting Services; Waupun, WI, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 258C2 for Channel 257A at Waupun, Wisconsin and modifies the license of Station WGGQ(FM) to specify operation on the higher powered frequency, as requested by Coursolle Broadcasting of Wisconsin. This action also substitutes Channel 226A for Channel 258A at New Holstein, Wisconsin, and modifies the construction permit of Station KFKQ(FM), accordingly. In addition, this action substitutes Channel 254A for Channel 259A at Mayville, Wisconsin. The changes at New Holstein and Mayville are necessary in order to accomplish the Waupun substitution. Channel 258C2 at Waupun requires a site restriction of 27.8 kilometers (17.2 miles) northwest of the city, at coordinates 43–51–13 and 88–53–33. Channel 226A at New Holstein requires a site restriction of 10.8 kilometers (6.7 miles) northwest of the community, at coordinates 44–02–18 and 88–09–06. A site restriction of 10.4 kilometers (6.5 miles) east of Mayville is required for Channel 254A, at coordinates 43–30–17

and 88–25–05. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–270, adopted September 9, 1988, and released September 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments, is amended, under Wisconsin, by adding Channel 258C2 and deleting Channel 257A under Waupun; by adding Channel 226A and deleting Channel 258A under New Holstein; and by adding Channel 254A and deleting Channel 259A under Mayville.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–23277 Filed 10–7–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

50 CFR Part 663

[Docket No. 71158–7258]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice modifying restrictions on fishing for the *Sebastes* complex of rockfish caught north of Coos Bay, Oregon, and for sablefish caught with trawl gear off Washington, Oregon, and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). For yellowtail rockfish, the intended effect is to lower fishing rates, reduce the amount by which the 1988 acceptable biological catch (ABC) for this species will be exceeded, and reduce the likelihood of biological stress. For sablefish, the intended effect is to reduce discards while enabling the 6,000 metric ton (mt) trawl quota for that species to be reached.

DATES: Effective 0001 hours (local time) October 5, 1988, until modified, superseded, or rescinded. Comments will be accepted through October 26, 1988.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150, or E. Charles Fullerton, 213–514–6196.

SUPPLEMENTARY INFORMATION: The implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at § 663.22 and § 663.23 provide for inseason adjustments of fishing levels by notice published in the **Federal Register**. The Pacific Fishery Management Council (Council) reviewed the progress of the groundfish fishery at its September 21–22, 1988 meeting in Costa Mesa, California, and recommended two actions: (1) Decreasing the trip limit for the yellowtail rockfish component of the multi-species *Sebastes* complex of rockfish caught north of Coos Bay, Oregon; and (2) removing the landing frequency limit (but retaining the 2,000 pound trip limit) on sablefish caught with trawl gear off Washington, Oregon, and California.

These actions supersede those provisions published at: (1) 53 FR 248 (January 6, 1988) for yellowtail rockfish, a component of the *Sebastes* complex; and (2) 53 FR 29480 (August 5, 1988) for sablefish caught with trawl gear.

Because the vast majority of groundfish caught off Washington, Oregon, and California is taken from the exclusive economic zone (EEZ) which extends from 3 to 200 nautical miles offshore, all groundfish taken and retained, possessed or landed in or offshore of Washington, Oregon, and California are subject to these restrictions.

The Council's recommendations and the actions taken by the Secretary of Commerce (Secretary) on those recommendations are presented below.

Yellowtail Rockfish

Council Recommendation. The Council recommended that the weekly trip limit for the yellowtail rockfish component of the *Sebastes* complex caught north of Coos Bay, Oregon, should be decreased from 10,000 pounds to 7,500 pounds, with proportional changes in the biweekly and twice-weekly trip limit options. All other provisions of the trip limit for the *Sebastes* complex (published at 53 FR 248 on January 6, 1988) remain the same, including the trip limit for the *Sebastes* complex as a whole, the choice of biweekly or twice-weekly trip limits, the exemption for landings less than 3,000 pounds, and the declaration procedures.

Rationale. Yellowtail rockfish is a dominant component of the *Sebastes* complex of rockfish in the Vancouver and Columbia areas. Since 1983, trip limits have been imposed on the *Sebastes* complex as a whole because yellowtail rockfish generally are caught with other species in this multispecies complex. In 1988, the trip limits were designed to produce landings close to the harvest guideline of 10,200 mt for the complex and 3,600 mt for yellowtail rockfish. These harvest guidelines are not quotas. The harvest guidelines apply to waters north of Coos Bay, Oregon, an area slightly smaller than the entire Vancouver-Columbia area. The ABC of 3,700 mt for yellowtail rockfish in the Vancouver-Columbia area, therefore, is 100 mt larger than the harvest guideline.

The best available information presented at the September 21–22, 1988 meeting of the Pacific Fishery Management Council (Council) indicated that landings have exceeded the ABC by 1,300 mt and, unless further curtailed, will exceed the harvest guideline for the *Sebastes* complex by 1,100 mt and the ABC for yellowtail rockfish by almost 2,300 mt by the end of the year, thereby increasing the likelihood of biological stress on yellowtail rockfish.

The Council was not concerned about exceeding the 10,200 mt harvest guideline for the *Sebastes* complex because trip limits on that complex are intended to protect yellowtail rockfish. No other stock is believed to need additional protection at this time. Therefore, the trip limit for the *Sebastes* complex is not modified.

The Groundfish Management Team (GMT) advised, and the Council's Scientific and Statistical Committee

concurred, that little can be done at this time to effectively reduce actual catches of yellowtail rockfish while at the same time avoiding large effort shifts into fisheries that are already fully utilized, notably the deepwater Dover sole/sablefish complex. If all further landings were prohibited for the remainder of the year, yellowtail rockfish still would be unavoidably caught and discarded while fishing for other species. The GMT estimated that if all further landings of yellowtail rockfish were prohibited on October 5, cumulative landings for the year would be approximately 5,000 mt, about 1,000 mt less than would occur if the current trip limit of 10,000 pounds is continued. However, at least 700 mt, probably more, still would be unavoidably caught and discarded, resulting in a net savings of less than 300 mt

A 3,000 pound trip limit was considered by the Council but not adopted because it was estimated that landings would total 5,700 mt, only 300 mt less than the 6,000 mt expected under the current trip limit of 10,000 pounds. Although discards under the 3,000 pound trip limit would be less than if the fishery were closed, the reduction in total fishing mortality was not expected to be significantly different. In addition, a trip limit of 3,000 pounds or less was expected to encourage effort shifts into other fully utilized fisheries.

A 7,500 pound weekly trip limit also was considered. Although not estimated precisely, cumulative landings under a 7,500 pound trip limit were expected to be between 5,700 mt (same as 3,000 pound trip limit) and 6,000 mt (same as 10,000 pound trip limit). No estimate for discards is available for either a 3,000 pound or 7,500 pound trip limit. However, discards are expected to be lower under the higher trip limit.

The Council's Groundfish Select Group (GSG), composed of industry representatives and fishery managers, recommended implementation of the 7,500 pound weekly trip limit because: (1) A lower trip limit (3,000 pounds) would not significantly lower fishing mortality; (2) most unavoidable catches could be landed rather than discarded; and (3) effort shifts into fully utilized fisheries would be minimized. Based on the advice of the GSG, the Council recommended that the weekly trip limit for yellowtail rockfish (53 FR 248, January 6, 1988) be decreased by 25 percent, from 10,000 pounds to 7,500 pounds. The Council also expressed a desire for stability in its regulations, noting that a trip limit of 7,500 pounds may be necessary to keep landings within ABC in 1989.

Secretarial Action. The Secretary concurs with the Council's recommendations. Therefore, the trip limit provisions published in the **Federal Register** at 53 FR 248 (January 6, 1988) are adjusted by decreasing the poundage limits for the yellowtail rockfish component of the *Sebastes* complex north of Coos Bay, Oregon as follows:

1. In paragraph (3)(a) "weekly trip limit," change 10,000 pounds to 7,500 pounds;

2. In paragraph (3)(b) "biweekly trip limit," change 20,000 pounds to 15,000 pounds; and,

3. In paragraph (3)(c) "twice-weekly trip limit," change 5,000 pounds to 3,750 pounds.

Sablefish

Council Recommendation. The Council recommended removal of the restriction which allowed only one landing of trawl-caught sablefish per week. No other changes to the allocations or trip limit were recommended.

Rationale. In 1988, the optimum yield (OY) quota for sablefish was allocated between trawl and non-trawl gears (53 FR 248, January 6, 1988). A coastwide trip limit also was imposed on the trawl fishery to discourage targeting on sablefish. This trip limit allowed only two landings a week containing more than 1,000 pounds of sablefish, and in each landing, no more than 6,000 pounds or 20 percent of all fish on board (round weights), whichever is greater, could be sablefish. No more than 5,000 pounds (round weight) of the sablefish landed in a trip could be smaller than 22-inches (total length). In addition, an 800 mt reserve was established in case trawl landings were not sufficiently curtailed by the trip limit.

At the July 1988 Council meeting, the Council determined that the trip limit was not slowing landings sufficiently and the trawl allocation for sablefish would be exceeded before the end of the year. As a result, the trawl trip limit was reduced to only one landing per week containing no more than 2,000 pounds of sablefish, and the size limit was removed. The 800 mt reserve also was added to the trawl allocation, raising it from 5,200 mt to 6,000 mt (53 FR 29480, August 5, 1988.)

At the September 21–22, 1988 Council meeting, it became apparent that the new trawl trip limit was too restrictive. The best available information indicated that trawl landings in 1988 would be 5,000 mt, 200 mt below the initial trawl allocation and 1,000 mt below the revised trawl allocation. In addition, the one landing per week restriction was causing many sablefish to be discarded which were caught incidentally while fishing for other species. Consequently, the Council recommended removing the one landing per week restriction, while retaining the 2,000 pound limit per landing. This change should enable achievement of the OY while allowing sablefish to be landed which otherwise would be discarded.

Secretarial Action. The Secretary concurs with the Council's recommendation. Therefore, the coastwide trawl trip limit for sablefish published in the **Federal Register** at 53 FR 29480 (August 5, 1988) is adjusted so that paragraph (2) is revised to read as follows:

(2) No more than 2,000 pounds (round weight) of sablefish caught with trawl gear may be retained or landed per vessel per fishing trip. This landing may consist of sablefish of any size.

All other provisions for trawl-caught sablefish published in the **Federal Register** at 53 FR 248 (January 6, 1988), as modified at 53 FR 29480 (August 5, 1988), remain in effect.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are being taken under the authority of § 663.22 and § 663.23, and are in compliance with Executive Order 12291. The actions are covered by the regulatory flexibility analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice in the **Federal Register** in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. If current fishing rates continue, the 1988 ABC for yellowtail rockfish will be significantly exceeded by the end of the year, and the trawl allocation for sablefish will not be reached. Prompt action to change these fishing rates is necessary to decrease the likelihood of biological stress on yellowtail rockfish and to maintain the allocation levels for sablefish agreed to by industry representatives. Sablefish allocations initially were designed to enable the trawl fishery to last throughout the year and to minimize the likelihood of biological stress which could result if excessive discards of incidentally-caught sablefish resulted

from early closure of the fishery. Consequently, further delay of this action is impracticable and contrary to the public interest, and these actions are taken in final form on October 5, 1988, the closest possible date following the end of a fishing week.

The public has had opportunity to comment on these actions. The public participated at meetings of the Council and its advisory bodies on September 20–21, 1988 in Costa Mesa, California, and at the Council's Groundfish Management Team meeting on August 10–12, 1988 in Menlo Park, California. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

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

Dated: October 5, 1988.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–23403 Filed 10–5–88; 5:00 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 196
Tuesday, October 11, 1988

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

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 620 and 621

Loan Policies and Operations; Disclosure to Shareholders; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Agricultural Credit Act of 1987 (Pub. L. 100–233) (1987 Act) establishes mechanisms to enable the creation of a secondary market for agricultural real estate loans. To facilitate operation of this secondary market, the 1987 Act establishes the Federal Agricultural Mortgage Corporation (FAMC) as a Farm Credit System institution. FAMC will provide a guarantee to investors of the repayment of principal and interest on securities that are backed by or that represent interests in certain agricultural loans, and will have access to a $1.5 billion line of credit at the United States Treasury. The Farm Credit Administration (FCA) Board publishes for public comment proposed regulations governing the content of FAMC's annual report, the examination of FAMC, and the authority of System banks and associations to originate loans for sale to certified facilities or to act as certified facilities.

DATE: Comments must be received on or before November 10, 1988.

ADDRESS: Comments should be submitted in writing, in triplicate, to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

George D. Irwin, Assistant Deputy Director, Office of Analysis and Supervision, Farm Credit Adminstration, McLean, Virginia 22102–5090, (703) 883–4054

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987 promotes the creation of a secondary market for agricultural real estate loans by adding a new Title VIII to the Farm Credit Act of 1971, as amended (1971 Act). To facilitate operation of this secondary market, the 1987 Act establishes the Federal Agricultural Mortgage Corporation as a Farm Credit System institution that will have succession until dissolved by an Act of Congress.

FAMC will serve as a credit enhancer, providing a guarantee to investors of the repayment of principal and interest on securities issued by certified facilities (poolers) that represent interests in, or obligations backed by, any pool or qualified loans held by poolers. The obligations guaranteed by FAMC pursuant to the 1987 Act are not obligations of, and are not guaranteed as to principal or interest by, FCA, the United States, or any agency or instrumentality thereof, other than FAMC. FAMC's ability to meet its obligations as guarantor is supported by (i) a reserve, or retained subordinated participating interests, equal to at least 10% of the outstanding principal amount of the loans constituting the pool, for which certified facilities and participating loan originators are responsible; (ii) a reserve created by FAMC, funded by fees, assessed poolers at the time a guarantee is initially issued by FAMC, of not more than ½ of 1 percent of the initial principal amount of each pool of qualified loans, and by an annual fee that may be assessed beginning in the second year of not more that ½ of 1 percent of the principal amount of the loans then constituting the pool; and (iii) a line of credit from the Secretary of the Treasury not to exceed $1.5 billion. In addition, FAMC may not declare or pay any dividend on its own stock unless its Board determines that adequate provision has been made for the internal reserves specified in item (ii).

The FCA Board proposes amendments to its regulations to implement new section 8.11 of the 1971 Act which authorizes FCA to promulgate regulations relatingf to the examination of FAMC and the content of FMAC's annual report. Section 8.11 also authorizes FCA to provide for the general supervision of the safe and sound performance of FAMC, including through the use of FCA enforcement powers.

Pursuant to this authority, the FCA Board proposes to amend FCA regulations by adding a new Subpart C to Part 621 setting forth the requirements for FAMC's annual report of condition. The FCA has drawn upon the experience of the Securities and Exchange Commission (SEC) in formulating the requirements of FAMC's annual report of condition. FCA may adjust these requirements in the future if its regulatory experience indicates that such adjustment is appropriate and necessary to provide for safe and sound operations.

The new Subpart C provides that FAMC is to meet the annual report requirement by making available the following materials within 90 days after the end of the fiscal year covered by the report: (1) for both the stock issued in FAMC and the mortgage-backed securities issued by poolers, the forms for registration filed under, or prepared in accordance with, the Securities Act of 1933 (Securities Act) and the registration forms and reports filed under, or prepare in accordance with, sections 12, 13, 14 and 16 of the Securities Exchange Act of 1934 (Exchange Act); and (2) the report of the independent public accountant required to be prepared pursuant to new section 8.11(c) of the 1971 Act. FCA considers information on performance of the loans in the pools established pursuant to standards set by FAMC to be among the material facts to be disclosed in the filings that comprise the annual report. FAMC shall file this information with the Chief Examiner of FCA and also make it available to the public upon request. In addition, proposed new Subpart E to Part 620 provides that FAMC shall provide to its shareholders the equivalent of the annual report to security holders required by the Securities Exchange Act of 1934.

This basic approach of incorporating SEC requirements by reference is patterned after regulations of the Federal Home Loan Bank Board. Further, the approach minimizes the potential problem of reporting under two different standards, since the 1987 Act

specifically states that certain exemptions from the Federal securities laws afforded government and agency securities are not available to securities issued by poolers. Section 8.12 of the 1971 Act expressly provides that securities representing an interest in a pool of qualified loans and guaranteed by FAMC issued by poolers are not eligible for the "government instrumentality'" exemption under section 3(a) of the Securities Act. Section 8.12 of the 1971 Act also states that such securities are not "government securities" for purposes of the Exchange Act or the Investment Company Act of 1940. However, poolers who issue securities may seek to rely on other exemptions available under these statutes.

Section 621.22 of the proposed regulation states that providing false or misleading information or omitting pertinent information may subject FAMC, and its officers, directors, employees, or others participating in its affairs, to enforcement action by FCA. Section 621.23 provides a safe harbor from § 621.22. Both of these sections are patterned after regulations dealing with annual disclosure statements of commercial banks, which were recently published by the Office of Comptroller of Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC). FCA's regulations, like those of OCC and FDIC, seek to encourage management to present information concerning future directions and plans. Information about future prospects, based on accurate current information, will not be considered false or misleading if the prospects are not realized.

These proposed regulations foster the monitoring of safe and sound performance of the duties vested in FAMC. Disclosure pursuant to the requirements of the SEC facilitates informed decision-making by FCA, investors, market analysts and the general public. This analytical assessment provides an important oversight role that will complement FCA's supervisory efforts, enhance public confidence in the secondary market, and reduce the likelihood that the market will overreact to incomplete information. An additional rationale for utilizing the SEC requirements is to enable FAMC to be readily compared with other institutions. The federal securities laws provide a common point of reference for corporate issuers in disclosure matters.

The FCA Board also proposed an amendment to 12 CFR Part 621, Subpart B, to implement new section 8.11(b)(1) of the 1971 Act, which requires FCA to examine the financial transactions of FAMC. This proposed regulation will require FAMC to comply with the requirements applicable to other System institutions for filing Reports of Condition and Performance with FCA, including quarterly reports. These reporting requirements provide information used in conducting examinations of all System institutions. It should be noted that section 8.11 requires FCA to examine FAMC not less than once a year, and at such other times as determined by the FCA Board. The FCA is prepared to monitor FAMC closely during the initial period of operation and to examine FAMC frequently.

Finally, the FCA Board adopts proposed regulations which contain certain conforming and technical amendments to other regulations. Specifically, proposed regulations in new Subpart R of 12 CFR Part 614 authorize System banks and associations to originate loans for sale to certified facilities or to act as certified facilities, as provided for in new sections 8.0 and 8.5 of the 1971 Act. The FCA Board, in connection with final regulations on civil money penalties (53 FR 27284, July 19, 1988), published a technical amendment to § 622.2(d) and 623.2(d) relating to rules applicable to formal hearings, and practice before FCA, respectively. This technical amendment makes the regulations pertaining to enforcement proceedings applicable to FAMC, as provided by new section 8.11 of the 1971 Act.

List of Subjects in 12 CFR Parts 614, 620 and 621

Accounting, Agriculture, Banks, banking, Credit, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, Parts 614, 620 and 621 of Chapter VI, Title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 is revised to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233.

2. Part 614 is amended by adding a new Subpart R to read as follows:

Subpart R—Secondary Market Authorities

§ 614.4910 Basic authorities.

(a) Any bank or association of the Farm Credit System, except a bank for cooperatives, with direct lending authority may originate agricultural real estate loans for sale to one or more certified agricultural facilities under Title VIII of the Act.

(b) Any bank or association of the Farm Credit System, except a bank for cooperatives, may operate as a certified facility under Title VIII of the Act, if so designated by the Federal Agricultural Mortgage Corporation, either acting alone or jointly with other banks and/or associations.

PART 620—DISCLOSURE TO SHAREHOLDERS

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

Authority: Secs. 5.17, 8.11; 12 U.S.C. 2252, 2279aa–11; sec. 424 of Pub. L. 100–233.

4. Part 620 is amended by adding a new Subpart E to read as follows:

Subpart E—Report to Shareholders of Federal Agricultural Mortgage Corporation

§ 620.40 Content of report to shareholders of Federal Agricultural Mortgage Corporation.

The Federal Agricultural Mortgage Corporation shall prepare and distribute to its shareholders, within 90 days of the end of its fiscal year, the equivalent of the annual report to shareholders required by section 14 of the Securities Exchange Act of 1934, as described in Part 621, Subpart C of these regulations.

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

5. The authority citation for Part 621 is revised to read as follows:

Authority: Secs. 5.17, 8.11; 12 U.S.C. 2252, 2279aa–11.

6. Section 621.10 is amended by revising paragraph (a) to read as follows:

Subpart B—Reports of Condition and Performance

§ 621.10 Applicability and purpose.

(a) Each institution of the Farm Credit System, including the Federal

Agricultural Mortgage Corporation, shall prepare and file such reports of condition and performance as may be required by the Farm Credit Administration.

* * * * *

7. Section 621.11 is revised to read as follows:

§ 621.11 Content and standards—general rules.

Each institution of the Farm Credit System, including the Federal Agricultural Mortgage Corporation, shall prepare reports of condition and performance:

(a) In accordance with all applicable laws, regulations, standards, and such instructions and specifications and on such media as may be prescribed by the Farm Credit Administration;

(b) In accordance with generally accepted accounting principles and such other accounting requirements, standards, and procedures as may be prescribed by the Farm Credit Administration; and

(c) In such manner as to facilitate their reconciliation with the books and records of reporting institutions.

8. Section 621 is amended by adding a new Subpart C to read as follows:

Subpart C—Annual Report of Condition of the Federal Agricultural Mortgage Corporation

Sec.

Subpart C—Annual Report of Condition of the Federal Agricultural Mortgage Corporation

§ 621.20 Form and content.

The annual report of condition to be prepared by the Federal Agriculture Mortagage Corporation (FAMC) shall consist of the following:

(a) For both the stock issued by FAMC and the securities issued by certified facilities which are guaranteed:

(1) The forms for registration (17 CFR Part 239) that FAMC and certified facilities have filed or would have filed if required to register under the Securities Act of 1933 (Securities Act);

(2) The forms for registration, the annual and current reports filed with SEC, the annual report to security holders, and the statements of directors, officers, and principal shareholders required by sections 12, 13, 14 and 16 of the Securities Exchange Act of 1934 (Exchange Act), prepared on the appropriate SEC forms (17 CFR Part 249), that FAMC and certified facilities have filed or would have filed under the Exchange Act if FAMC and the certified facilities were required to make these filings;

(3) Where a form to be submitted pursuant to paragraphs (1) or (2) of this section specifies that the information required by an item in the Securities Exchange Commission Regulation S–K (17 CFR Part 229) or S–X (17 CFR Part 210) should be furnished, include such information; and

(b) The report of the independent public accountant required by section 8.11(c) of the Act;

(c) In addition to the information expressly required by this section, such additional material information as to make the required statements not misleading.

(d) The following legend to be included on the first page of the annual report of condition in capital letters and bold face type, to advise the public that the Farm Credit Administration has not reviewed the information contained therein: "This annual report of condition has not been reviewed, or confirmed for accuracy or relevance, by the Farm Credit Administration."

§ 621.21 Delivery

(a) Three complete copies of the annual report shall be filed with the Chief Examiner, Farm Credit Administration, within 90 days after the end of the fiscal year covered by the report. Each annual report shall include a certification of correctness which meets the requirements of § 621.12.

(b) FAMC, on receiving a request for an annual report of condition, shall promptly mail or otherwise furnish to the requestor a copy of the most recent annual report described in § 621.20.

§ 621.22 Prohibited conduct and penalties.

(a) The FAMC and each officer, director, employee, agent or other person participating in the affairs of FAMC shall not, directly or indirectly:

(1) Disclose or cause to be disclosed false or misleading information in the annual report of condition, or omit or cause the omission of pertinent or required information in the annual report of condition; or

(2) Represent that the Farm Credit Administration, or any employee thereof, has passed upon the accuracy or completeness of the annual report of condition.

(b) For purposes of this part, a person "participating in the affairs of FAMC" includes, but is not limited to, any person who provides or reviews information contained in, or directly or indirectly assists in the preparation of, the annual report of condition.

(c) Conduct which violates paragraph (a) of this section also may serve as the basis for enforcement action by the Farm Credit Administration under Part C, Title V, of the Act. This includes, but is not limited to, the assessment of civil money penalties against FAMC or any officer, director, employee, agent or other person participating in the affairs of FAMC who violates this part.

§ 621.23 Safe harbor provision.

The provisions of § 621.22(c) shall apply to all parts of the annual report of condition, including statements concerning future economic performance, management's plans and objectives for future operations, and financial forecasts, except that § 621.22(c) shall not apply to such forward-looking statements when it is shown by the person involved or FAMC that such statements were included with a reasonable basis or in good faith.

§ 621.24 Other period reports.

The provisions of Subpart C shall apply to quarterly and such other periodic reports that FAMC may elect to prepare.

Date: October 4, 1988.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 88–23177 Filed 10–7–88; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–88–10]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 9, 1988.

ADDRESS: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 25647, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 1, 1988.

Denise D. Hall,

Manager, Program Management Staff.

Petitions for Rulemaking

Docket No.: 25647

Petitioner: Hamilton Aviation

Regulations Affected: 14 CFR Section 145.57

Description of Relief Sought: Revise § 145.57(a) to refer to "using manufacturer's customized manuals, serialized for the aircraft when applicable" and maintaining in current condition, all other manufacturer's service manuals, instructions, and service bulletins that relate to the articles that it maintains or alters.

[FR Doc. 88-23276 Filed 10-7-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 80998-8198]

Proposed Limit on Duty-Free Insular Watches in Calendar Year 1989

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Proposed rule and request for comments.

SUMMARY: This action invites the comments of interested persons on a proposal to maintain during 1989 the current level of territorial eligibility shares. We also propose to amend § 303.14(d)(2) and (3) by changing the amount of the new entrant invitation for territorial shares in the Virgin Islands and Guam from 500,000 units to 200,000 units.

DATE: Comments must be received on or before November 10, 1988.

ADDRESS: Address written comments to Frank Creel, Director, Statutory Import Programs Staff, Room 1523, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377-1660, same address as above.

SUPPLEMENTARY INFORMATION: The insular possessions watch industry provision in section 110 of Pub. L. No. 97-446 (96 Stat. 2331) (1983) (19 U.S.C. 1202 note) requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands. Regulations on the establishment of these quantities and shares are contained in section 303.3 and 303.4 of title 15, Code of Federal Regulations (15 CFR 303.3 and 303.4). Section 303.6(h) gives the Secretaries authority to propose changes in § 303.14, which includes the amounts of the territorial shares set aside for new entrant invitations.

The Departments propose to maintain in § 303.14(e) of the regulations the total quantity and respective shares of duty-free watches and watch movements for calendar year 1989 at the levels established in 1988 (53 FR 17924; May 19, 1988), for the following reasons:

1. There are no producers in American Samoa and the Northern Mariana Islands. This proposal would leave these territories' shares at the minimum required by the statute.

2. There is only one producer in Guam, and the amount we propose is consistent with the needs of the existing producer along with a set-aside of 200,000 units for possible allocation to new firms in Guam.

3. We expect total Virgin Islands shipments in 1988 to exceed 4 million units. The amount we propose is consistent with the anticipated needs of the existing producers along with a set-aside of 200,000 units for possible allocation to new firms in the Virgin Islands.

As noted above, we are proposing to lower the amount set aside for new entrant firms in the Virgin Islands and Guam from 500,000 units to 200,000. After the enactment of Pub. L. 97-446 in 1983, the Departments changed the regulations to set aside 500,000 units for possible new entrants in each territory. Our experience since then has shown that a new entrant is unlikely to use that amount due to the length of time it takes to apply for and receive an allocation, open a facility, train personnel, and begin production. The Departments do not propose changing the 500,000 unit set-aside for new entrants in American Samoa and the Northern Mariana Islands because the statute mandates that each territory have an allocation of at least 500,000 units each year even if there is no producer in the territory.

Classification: Executive Order 12291. In accordance with Executive Order 12291 (46 FR 13193, February 19, 1981), the Departments of Commerce and the Interior have determined that this rule does not constitute a "major rule" as defined by section 1(b) of the Order. It is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparations of a Regulatory Impact Analysis is not required.

This regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The commercial benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than $10 million per year.

Paperwork Reduction Act. This rule does not contain information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 15 CFR Part 303

Imports, Customs duties and inspection, Watches and jewelry, Marketing quotas, Administrative practice and procedure, Reporting and recordkeeping requirements, American Samoa, Guam, Virgin Islands, Northern Mariana Islands.

For reasons set forth above, we propose to amend Part 303 as follows:

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2329, 2331 (19 U.S.C. 1202 note); Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note)

§ 303.14 [Amended]

2. Section 303.14 is amended by changing "500,000" to "200,000" in § 303.14(d) (2) and (3).

Jan W. Mares,

Assistant Secretary for Import Administration.

Mark Hayward,

Deputy Assistant Secretary for Territorial and International Affairs.

[FR Doc. 88–23382 Filed 10–7–88; 8:45 am]

BILLING CODE 3510-DS-M; 4310-93-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R–88–1397; FR–2370]

Mortgage and Loan Insurance Programs; Title I Property Improvement and Manufactured Home Loans; Miscellaneous Amendments

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

ACTION: Extension of comment period for proposed rule.

SUMMARY: The Department published on August 15, 1988 (53 FR 30697) certain proposed changes in the regulations governing its property improvement loan and manufactured home loan insurance programs under Title I, section 2 of the National Housing Act. The comment period for the proposed rule expired on September 29, 1988

Several interested parties have informed the Department that, for various reasons, they have been unable to submit their comments by September 29th, and have requested the Department to extend the comment period. The Department believes that it is important to the development of the Final Rule to provide these and all other interested parties with an opportunity to express their views on this matter, and therefore the comment period has been extended by an additional month.

DATE: Comments on the proposed rule must be received by October 31, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, Room 9160, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755–6880. (This is not a toll-free number.)

Dated: October 5, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88–23389 Filed 10–7–88; 8:45 am]

BILLING CODE 4210-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule on Payment of Premiums, 29 CFR Part 2610, that appeared at pages 39200 through 39215 in the **Federal Register** of Wednesday, October 5, 1988 (53 FR 39200). This action is needed to correct an editorial error in the preamble to that proposed rule.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8823 (202–778–8059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The following correction is made in FR Doc. 88–22865 appearing on pages 39200 through 39215 in the issue of October 5, 1988:

1. On page 39206, the paragraph beginning at the bottom of column two, (four lines from the bottom) and ending at column three, line 18, is corrected to read as follows:

Finally, the PBGC solicits public comment on the frequency with which it should update the interest rates in Appendix B ("Interest Rates for Valuing Vested Benefits"). The interest rates in Appendix A ("Late Payment Interest Charges") generally change, and are generally updated by the PBGC, on a quarterly basis. The PBGC proposes to update the rates in Appendices A and B on a quarterly basis, so that practitioners will be able to obtain all rate changes under the premium regulation at the same time. While the rates in Appendix B do change on a monthly basis, the PBGC does not believe that monthly updating is needed, because these rates, unlike the Appendix B rates, are not of immediate relevance to the practitioner.

Note.—An additional Pension Benefit Guaranty Corporation document appears in the Corrections Section of this issue.

Dated: October 5, 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88–23482 Filed 10–7–88; 8:45 am]

BILLING CODE 7708-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-465, RM-6393]

Radio Broadcasting Services; Sitka, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Alaska Broadcast Communications, Inc. proposing the allotment of Channel 276C2 to Sitka, Alaska, as that community's first local commercial FM service. Reference coordinates used for this proposal are 57-03-00 and 135-20-00.

DATES: Comments must be filed on or before November 21, 1988, and replay comments on or before December 6, 1988.

ADDRESS: Federal Communications Commission, information 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John Wells King, Esq., Haley, Bader & Potts, 2000 M Street, NW., Suite 600, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-465, adopted August 28, 1988, and released September 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-23278 Filed 10-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-463, RM-6360]

Radio Broadcasting Services; Wilson, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Clarence Medlin, seeking the allotment of FM Channel 279A to Wilson, Arkansas, as that community's first local broadcast service. Reference coordinates for this proposal are 35-32-38 and 90-07-10.

DATES: Comments must be filed on or before November 21, 1988, and reply comments on or before December 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert A. Marmet, Esq., Marmet and McCombs, 1822 Jefferson Pl., NW., Washington, DC 20036-2549.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-463, adopted August 29, 1988, and released September 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-23280 Filed 10-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[Docket No. 88-458, RM-6391]

Radio Broadcasting Services; Ridgecrest, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bel Air Broadcasting Corporation, licensee of Station KZIQ-FM, Channel 224A, Ridgecrest, California, seeking the substitution of Channel 224B1 for Channel 224A and modification of its license accordingly. Reference coordinates utilized for this proposal are those of the petitioner's presently licensed site at 35-36-58 and 117-38-35.

DATES: Comments must be filed on or before November 18, 1988, and reply comments on or before December 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Charles M. Firestone, Esq., Mitchell, Silberberg & Knupp, 11377 West Olympic Blvd., Los Angeles, CA 90064.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-458, adopted August 30, 1988, and released September 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M

Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–23284 Filed 10–7–88; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 88–464, RM–6331]

Radio Broadcasting Services; Wray, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Wray Radio, Inc., licensee of Station KRDZ–FM, Channel 252A, Wray, Colorado, proposing the substitution of FM Channel 252C2 for Channel 252A and modification of its license accordingly, to provide that community with its first expanded coverage area FM service. The site coordinates for this proposal are 40–04–56 and 102–11–25.

DATES: Comments must be filed on or before November 21, 1988, and reply comments on or before December 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Robert D. Zellmer, President, Wray Radio, Inc., P.O. Box 466, Wray, CO 80758.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–464, adopted August 29, 1988, and released September 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–23279 Filed 10–7–88; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 88–456, RM–6399]

Radio Broadcasting Services; Durango, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by for rule making filed by Durango Broadcasting Company, proposing the allotment of FM Channel 275C to Durango, Colorado, as that community's third local FM service. Reference coordinates used for the proposal are 37–16–30 and 107–52–42.

DATES: Comments must be filed on or before November 18, 1988, and reply comments on or before December 5, 1988.

ADDRESS: Federal Communications Commission, Washingtn, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Durango Broadcasting Company, Attn: Caren Lacy, 1885 Ponder Hts. Dr., Colorado Springs, CO 80906.

FOR FURTHER INFORMATION CONTACT: Nacy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–456, adopted August 30, 1988, and released September 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–23285 Filed 10–7–88; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket Nos. 88–460, RM–6263, RM–6214, RM–6338]

Radio Broadcasting Services; Chauncey, GA, et al.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on three separately filed petitions, each proposing the use of Channel 267. The first, filed by Lonnie C. Carter, proposes to allot Channel 267C2 to Chauncey, Georgia, as a first local FM service (RM–6263). The second, filed by Sol Broadcasting, Inc., licensee of Station WKTM(FM), Soperton, Georgia, proposed to substitute Channel 267C2 for Channel 269A at Soperton, and to modify its Class A license accordingly (RM–6214). The third petition, filed by Kirby Broadcasting Company, licensee of Station WKKZ(FM), Dublin, Georgia, proposed to substitute Channel 224C2 for Channel 224A at Dublin, and to modify its license to specify the Class C2 channel. To accomplish the Dublin modification, Kirby also requests the substitution of Channel 276A for Channel 221A at Eastman, Georgia, and modification of the license for Station WUFF(FM) to specify the new channel. Additionally, Channel 265A is proposed as a substitute for vacant but applied for Channel 223A at Lyons, Georgia. Coordinates for Channel 267C2 at Chauncey are 32–16–03 and 83–06–26, for Channel 267A at Eastman are 32–13–35 and 83–13–10, for Channel 224C2 at Dublin are 32–31–21 and 82–54–00, for Channel 265A at Lyons are 32–06–48 and 82–23–52, and for Channel 267C2 at Soperton are 32–25–31 and 82–33–26. We are issuing the licensee of Station WUFF(FM) at Eastman, Georgia, an Order to Show Cause regarding the proposal to change its channel.

DATES: Comments must be filed on or before November 21, 1988, and reply comments on or before December 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lonnie C. Carter, P.O. Box 577, Homerville, Georgia 31634 (petitioner for Chauncey, Georgia); Roy F. Perkins, 1724 Whitewood Lane, Herndon, Virginia 22070 (attorney for Sol Broadcasting, Inc.) (Soperton, Georgia); William K. Keane, Rebecca L. Dorch, Wilner & Scheiner, 1200 New Hampshire Ave., NW., Suite 300, Washington, DC 20036 (attorneys for Kirby Broadcasting Company) (Dublin, Eastman & Lyons, Georgia).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 88–460, adopted August 29, 1988, and released September 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–23283 Filed 10–7–88; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket Nos. 88–459, RM–6330]

Radio Broadcasting Services; Battle Ground, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Linda Kuenzie, seeking the allotment of FM Channel 254A to Battle Ground, Indiana, as that community's first local broadcast service. Reference coordinates for this proposal are 40–31–09 and 86–50–56.

DATES: Comments must be filed on or before November 18, 1988, and reply comments on or before December 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Linda Kuenzie, 13 East 11th Street, Washington, MO 63090.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–459, adopted August 30, 1988, and released September 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–23236 Filed 10–7–88; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 88–457, RM–6307]

Radio Broadcasting Services; New Albany, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Roch Communications Company, seeking the allotment of Channel 234A to New Albany, Indiana, as that community's first local commercial FM service. Reference coordinates utilized for this proposal are 38–18–48 and 85–53–57.

DATES: Comments must be filed on or before November 18, 1988, and reply

comments on or before December 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jerrold Miller, Esq., Miller & Fields, P.C., P.O. Box 33003, Washingon, DC 30033.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–457, adopted August 30, 1988, and released September 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should not that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–23281 Filed 10–7–88; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88–462, RM–6432]

Radio Broadcasting Services; Central, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by C.N. Morris proposing the allotment of Channel 237C2 to Central, New Mexico, as the community's first local FM service. Channel 237C2 can be allotted to Central in compliance with the Commission's minimum distance separation requirements without a site restriction. The spacing requirements are met based on the modification of the license of Station KJJJ, Clifton, Arizona, from Channel 237A to Channel 271C, pursuant to MM Docket 88–334. The coordinates for this allotment are North Latitude 32–46–30 and West Longitude 108–09–18. Mexican concurrence is required since Central is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before November 18, 1988, and reply comments on or before December 5, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Helen E. Disenhaus, Swidler & Berlin, Chartered, 3000 K Street, NW., Suite 300, Washington, DC 20007 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–462, adopted August 29, 1988, and released September 27, 1988. 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–23282 Filed 10–7–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the American Burying Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for the American burying beetle (*Nicrophorus americanus*) and thereby provide the species protection under the Endangered Species Act of 1973, as amended. Once widely distributed throughout eastern North America, this species has disappeared from most of its former range. Two known populations currently exist, one in eastern Oklahoma and the other on an island off the coast of New England. Despite extensive efforts to locate additional populations, only two specimens have been found elsewhere in more than 10 years. The cause of the species' decline is unknown. Critical habitat is not proposed. The Service requests comments on this proposal.

DATES: Comments from all interested parties must be received by December 12, 1988. Public hearing requests must be received by November 25, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to: Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts, 02158. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Hecht at the above address (617/965–5100 or FTS 829–9316).

SUPPLEMENTARY INFORMATION:

Background

Nicrophorus americanus, described by Olivier in 1790 (Perkins 1980), is a member of the family Silphidae, the carrion beetles. Generally known as the American burying beetle, this species has also been referred to as the giant

carrion beetle (Wells *et al.* 1983). The American burying beetle is the largest member of its genus in North America, measuring 25–36 mm (1.0–1.4 inches) in length. Distinguishable by its large size, the American burying beetle is also identifiable by a large orange-red pronotal disk. This, the orange antennal club, red frons, and two pairs of scalloped red spots on the elytra (wing covers) contrast sharply with a black background (Wells *et al.* 1983).

Investigations to date indicate that the biology of the American burying beetle is similar to that of other species of the genus, except that the carrion selected for breeding purposes tends to be larger (Kozol *et al.* 1987). Schweitzer and Master (1987) based the following description of the American burying beetle's life history on Kozol's paper and their own observations:

> Beetles of both sexes are attracted to appropriate carrion at night, generally soon after dark. Apparently males and females fight among themselves until one pair (usually the largest male and female) remains on the carcass. These individuals then bury it, often before dawn of the first morning. The carrion may then be moved laterally for some distance (often over a meter) underground. Eventually, a chamber is constructed. Eggs are laid on the carrion and at least one, usually both, parents remain with the eggs and subsequent larvae. Larvae cannot survive without parental care. They emerge as adults in about 48–56 days and the parents and young then disperse. Occasionally, individuals may succeed in rearing two broods of young. As far as is known, the young, which emerge in July and August, do not reproduce until the following June or July. Adults overwinter, probably singly in the soil. Adults feed on carrion and apparently also capture and consume live insects.
>
> Apparently, any kind of vertebrate carrion between about 50 and 200 grams is acceptable * * * Brood sizes varied between 8 and 23 teneral adults eclosed.

Once widely distributed throughout eastern North America, this species has disappeared from most of its historic range. Historical records include 32 states, the District of Columbia, and 3 Canadian provinces encompassing the area from Nova Scotia and Quebec, south to Florida and west to Minnesota, South Dakota, Nebraska, Oklahoma, and Texas (Wells *et al.* 1983, Schweitzer and Master 1987). Two extant populations are known, one on a New England island and the other in eastern Oklahoma.

The New England island population was estimated at 520 beetles (850 beetles at the high end of the 95% confidence interval) in 1986 (Kozol *et al.* 1987). All but one capture occurred on a portion of the island where much of the land is owned by a State agency or by private conservation organizations.

The existence of the eastern Oklahoma population was recently brought to the attention of the Service. This population is known from collections at blacklight of one specimen in 1979, one specimen of unknown date sometime between 1979 and 1987, seven specimens in 1987, and one specimen in 1988. Several circumstances, including the sporadic pattern of these collections at a blacklight that has reportedly been operated for more than 5000 hours since 1976 and the fact that at least five other species of *Nicrophorus* are regularly collected at this site, suggest that the size and stability of this population may be a matter of concern (pers. comm. Pat Mehlhop, Oklahoma Natural Heritage Inventory, 1988).

In the early 1980's, an incident involving collection of a single American burying beetle occurred about 40 miles north of the site of the Oklahoma population described above. Nightly blacklighting conducted during one week each summer over an eight year period yielded only the one specimen at this locale (pers. comm. D. Davis, Smithsonian Institution, 1988). It is unclear whether there is a relationship between this specimen and the other Oklahoma collections.

A single specimen was captured and released at a second site in New England in 1985. Extensive efforts using both carrion baits and blacklights resulted in the capture of over 7000 *Nicrophorus* species at this location in 1986, but failed to retrap this species (Schweitzer and Master 1987).

Anderson (1982) speculated that the natural habitat of the species is mature climax forest, but the fact that there is no forest on the island where the beetle is found today casts serious doubt on this thesis. Habitat occupied by the known population includes maritime shrub thickets, coastal moraine grassland, and pastureland. There is agreement that availability of significant humus and top soil suitable for burying of carrion is an essential habitat requirement of the American burying beetle (Schweitzer and Master 1987).

Davis (1980) detailed the decline in the number of American burying beetle specimens in collections and solicited information on the locations of existing populations. Anderson (1982) found a pattern of increasing localization in capture records. The *IUCN Red Data Book* (Wells *et al.* 1983) described this species as having experienced "one of the most disastrous declines of an insect's range ever to be recorded," and stated that the U.S. Fish and Wildlife Service should be encouraged to list it as an endangered species. In 1980, the U.S. Fish and Wildlife Service included *Nicrophorus americanus* in a status review of insects in major public collections (Perkins 1980). The American burying beetle was recognized as a Category 2 candidate for listing in the Service's May 22, 1984 (49 FR 21670) invertebrate review notice. Category 2 taxa are those for which existing information indicates the possible appropriateness of proposing listing under the Endangered Species Act, but for which sufficient biological information is not presently available to support a proposed rule.

In 1987, the Eastern Regional Office of The Nature Conservancy compiled the results of a range-wide status survey for the American burying beetle. Since 1960, this once ubiquitous species has been collected only in Ontario, Kentucky, Arkansas, Michigan, Oklahoma, Nebraska (pers. comm. Brett Ratcliffe, Nebraska State Museum, 1988) and in two New England states. Moreover, failure of extensive efforts in 1986 to recapture American burying beetles at the sites of most recent captures in Arkansas and Michigan suggests a continuing constriction of the species' range. Significant efforts in 1986 and 1987 to locate American burying beetles on another New England island, where a 1985 capture was reported, were unsuccessful. Other recent unsuccessful capture efforts were conducted in northwestern Pennsylvania, New Jersey, New York (Long Island), Tennessee, western North Carolina, Torreya State Park in Florida, and on mainland areas in New England. A single specimen was collected at a blacklight in northeastern Oklahoma in the early 1980's. The abundance of the species in collections (including student collections) with capture dates prior to 1950 and the ease of capture at blacklight and pitfall traps experienced at the site of the known extant population confirm that these unsuccessful efforts to locate American burying beetles are indicative of their decline throughout most of their former range.

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 American burying

beetle (*Nicrophorus americanus*) are as follows:

A. *The present or threatened destruction, modification or curtailment of its habitat or range.* As described above, the American burying beetle has almost entirely vanished from its former range. It is possible that future search efforts may result in discovery of another extant population. However, the extent of the species' decline suggests that any newly discovered populations are also vulnerable to whatever factors have caused their disappearance elsewhere.

Anderson (1982) believed that, as with a similarly large European *Nicrophorus* species, the decline of the American burying beetle was due to the destruction of "primary" or virgin forest, which he speculated was the essential habitat of the species. This hypothesis is refuted by the fact that many records document collections of the species in various locations more than a century after destruction of the primary forest. Furthermore, the site of the known New England population supports no forests. It is possible that loss of some obscure habitat component has contributed to the beetle's disappearance, but habitat generally similar to that of the known population is not rare (Schweitzer and Master 1987).

B. *Over-utilization for commercial, recreational, scientific, or educational purposes.* Collection has not been a factor in the present decline of this once ubiquitous species (Schweitzer and Master 1987). However, ease of trapping could make this population vulnerable to over-collection if its location were to become well known.

C. *Disease or Predation*—Predation has probably not been a factor in this species' decline, but introduction of a non-native, species-specific pathogen could explain the fact that this species has disappeared while several other species of the same genus (for example, *N. orbicollis* and *N. tomentosus*) with similar habits continue to thrive (pers. comm. Andrea Kozol, Boston University, 1988). Such a hypothesis is also consistent with the location of the two remaining populations: one on an island and the other on the edge of the species' historic range. No studies addressing this theory have been undertaken to date.

D. *The inadequacy of existing regulatory mechanisms.* This species has no legal protection in any State where it is known or suspected to exist. Localized regulations requiring that electronic bug-zappers in the vicinity of the known population be equipped with grids small enough to exclude American burying beetles would remove the potential for take described under E, below. Lack of understanding of the causes of the species' decline precludes recommendation of other regulations for protection of the species at this time. It is possible that future studies of the species will show a need for such regulations.

E. *Other natural or manmade factors affecting its continued existence.* A low reproductive rate (compared with other insects) limits the ability of this species to rebound from any period of elevated mortality.

Use of electronic bug-zappers in the vicinity of American burying beetles could result in take of this species. Other *Nicrophorus* species have been killed by zappers and American burying bettles are attracted to identical light sources (pers. comm. Michelle P. Scott, Boston University, 1987). Since *Nicrophorus* males are involved in brood-rearing, this sex (which is selectively killed by zappers in most insect groups) is not functionally surplus.

Some speculation has focused on the possible role of the pesticide DDT in the decline of the American burying beetle. Some support for this hypothesis is furnished by reports that the site of the known island population, unlike most other New England islands and many mainland areas, was never extensively sprayed for mosquito or gypsy moth suppression. However, most other recent records of the species are from farming areas where DDT would likely have been used prior to its banning. Further, if DDT contamination of the beetle's food supply had occurred, it is hard to explain why other carrion-feeding members of the genus were not similarly affected (Schweitzer and Master 1987).

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 American burying beetle as endangered. Endangered status is warranted by the decline in the species' range from more than a third of the continental United States and parts of southeastern Canada to only two verified populations. Failure of 1986 efforts to relocate the species in Arkansas and Michigan suggests that whatever caused the decline of the species was still at work at least as recently as the mid 1970's. While it is not improbable that other remnant populations will be discovered in the future, it is likely that those populations remain vulnerable to the factors that have caused the general decline of the species. Further, there is no known way to reverse any decline that might occur in the known populations.

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. This determination is based on the premise that such a designation would not be beneficial to the species (50 CFR 424.12). As discussed under "Factor B" above, ease of trapping could make the American burying beetle vulnerable to collectors who might be attracted to the locale of the known populations by the publication of maps and other specific location information. No benefit from critical habitat designation has been identified that outweighs the threat of collection.

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 local governments 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 prohibitions against taking and harm are discussed, in part, below.

The Act requires development and implementation of recovery plans for listed species. Because the causes of the decline of the American burying beetle are unknown, it is probable that initial recovery activities will focus on research to determine those causes. Later actions may include efforts to reestablish the species in suitable locations in its former range.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part

402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service has not identified any ongoing or proposed projects with Federal involvement that could affect this species.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general trade 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 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 or threatened 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 otherwise available. Requests for hardship permits are not anticipated, since the species has no known commercial value.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. 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 the American burying beetle;

(2) The location of any additional populations of the American burying beetle 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;

(4) Current or planned activities that may impact the American burying beetle.

Final promulgation of the regulation on the American burying beetle will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see **ADDRESSES** section, above).

National Environmental Policy Act

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

Literature Cited

Anderson, R.S. 1982. On the decreasing abundance of *Nicrophorus americanus* Oliver (Coleoptera:Silphidae) in eastern North America. Coleopt. Bull. 36(2):362–365.

Davis, L.R. 1980. Notes on Beetle distributions with a discussion of *Nicrophorus americanus* Olivier and its abundance in collections. (Coleoptera:Scarabeidae, Lampyridae and Silphidae). Coleopt. Bull. 34(2):245–251.

Kozol, A.J., M.P. Scott, and J.F.A. Traniello. 1987. Distribution and natural history of the American burying beetle (*Nicrophorus americanus*). Unpublished report for the Eastern Heritage Task Force of The Nature Conservancy.

Perkins, P.D.P. 1980. North American insect status review. Contract 14–16–0009–79–052 final report to USDI Office of Endangered Species.

Schweitzer, D.F. and L.L. Master. 1987. *Nicrophorus americanus* (American burying beetle): results of a global status survey. Report for Region 5 of the U.S. Fish and Wildlife Service.

Wells, S.M., R.M. Pyle, and N.M. Collins. 1983. The IUCN red data book. IUCN, Gland, Switzerland. pp 379–381.

Author

The primary author of this proposed rule is Anne Hecht of the Service's Regional Office in Newton Corner, Massachusetts (see **ADDRESS** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: Pub. L. 93–205, 87 Section 884; Pub. L. 94–359, 90 Section 911; Pub. L. 95–632, 92 Section 3751; Pub. L. 96–159, 93 Section 1225; Pub. L. 97–304, 96 Section 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under INSECTS, 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						
INSECTS							
•	•	•	•	•	•	•	

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Beetle, American burying (-Giant carrion beetle).	*Nicrophorus americanus*	U.S.A. (eastern States south to FL, west to SD and TX), eastern Canada.	NA	E	.....	NA	NA

Dated: September 2, 1988,

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-23260 Filed 10-7-88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal to Determine Platanthera leucophaea (Eastern Prairie Fringed Orchid) and Platanthera praeclara (Western Prairie Fringed Orchid) To Be Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Platanthera leucophaea* (Eastern prairie fringed orchid), and *Platanthera praeclara* (Western prairie fringed orchid) to be threatened species under authority of the Endangered Species Act (Act) of 1973, as amended. Both species have been extirpated throughout much of their former ranges by conversion of habitat to crop fields, overgrazing, intensive and continuous hay mowing, drainage, fire protection activities, and subsequent decline of prairie habitat. *P. leucophaea* remains extant in approximately 51 populations in seven States and two Canadian Provinces; however, many of these are small, unprotected, and unmanaged populations. *P. praeclara* remains extant in about 40 populations in seven States and one Canadian Province; many of these are small hay meadow populations, where plants are annually cropped before seeds are dispersed. This proposal, if made final, would implement the protection provided by the Endangered Species Act of 1973, as amended, for *P. leucophaea* and *P. praeclara*. Critical habitat is not being proposed at this time. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 12, 1988. Public hearing requests must be received by November 25, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Coordinator, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and material received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator at the above address (612/725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

The prairie fringed orchids, *Platanthera leucophaea* and *P. praeclara* are closely related members of the orchid family and are referred to as a species pair (Sheviak and Bowles 1986). Prior to description of *P. praeclara* the two species were considered as *P. leucophaea* with a total range including 21 states and two provinces (Correll 1950, Luer 1975). Their joint distribution pattern extends from Oklahoma north to Manitoba, and east in a narrowing peninsula through the Great Lakes states to Maine. Populations also range westward through Nebraska in groundwater maintained habitats. *P. leucophaea* occurs primarily east of the Mississippi River, while *P. praeclara* is restricted to west of the Mississippi (Sheviak and Bowles 1986). Both species require full sunlight and usually inhabit tall grass calcareous silt loam or sub irrigated sand prairies. In the east, *P. leucophaea* also occupies calcareous wetlands, including open portions of fens, sedge meadows, marshes, and bogs (Bowles 1983).

The prairie fringed orchids are perennial herbs which regenerate from a fusiform tuber rootstock. Their tubers are dormant during winter and thus are adapted to dormant season prairie fires; such fires and high precipitation levels appear to promote flowering (Sheviak 1974, Roosa and Eilers 1979, Bowles 1983, Currier 1984). Leaves and an inflorescence (if flower primordia were set the prior year) usually emerge in May, and flowering begins by late June to early July. These species are characterized by large white flowers (the largest in the genus) arranged in an inflorescence that may reach 12 decimeters (47 inches) high with up to 40 flowers. The flowers are fragrant after sunset and adapted to pollination by night flying hawkmoths which ingest a high volume nectar resource from long nectar spurs (Bowles 1983). Pollination is required for seed production, while seedling establishment depends upon development of mycorrhizae with a favorable soil inhabiting fungus (reviewed in Bowles 1983). Differences in flower structures and pollination mechanics serve to isolate the species from hybridization; these features can be used to identify living or preserved specimens (Sheviak and Bowles 1986). The western species has larger flowers adapted to placing pollinia (pollen masses) on the compound eyes of visiting pollinators. In contrast, the eastern species places pollinia on the proboscis of visiting moths.

Platanthera leucophaea has declined over 70 per cent from original county records and now has about 51 extant populations in seven states. Primarily due to the destruction of large grasslands east of the Mississippi River, extremely large or extensive populations of this orchid do not exist in the United States. In Canada, 12 populations are known from fens and prairies in 12 Ontario counties; one fen population is estimated at 2,000 plants (Brownell 1984). The plant is also known from New Brunswick, where it is considered rare (Hinds 1983). However, most of these populations are not representative of the once vast prairie habitat that supported most populations of this orchid.

Platanthera leucophaea is presumed extirpated from Oklahoma, where the type specimen was collected by Nuttall in 1819 near the confluence of the Kiamichi and Red Rivers; it may have occurred in similar floodplain habitat in adjacent Arkansas (Sheviak and Bowles 1986). This orchid reached its western range limit in eastern Missouri and Iowa. It has not been relocated in Missouri (Morgan 1980), but one small population with three plants remains in Iowa. In the eastern United States, this

orchid has not been relocated in New York, Pennsylvania, New Jersey, and Indiana; isolated disjunct populations still occur in Maine and Virginia (Bowles 1983). The Maine population occurs on private land in portions of an extensive fen, which is undergoing some invasion by woody vegetation. Flowering plants appear erratically at this site. The current population appears to be about 20 adult individuals (Barbara Vickery, The Nature Conservancy, pers. comm. 1988). The small Virginia populations occur in a sedge meadow subject to light grazing.

The eastern white fringed orchid is known historically from 23 Michigan counties; 18 populations (about half are protected) now are extant from nine counties, where 1322 flowering stems were counted in 1984 (Chapman and Crispin 1985). Southern Michigan populations are small and occur in isolated bog habitats, while several larger populations of over 100 plants occur in lakeside prairies bordering Saginaw Bay. The three largest Michigan populations, totalling about 900 plants, occur on degraded upland prairies bordering Lake Erie. These sites are State owned, but extensive management may be needed to maintain the orchids as their communities go through successional changes. A population near Bay City disappeared after severe flooding in 1986, and has not been observed since (G.T. Higgs, James Clements Airport Advisory Committee, pers. comm. 1988).

Platanthera leucophaea originally occurred in 10 Ohio counties. McCance (Ohio Department of Conservation, pers. comm. 1987) reports only two extant populations in 1987. The larger, containing about 60 flowering plants in 1987, was down from 367 plants in 1982. The other population contained 46 flowering plants in 1984, but only six plants were found in 1987. Two other populations occur in sites frequently inundated by Lake Erie, and their current status is unknown.

In Wisconsin, this orchid originally was known from 17 counties in the south and southeast portions of the state (Alverson 1981). Ten small populations now occur in eight counties. One large population of several hundred plants occurs in a protected Lake Michigan border sand prairie.

Illinois probably contained the largest and most extensive presettlement populations of the eastern prairie fringed orchid and also sustained the most drastic population decline of any state. Orginally it was known from tall grass prairie in 33 counties across the northern two thirds of the State, an area now almost totally converted to agriculture (Bowles and Kurz 1981). Sixteen populations remain in six counties concentrated in the Chicago region; two additional populations occur in cemetery prairies in eastern and western Illinois counties. Only two populations consist of over 100 plants; both are in a Lake Michigan border county. Most populations are protected, and only six occur on private unprotected land.

Platanthera praeclara has experienced over a 60 percent decline according to county records, with about 40 populations remaining in seven states (Bowles and Duxbury 1986). Apparently, it has been extirpated from South Dakota where it was originally known from two counties. Populations in the southern part of this orchid's range seldom are observed. The two Oklahoma populations occur in privately owned hay meadows and were only observed during their original discovery (Magrath and Taylor 1978). This orchid was widespread in eastern Kansas, where it was originally known from 14 counties. Now, populations are reduced to eight counties where it is believed to occur in seven privately owned hay meadows and one University of Kansas research area (R. E. Brooks, U. of Kansas, pers. comm. 1987). Two small populations currently are known to occur in northwest Missouri. One population of five plants occurs on a private tract, while a second, of about 25 plants, is in a hay meadow recently acquired by the state.

Populations in the northern and central portions of the western prairie fringed orchid's range are larger and more extensive, but still reduced in size and range. This orchid probably was most widespread in the deep loess soils of Iowa, where a total of about 600 plants currently exist. Now, 13 populations are known extant from 11 Iowa counties (D. Howell, Iowa Department of Natural Resources, pers. comm. 1987). Most populations are small, with the largest consisting of about 275 plants. Six of the Iowa populations are in public or private conservation ownership and are managed by burning or mowing.

Platanthera praeclara originally was widespread in eastern Nebraska (Bowles and Duxbury 1986). A highly questionable historic record from 1842 attributed to Wyoming is now considered to be from Western Nebraska. Now, five populations are known from four counties. Two populations are small (less than 20 plants each) and disjunct in western Nebraska; one occurs on private land, while the other is on Federal land administered by the U.S. Fish and Wildlife Service. Neither is managed for the orchids, and the Federally owned tract is undergoing brush invasion. Three other sites in eastern Nebraska are on private or public land managed for conservation. The largest population consists of about 150 plants.

Two large scattered populations occur in Minnesota and North Dakota, each with 1000–2000 plants (Smith 1981, Bowles and Duxbury 1986). The North Dakota population represents the type locality for *Platanthera praeclara* (Sheviak and Bowles 1986) and occurs on Federally owned sand prairie managed by the U.S. Forest Service for grazing. Research is needed to determine what effects current management has on the orchids, and if increases in grazing intensity would negatively affect their populations. Nine subpopulations occur in four Minnesota counties. The largest is in protected ownership and is found at five sites with about 500 plants. This orchid recently was discovered in similar prairie habitat in Manitoba (Brownell 1984).

Federal Government action on these plants began as a result of Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report (Ayensu and DeFilipps 1978), designated as House Document No. 94–51, was presented to Congress on January 9, 1975. *Platanthera leucophaea*, which at that time was placed in the genus *Habenaria* and included in part the then undescribed *P. praeclara*, was listed as "threatened" in that document. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) of the Act (now section 4(b)(3)) and of its intention to review the status of plant taxa named within. 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. *Platanthera leucophaea* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the Federal Register on April 26, 1978 (43 FR 17909). On December 10, 1979, the

Service published a notice (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments to the Act. On December 15, 1980 (45 FR 82479), and September 27, 1985 (50 FR 39525), the Service published revised notices of review for native plants in the Federal Register. *Platanthera leucophaea* (including in part the then yet underscribed *P. praeclara*) initially was included in those notices as a category 1 species. Category 1 species are those for which biological information in the Service's possession warrants listing as endangered or threatened. Later, this orchid was dropped to category 2, indicating that further biological research and field study were needed to ascertain its status.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on those species, including *Platanthera leucophaea*, was October 13, 1983. On October 13, 1983, and again in 1984, 1985, 1986, and 1987, the petition finding was that listing of *Platanthera leucophaea* was warranted pending finding of further biological information but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires that the petition be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The present proposal constitutes the final finding that the listing is warranted. The Service proposes to implement the petitioned action in accordance with section 4(b)(3)(B)(ii) of the Act.

Status reports compiled by Brower (1977), Alverson (1981), Bowles and Kurz (1981), Chapman (1981), Hauser et al. (1981), Morgan (1980), Smith (1981), Spooner (1981), Tyrl et al. (1978), Watson (1983), Brownell (1984), and Bowles and Duxbury (1986), as well as other pertinent literature (see: REFERENCES) provide the biological basis for this proposed rule. The data demonstrate a historic decline in distribution and population levels, and continuing threats to remaining populations.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Platanthera praeclara* (Nutt.) Lindl. and *Platanthera leucophaea* Sheviak and Bowles are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The prairie fringed orchids have declined significantly throughout their ranges due to conversion of most of their habitats to cropland, overgrazing, intensive hay mowing, drainage, and fire protection; these and related threats continue. Many of the largest *Platanthera leucophaea* populations occur in habitats supporting successional vegetation. Without management these populations may decline in response to changing vegetation patterns. Many other populations are small and occur on small isolated prairie remnants, where seed set and reproduction is limited by dependence on chance visitation from pollinators. Over 35 percent of the known populations of *Platanthera praeclara* occur in hay meadows, primarily in the southern portion of this orchid's range. These plants seldom are seen, and populations apparently are small. Hay mowing annually removes seed capsules and plant biomass before natural seed dispersal can occur. This prevents recruitment of seedlings into populations and probably weakens adult plants, resulting in gradual population decline through attrition (Bowles 1983, Bowles and Duxbury 1986). Changing land use also threatens hay meadow populations. At least four Kansas hay meadows known to support *Platanthera praeclara* populations have been converted to agriculture since their discovery in the 1970's, while one Oklahoma hay meadow now is threatened with subdivision (Bowles and Duxbury 1986).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Native terrestrial orchids rarely are grown from seed; adult plants often are sought after for scientific and commercial purposes, or for private gardens. Smaller populations of the prairie fringed orchids would be negatively impacted by collecting. Because of higher human population densities in the east, the eastern prairie fringed orchid is subject to greater scientific and commercial pressures; at least one Michigan population was impacted by removal of plants. However, because of the recent description of *Platanthera praeclara* (western prairie fringed orchid) and its usually small populations, over-collecting may be a serious problem for this species. At least one instance of removal of a western prairie fringed orchid plant for commercial purposes has taken place in Minnesota.

C. *Disease or predation.* No diseases are known to be adversely impacting either prairie fringed orchid species. All inflorescences were removed from one Minnesota population of *Platanthera praeclara* by an unknown herbivore, but the long term impact remains unknown. Conehead grasshoppers (Orthoptera: *Neoconocephalus*) occasionally are observed eating the flowers or fruits of these orchids. However, the major predator is man through use of this orchid and its community for pasture or hay. Long term overgrazing or haying apparently leads to population decline because plants either are harvested or are not allowed to complete their life cycles.

D. *The inadequacy of existing regulatory mechanisms.* The prairie fringed orchids are formally or officially listed as endangered, threatened, or rare in nine states (IA, IL, MI, MN, MO, NE, ND, OH, WI) throughout their range. However, only a few states where these species are extant offer protection is listed plants beyond that afforded by their presence on public lands. State laws of Illinois, Iowa, Minnesota, Michigan, and Missouri prohibit the removal and sale of listed plants. In Wisconsin, Ohio, and New York it is illegal to harvest endangered or threatened plants. Although *Platanthera leucophaea* and *P. praeclara* are offered various forms of recognition or protection under state laws, the Endangered Species Act offers possibilities for protection through section 6 by cooperation between States and the Service, and cooperation through section 7 (interagency cooperation) requirements. The plants are considered rare in Canada, but are not afforded any official designation or protection.

E. *Other natural or manmade factors affecting its continued existence.* Pollination of the prairie fringed orchids is required for seed set, and is accomplished only by hawkmoths (Sphingidae). As a result, long-term population survival requires maintenance of hawkmoths. Any threat to these insects, (such as the use of insecticides) or their habitats and food plants, is a threat to survival of prairie fringed orchids.

The Service has carefully assessed the best scientific information available regarding the past, present, and future

threats faced by these taxa, in determining to propose this rule. Based on this evaluation, the preferred action is to list *Platanthera leucophaea* and *Platanthera praeclara* as threatened species, because of the known loss of most of their populations and habitat, and continued threats to existing populations. For reasons detailed below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service believes that designation of critical habitat would not be prudent because no benefit to the taxon can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description.

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 land acquisition, if necessary, and cooperation with the States; it also requires that recovery actions be carried out for all listed species. These actions are initiated by the Service following listing. Some may be undertaken prior to listing, circumstances permitting. Potential habitat management actions that might benefit *Platanthera leucophaea* and *P. praeclara* include: evaluation and specific management actions on public lands to enhance orchid populations, land protection measures which will reduce frequent disturbance to both species' habitat, and a program for landowners to educate them about the nature of their orchid populations and how they might alter management of their property to benefit these species. The protection required by Federal agencies and applicable prohibitions are discussed 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 specifies or result in destruction or adverse modification of proposed critical habitat. When a species is 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, the responsible Federal agency must enter into formal consultation with the Service.

No Federal involvement is expected for *Platanthera leucophaea* since the species is not known to occur on Federal lands. *Platanthera praeclara* is known to occur on lands under the jurisdiction of the U.S. Fish and Wildlife Service. Grazing management plans on the Valentine National Wildlife Refuge should consider the effects livestock has on the species. A population monitoring program for *P. praeclara* should be initiated. A widely scattered population of *P. praeclara* in North Dakota is found within the boundaries of the Sheyenne Valley National Grassland. This population extends over several thousand acres managed by the U.S. Forest Service which in turn leases the area to the Sheyenne Valley Grazing Association for livestock production. The Forest Service and the Grazing Association are aware of the *P. praeclara* populations. The species is found on 25 of the 58 allotments within the Sheyenne Valley National Grassland. A cooperative monitoring system involving the Forest Service, the Sheyenne Valley Grazing Association, and the Fish and Wildlife Service should be initiated. Research is also needed to better understand which types of management actions within the Grassland area might be beneficial to *P. leucophaea*. Cooperative discussions between the Forest Service, the Grazing Association, and the Service have been initiated. It will be necessary for the Forest Service to enter into consultation with the Service so that *Platanthera praeclara* plants are considered in the course of activities carried out by the Sheyenne Valley Grazing Association. It has been the experience of the Service that the majority of section 7 consultations are resolved so that the species is protected and the project can continue.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Platanthera leucophaea* and *P. praeclara*, all trade prohibitions of section 9(a)(2) of the Act, as implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or remove them from areas under Federal jurisdiction and reduce them to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that some trade permits would be issued because these plants belong to the orchid family, species of which now are sought for cultivation.

On July 1, 1975, *Platanthera leucophaea* was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which is implemented through section 8A of the Act. The effect of this listing is that both export and import permits are required before international shipment may occur. Such shipment is strictly regulated by CITES member nations to prevent if from being detrimental to the survival of the species, and cannot be allowed if it is for primarily commercial purposes. If plants are certified as artificially propagated, however, international shipment requires only export documents under CITES, and commercial shipments may be allowed. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, P.O. Box 27329., U.S. Fish and Wildlife Service, Washington, DC 20038–7329, (202/343–4955).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other 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 *Platanthera leucophaea* and *P. praeclara*;

(2) The location of any additional population of *Platanthera leucophaea* and *P. praeclara* and the reasons why any habitat of this species 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 these species; and

(4) Current or planned activities in the subject area and their possible impacts on *Platanthera leucophaea* and *P. praeclara*.

Final promulgation of the regulation on *Platanthera leucophaea* and *P. praeclara* 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. Request must be filed within 45 days of the date of the proposal. Such request must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments, 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. The reasons for this determination were published in the **Federal Register** October 25, 1983 (48 FR 49244).

Reference Cited

Alverson, W.S. 1981. Report on the Wisconsin status of *Platanthera leucophaea*. Unpublished report. 17 pp.

Ayensu, R.E., and R.A. DeFilipps, 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund. 403 pp.

Bowles, M.L. 1983. The tallgrass prairie orchids *Platanthera leucophaea* (Nutt.) Lindl. and *Cypripedium candidum* Muhl. ex Willd.: Some aspects of their status, biology, and ecology, and implications toward management. Natural Areas Journal 3: 14–37.

Bowles, M.L., and D. Kurz. 1981. Report on the Illinois status of *Platanthera leucophaea*. Unpublished report. 8 pp.

Bowles, M.L., and A. Duxbury. 1986. Report on the status of *Platanthera leucophaea* Sheviak & Bowles in Oklahoma, Kansas, Nebraska, South Dakota, and North Dakota. Unpublished report. 76 pp.

Brower, A.E. 1977. The prairie white fringed orchid *Habenaria leucophaea* (Nutt.) Gray in Maine and its relevance to the Critical Areas Program. Maine State Planning Office. Unpublished report.

Brownell, V.P. 1984. Report on the prairie fringed orchid (*Platanthera leucophaea*): a rare species in Canada. Unpublished report.

Chapman, K.A. 1981. Report on the Michigan status of *Habenaria leucophaea*. Biology Department. Unpublished report. 7 pp.

Chapman, K.A., and S.R. Crispin, 1985. Report on a comprehensive survey for *Platanthera leucophaea* in Michigan. unpublished report. 20 pp.

Correll, D.C. 1950. Native orchids of North America north of Mexico. Chronica Botanica Co., Waltham, MA.

Currier, P.J. 1984. Response of prairie fringed orchid to fire and reduction in grazing (Nebraska). Restoration and Management Notes. 2: No.17.

Hauser, L.A., T.J. Crovello, and J.A. Bacone. 1981. Report on the Indiana status of *Platanthera leucophaea* (Nutt.) Lindl. Unpublished report. 6 pp.

Hinds, H.R. 1983 The rare vascular plants of New Brunswick. Pp 23.

Luer, C.A. 1975. The native orchids of the United States and Canada, excluding Florida. New York Botanical Garden.

Magrath, L.K., and J. Taylor. 1978. Orchids and other new and interesting plants from Oklahoma. Publication No. 2. Herbarium, Southeastern Oklahoma State University, Durant.

Morgan, S.M. 1980. Report on the Missouri status of *Platanthera leucophaea* (Nutt.) Lindl. Missouri Department of Conservation.

Roosa, S.J., and L.J. Eilers. 1979. Endangered and threatened Iowa vascular plants. State Conservation Commission. p. 39

Sheviak, C.J. 1974. An introduction to the ecology of the Illinois Orchidaceae. Illinois State Museum Scientific Paper 14.

Sheviak, C.J., and M.L. Bowles. 1986. The prairie fringed orchids: a pollinator-isolated species pair. Rhodora 88:267–290.

Smith, W.B. 1981. Report on the Minnesota status of *Platanthera leucophaea* (Nutt.) Lindl. Minnesota. Department of Natural Resources. 10 pp.

Spooner, D.M. 1981. Report on the Ohio status of *Platanthera leucophaea* (Nutt.) Lindl. Ohio Department of Natural Resources. 11 pp.

Tyrl, R.J., J.L. Gentry, Jr., P.G. Risser, and J.J. Crockett. 1978. Field Surveys and Status Evaluation on Proposed and Candidate Endangered and Threatened Plant Species in Oklahoma. Unpublished report. Pp. 227–236.

Watson, W.C. 1983 Report of *Platanthera leucophaea*. (Nutt.) Lindl. in Iowa. University of Northern Iowa. Unpublished report. 22 pp.

Author

The primary author of this proposed rule is William F. Harrison (see **ADDRESSES** section). Preliminary documentation was prepared under contract by Marlin L. Bowles, The Morton Arboretum, Lisle, IL.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Orchidaceae, 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					
Orchidaceae—Orchid family:						
•	•	•	•	•	•	•

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Platanthera leucophea	Eastern prairie fringed orchid	U.S.A. (IL, NY, PA, NJ, MI, IN, OK, LA, OH, AR, MO, IA, ME, VA, MN), Canada (ON, NB).	T		NA	NA
Platanthera praeclara	Western prairie fringed orchid	U.S.A. (IA, MN, MO, NE, ND, KS, OK, SD), Canada (MB).	T		NA	NA
*	*	*	*	*	*	*

Dated: September 26, 1988.

Susan Recee,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-23261 Filed 10-7-88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Delisting of Astragalus perianus (Rydberg milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to remove *Astragalus perianus* (Rydberg milk-vetch) from the List of Endangered and Threatened Plants. This action is based on a review of all available data, which indicate that the species should no longer be classified as threatened. When the species was federally listed in 1978 it was known only from two populations. One population existed at the type locality in Bullion Canyon, Piute County, Utah, and another population occurred on top of Mt. Dutton in Garfield County, Utah. Extensive studies have been conducted for the last 9 years resulting in the discovery of ten additional populations.

DATES: Comments from all interested parties must be received by December 12, 1988. Public hearing requests must be received by November 25, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Fish and Wildlife Enhancement, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, botanist, at the above address (801/524-4430 or FTS 588-4430).

SUPPLEMENTARY INFORMATION:

Background

Rydberg and Carlton were the first to collect this milk-vetch during 1905 in the Tushar Mountains west of Marysvale, Piute County, Utah. Their collection remained obscure until 1964 when Rupert Barneby used this collection as the type specimen in describing *Astragalus perianus* as a new species (Barneby 1964).

Numerous attempts were made to relocate this species in the Tushar Mountains. In 1976, specimens were collected and positively identified as *A. perianus*. Prior to this collection the species was thought to be extinct at the type locality. In June 1975, Welsh and Murdock discovered the species at the top of Mount Dutton on the Sevier Plateau, Garfield County, Utah. The species was federally listed as threatened in 1978 by the Service (43 FR 17910).

In 1981 Rupert Barneby reevaluated the specimens of *A. perianus* and a species it closely resembles, *A. serpens*, at Brigham Young University and identified a series of collections previously identified as *A. serpens* to be *A. perianus*. These collections, made in Kane, Iron, and Piute Counties from 1967 to 1977, greatly expanded the distribution of *A. perianus*.

In 1982 the U.S. Forest Service developed a management plan for *A. perianus* (U.S. Forest Service 1982). In August 1983 this plan was approved and implemented. As a consequence of this management plan, inventories were intensified and monitoring studies were established to determine use, condition and trends for the species and its habitat. From 1984 through 1987 the majority of potential habitat was inventoried. Twelve major population centers were located and mapped. These populations cover over 2,000 acres in six counties on six major mountains and plateaus in south-central Utah: the Tushar Mountains, Sevier Plateau, Markagunt Plateau, Fish Lake Plateau, Mount Dutton, and Thousand Lake Mountain.

The majority of habitat of *A. perianus* occurs on Federal lands administered by the Dixie and Fishlake National Forests. The remaining habitat occurs on private lands. Conservative estimates for the 12 populations indicate population numbers at well over 75,000 (Atwood 1987), and probably closer to 200,000 individuals (J.L. England pers. obs). All age classes are represented in all of the 12 populations. All populations are healthy with most having adequate protection from potential threats.

Summary of Factors Affecting the Species

50 CFR 424.11 requires that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *Astragalus perianus* Barneby (Rydberg milk-vetch) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.*

Mining and road construction remain as localized threats to small portions of the species' overall population, but because of the increase in the number and range of known populations, they no longer constitute a significant threat to *A. perianus*.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. A. perianus* is not collected for commercial purposes and the other factors have not and are not expected to impact the species' viability.

C. *Disease or predation.* All populations are healthy and viable with little or no disease or predation. The numbers of wildlife and livestock have decreased since 1950 with subsequent improvement in the overall vegetative condition of the species habitat. No evidence of livestock or wildlife use was observed over the last 9 years of study.

The recent introduction of mountain goats (*Oreamnos americanus*) into the Tushar mountains may pose a latent threat to that population. The Service, however, concurred with the "no effect" conclusion in the biological assessment the Forest Service prepared for the introduction of mountain goats in 1985. This concurrence was based in large part on the Forest Service's determination that the transplated herd would not intrude into the occupied habitat of *A. perianus*. In any event a significant impact on that one population would not affect the overall status of the species.

D. *The inadequacy of existing regulatory mechanisms.* The U.S. Forest Service Manual (Section 2670) requires protection and maintenance of viable populations of rare species which may be sensitive of environmental degradation. Since the majority of habitat for the Rydberg milk-vetch occurs on Federal lands administered by the U.S. Forest Service, administrative mechanisms exist to protect the species.

E. *Other natural or manmade factors affecting its continued existence.* No other natural or manmade factors affecting *A. perianus* are known.

The regulations at 50 CFR 424.011(d) state that a species may be delisted if: (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. Item (1) does not apply in this case, but in regard to items (2) and (3), 10 additional populations have been discovered, indicating that the original classification data were in error. The new discoveries have increased population numbers to well over 75,000 and probably closer to 200,000 individuals. The Rydberg milk-vetch is no longer in danger of becoming endangered, thus it should be delisted from threatened status.

Effect of Rule

The proposed action would result in the removal of this species from the list of Endangered and Threatened Plants. Federal agencies would no longer be required to consult with the Secretary of the Interior to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the Rydberg milk-vetch. There is no designated critical habitat for this species. Federal regulations and status on taking this species would no longer apply. The Forest Service should maintain the species on their Sensitive Species List and provide protection under the Forest Service administrative manual requirements to ensure the continued viability of the species.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions regarding any aspect of this proposal are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties.

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 (49 FR 49244).

References Cited

Atwood, N.D. 1987. Rydberg milkvetch, *Astragalus perianus* Barneby. Technical Report, U.S. Forest Service, Ogden, Utah. 18pp.

Barneby, R.C. 1964. Atlas of North American *Astragalus*. Memoirs of the New York Botanical Garden. 13(II):597–1188.

U.S. Forest Service. 1982. Management plan for *Astragalus perianus*. U.S. Forest Service Typed Document, Ogden, Utah. 49 pp.

Author

The author of this proposed rule is John L. England, Botanist, U.S. Fish and Wildlife Service (see address section above). Dr. N. Duane Atwood, Regional Botanist, USDA Forest Service, Intermountain Region, Ogden, Utah 84401, (801) 625–5599 or FTS 586–5599 provided substantial information.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by removing the entry "*Astragalus perianus* Rydberg milk-vetch * * *" under Fabaceae from the List of Endangered and Threatened Plants.

Dated: September 26, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 88–23259 Filed 10–7–88; 8:45 am]

BILLING CODE 4310–55–M

National Oceanic and Atmospheric Administration

50 CFR Part 651

Northeast Multispecies Fishery

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice the New England Fishery Management Council (Council) has submitted Amendment #2 (Amendment) to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) for review by the Secretary of Commerce. Comments are invited from the public on the Amendment and any other documents made available.

DATE: Comments will be accepted until December 5, 1988.

ADDRESS: Send comments to Richard B. Roe, Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930. Clearly mark the outside of the envelope "Comments on Amendment #2 to the Northeast Multispecies FMP." Copies of the Amendment, Environmental Assessment, and Regulatory Impact Review/Initial Regulatory Flexibility analysis are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Northeast Multispecies Plan Coordinator, (508) 281–3600, extension 252.

SUPPLEMENTARY INFORMATION: This amendment was prepared under the provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). This amendment proposes measures for the managing the multispecies finfish fisheries in the Northwest Atlantic.

The most significant problem addressed in this amendment is that of non-compliance. Although the Council believes that its fundamental management strategy remains sound, it has become evident that the intent of some of the management measures in the FMP are being compromised by specifications that are too easily circumvented. Six of the nine proposed measures are explicitly designed to enhance compliance with the basic measures of the FMP. The other three proposed measures are intended to enhance the ability of some of the

existing management measures to achieve their purpose.

The proposed measures of this Amendment are: (1) Increase the minimum size of yellowtail flounder from 12 inches to 13 inches and American plaice from 12 inches to 14 inches; (2) postpone indefinitely the scheduled increase in the FMP of regulated mesh (to 6 inches) in the Georges Bank portion of the Regulated Mesh Area (RMA), but effective January 1, 1990, require that vessels operating in the RMA (which are not otherwise exempt) use nets that are constructed with mesh no smaller than the regulated size throughout; (3) modify the regulatory language at § 651.20(f) that defines nets "not available for immediate use" to include only (a) nets that are stored below deck, (b) nets that are stowed and lashed down on deck, and (c) nets that are secured in a manner that significantly limits the chances of small mesh being used in the RMA, as approved by the NMFS Regional Director; (4) adopt regulatory language to facilitate non-reissuance of an Exempted Fishery Program permit when the participant has not complied with the reporting requirements; (5) establish a trip by-catch limit of 25 percent regulated species for vessels operating in the Exempted Fishery Program; (6) prohibit trawl vessels from entering Area II during the period of seasonal closure; (7) establish a minimum fish size for redfish at 9 inches; (8) require that all regulated minimum fish sizes shall apply to both commercial and recreational fishermen; and (9) extend mesh regulations established for the RMA into the Nantucket Shoals area to protect juvenile cod in the winter fishery, December 1 through March 31.

The receipt date for this amendment is October 4, 1988, and proposed regulations for this amendment are expected to be published 15 years later.

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

Dated: October 5, 1988.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-23402 Filed 10-5-88; 4:53 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 196
Tuesday, October 11, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Act; Fourth Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Pub. L. 96–177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lambs, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62) which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1988 by section 2(c) as adjusted under section 2(d) of the Act.

As published on January 6, 1988 (53 FR 267), the estimated aggregate quantity of meat articles prescribed by section 2(c), as adjusted by section 2(d) of the Act, for calendar year 1988 is 1,386.8 million pounds.

In accordance with the requirements of the Act, I have determined that the fourth quarterly estimate for 1988 of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1988 is 1,525.4 million pounds.

Done at Washington, DC, this 4th day of October 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88–23298 Filed 10–7–88; 8:45 am]

BILLING CODE 3410–10–M

Privacy Act of 1974; Amendment of an Existing System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Amendment of an existing system of records.

SUMMARY: The purpose of this notice is to add a new routine use to the system of records known as USDA/OP–1.

EFFECTIVE DATE: 5 U.S.C. 552(e)(11) requires that the public be provided a 30-day period in which to comment. Comments received on or before November 10, 1988, will be considered. Unless comments are received which would require a contrary determination, this amendment shall be effective as proposed without further notice at the end of the comment period.

ADDRESS: Comments should be addressed to Carolyn Wright, Security, Employee and Labor Relations Staff, Office of Personnel, Department of Agriculture, Room 16–W, Administration Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Illene M. Harrison, (202) 447–3083.

SUPPLEMENTARY INFORMATION: Section 7114(b)(4) of Title 5, United States Code, requires an agency to furnish, to the extent not prohibited by law, to officials of labor organizations recognized under 5 U.S.C. Chapter 71, data which are normally maintained by the agency in the regular course of business and are reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. In a number of judicial proceedings, it has been held that bargaining unit representatives' access to the names and addresses of bargaining unit employees was necessary to union representation of those employees, and that agencies must disclose such information, upon request, pursuant to 5 U.S.C. 7114(b)(4) and the Freedom of Information Act, 5 U.S.C. 552.

In order to enable USDA to comply with 5 U.S.C. 7114(b)(4), a routine use of its Personnel and Payroll System for USDA Employees, USDA/OP–1, is being added to allow the Department of Agriculture to disclose the names and home or designated mailing addresses of bargaining unit employees to officials of recognized labor organizations. Accordingly, the Office of Personnel is amending its systems of records known as USDA/OP–1 published at 49 FR 45071 et seq., December 10, 1984, as follows:

USDA/OP–1

SYSTEM NAME:

Personnel and Payroll System for USDA Employees, USDA/OP.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(24) labor organizations recognized under 5 U.S.C. Chapter 71 to provide home addresses or designated mailing addresses of bargaining unit employees.

Dated: October 5, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88–23299 Filed 10–7–88; 8:45 am]

BILLING CODE 3410–96–M

COMMISSION ON CIVIL RIGHTS

New York State Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:30 p.m. on October 20, 1988, in Room 305–A of the Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York. The purpose of the meeting is to orient new Committee members, review the draft of a summary report of a forum on the 1990 Census, discuss civil rights issues in the State, and select a topic for a project in Fiscal Year 1989.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Walter Y. Oi (415/321–2052), Vice Chairperson Setsuko M. Nishi (718/780–5314, 212/790–4320), or John I. Binkley, the Director of the Eastern Regional Division (202/523–5264; TDD 202/376–8117.) Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 30, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc 88-23262 Filed 10-7-88; 8:45 am]

BILLING CODE 6335-01-M

North Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 5:30 p.m. on Thursday, October 27, 1988, in the President's conference room, Reynolda Hall, Wake Forest University, Winston Salem, North Carolian 27106. The Committee will meet for orientation of new members, staff reports of the status of "Is North Carolina Education Becoming More Segregated?", an information memorandum for the Commissioners from the Committee, and program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson David B. Broyles or John I. Binkley, Director, Eastern Regional Division at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 3, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc 88-23263 Filed 10-7-88; 8:45 am]

BILLING CODE 6335-01-M

North Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that North Dakota Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon, on November 10, 1988, at the Doublewood Ramada Inn, 1400 East Interchange Avenue, Bismarck, North Dakota 58501. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Bryce Streibel or Philip Montez, Director of the Western Regional Division at (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 3, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc 88-23263 Filed 10-7-88; 8:45 am]

BILLING CODE 6335-01-M

Texas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the education subcommittee of the Texas Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at noon on November 2, 1988, at the Ramada Hotel Love Field (Room 526), 3232 West Mockingbird Lane, Dallas, Texas 75235. The purpose of the meeting is to develop program plans for a project addressing issues of educational access in Texas.

Persons desiring additional information, or planning a presentation to the Committee, should contact subcommittee Chairperson Dr. Denzer Burke or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 30, 1988.

Melvin Jenkins,

Acting Staff Director.

[FR Doc 88-23265 Filed 10-7-88; 8:45 am]

BILLING CODE 6335-01-M

Vermont Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:30 p.m., October 27, 1988, in the Smilie Room of the Kellogg-Hubbard Library, 133 Main Street, in Montpelier, Vermont.

The purposes of the meeting are to meet the members of the new Vermont Human Rights Commission and to learn of the Commission's jurisdiction, priority issues, and plans. The Vermont Advisory Committee will also discuss topics previously mentioned for a possible project during Fiscal Year 1989, hear other suggestions, and select a new project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Eloise R. Hedbor (802/372-6917) in Vermont or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117) in Washington, DC. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting. The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, October 3, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88-23266 Filed 10-7-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from one manufacturer/exporter and the petitioner, the Department of Commerce has conducted an administrative review

of the antidumping finding or replacement parts for self-propelled bituminous paving equipment for Canada. The review covers two manufacturers and/or exporters of this merchandise and the period September 1, 1986 through August 31, 1987. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 11, 1988.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–8312/2923.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 28169) the final results of its last administrative review on the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 41811, September 7, 1977). One manufacturer and/or exporter and the petitioner requested, in accordance with § 353.53a(a) of the Commerce Regulations, that we conduct an administrative review. We published a notice of initiation of October 20, 1987 (52 FR 38952). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The products covered by this review are replacement parts for self-propelled bituminous paving equipment for Canada, and are currently provided for in item number 652.1540, 652.1825, 652.3530, 678.5097, 680.2500, 680.3300, 685.9026, 685.9500, 686.8040, 688.1800, 712.4900, 773.2500 of the *Tariff Schedules of the United States Annotated* and item numbers 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, 9015.30.40 of the *Harmonized Tariff Schedules*. This review covers two exporters of this merchandise to the United States and the period from September 1, 1986 through August 31, 1987.

On the firm, General Construction Equipment Manufacturing Co., did not respond to our questionnaire. For this non-responsive firm the Department used the best information available for assessment and estimated antidumping duties cash deposit purposes. The best information available is the rate for the responding firm with shipment in this review.

United States Price

In calculating United States price, the Department used purchase price or exporter's sale price ("ESP") both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on the packed, f.o.b. price to unrelated purchasers in the United States. We made adjustments, were applicable, for U.S. and foreign inland freight, U.S. duty, brokerage charges, warranty expense, discounts, indirect selling expenses, and taxes which were not collected by reason of exportation of the merchandise to the United States. No other adjustment were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, when there were sales of such or similar merchandise, or constructed value, both as defined in section 773 of the Tariff Act, as appropriate.

Home market price was based on the packed, ex-factory or delivered price to unrelated purchasers. We made adjustments, where applicable, for discounts, inland freight, warranty expense, credit expense, and commissions to unrelated parties. We made a circumstance of sale adjustment for the difference in the taxes added to the U.S. sales, where appropriate, to offset the taxes not collected by reason of exportation to the United States and the taxes included in home market sales to end-users. When making comparisons with ESP sales we deducted indirect selling expenses to offset U.S. selling expenses.

Constructed value was calculated as the sum of materials, fabrication, general expenses, profit, and U.S. packing. We used actual general expenses since the actual expenses were above the statutory minimum. We added the actual profit since the actual profit was above the statutory minimum. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that for appraisement purposes the margins range from zero to 303.71 percent for Fortress Allatt and is 1.33 percent for General Construction for the period September 1, 1986 through August 31, 1987. Also, we preliminarily determine cash deposit rates are as follows:

Manufacturer/exporter	Margin (percent)
Fortress Allatt Ltd	1.33
General Construction Equipment Co	1.33

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments from the remaining known manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of these firms (52 FR 28169, July 28, 1987). For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipment occurred after August 31, 1987, and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 1.33 percent shall be required. These deposit requirements are effective for all shipments of Canadian replacement parts for self-propelled bituminous paving equipment entered, or withdrawn from warehouse, for consumption on or after the date of

publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

Date: October 4, 1988.

[FR Doc. 88-23381 Filed 10-7-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-489-501]

Certain Welded Carbon Steel Pipe and Tube Products From Turkey; Final Results of Antidumpting Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On May 18, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain welded carbon steel pipe and tube products from Turkey. The review covers three manufacturers and/or exporters of this merchandise to the U.S. and the period January 3, 1986 through April 30, 1987.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the margins from those presented in our preliminary results of review.

EFFECTIVE DATE: October 11, 1988.

FOR FURTHER INFORMATION CONTACT: Eugenio Parisi or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 1774) the preliminary results of its administrative review of the antidumping duty order on certain welded carbon steel pipe and tube products from Turkey (52 FR 23330, May 15, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Imports covered by this review are shipments of certain welded carbon steel pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches of any wall thickness, currently classifiable under Tariff Schedules of the United States Annotated items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 and Harmonized System item numbers 7306.30.50 and 7306.30.10. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably as A-120, A-53, or A-135.

The review covers three manufacturers and/or exporters of Turkish welded carbon steel pipe and tube products to the U.S. and the period January 3, 1986 through April 30, 1987. One firm, Yucel Boru, did not respond to our questionnaire; therefore, for this firm we used the best information available, which is the highest rate for responding firms with shipments during the period.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioner, the Committee on Pipe and Tube Imports, and two respondents, Borusan and Yucel Boru. We discovered two computer input errors in our printouts of Erkboru's and Borusan's sales listings. In the preliminary results for Borusan we used the incorrect interest rate for 1986, and for Erkboru we used the incorrect selling price for one U.S. sale. We have corrected such errors in the final results. In the preliminary results we used monthly weighted-average exchange rates from the International Monetary Fund. We note that in our final calculations we are using daily exchange rates from the Department of the Treasury and certified by the Federal Reserve Board in New York.

Comment 1: The petitioner argues that, because portions of Erkboru's cost-of-production response were unverifiable, the Department should allocate selling, general, and administrative ("SGA") expenses, labor, and factory overhead expenses on the basis of total tonnage sold, rather than total tonnage produced.

Department's Position: Normally we allocate labor and factory overhead based on actual labor hours or actual machine hours, and SGA based on the cost of goods sold for the merchandise under review. However, Erkboru did not furnish requested total actual labor and machine hours, or the cost of goods sold for standard pipe. Therefore, as best information available we used verified total tonnage of standard pipe produced to allocate labor and factory overhead, since these were production-related costs, and total tonnage of standard pipe sold to allocate SGA expenses, since these were sales-related costs, all of which were adverse to the respondent.

Comment 2: Petitioner argues that Erkboru's per-unit cost of galvanized sockets should be higher than its per-unit cost of black sockets, speculates that perhaps the originally reported larger figure for galvanized sockets is correct, and urges the Department to re-examine the cost of sockets.

Department's Position: We agree that theoretically the per-unit cost of galvanized sockets should be higher than that of black sockets, all other factors being equal. However, Erkboru provided only the total cost of galvanized and black sockets purchased during the review period. At verification we confirmed that Erkboru had overststated its total costs for galvanized sockets. In the absence of information concerning the number of sockets and the tonnage of pipe produced and sold according to diameter size, we allocated the verified galvanized socket costs over the total tonnage of socketed galvanized pipe sold to arrive at a per-unit socket cost. We used the same methodology for calculating per-unit costs of socketed black pipe. This resulted in a higher per-unit socket cost for black pipe.

Comment 3: Petitioner argues that home market credit costs should be based only on credit terms and should not include late payment costs. Petitioner argues that late payment costs are not a difference in circumstances of sale, because late payments can have no effect on a price which is set according to credit terms given at the time of sale. Petitioner argues that the ITA should treat the late payment credit costs as indirect expenses. Borusan claims that the Department should allow its claim for late payment credit costs in the home market because the number of days used to calculate the costs was verified by the Department, and it was based on the actual number of days of late payments for each customer for each month.

Department's Position: We consider late payment credit costs as direct expenses, in keeping with past Departmental practice (*see* Certain Tapered Journal Roller Bearings and Parts Thereof from Italy (49 FR 2278, January 19, 1984)). In making a circumstance-of-sale adjustment for differences in credit expenses, we consider the actual difference in payment experience, including late

payment costs, in the two markets, and not merely the offered terms of payment because the offered terms do not necessarily reflect the actual payment experience.

Comment 4: Petitioner argues that the verification report fails to mention whether the ITA was able to verify Borusan's home market dates of shipment. Petitioner argues that if Borusan's shipment dates occurred after the date of sale, then Borusan overstated its home market credit expenses. Borusan argues that, contrary to petitioner's allegations, the Department should confirm that the dates of sale used to calculate home market credit costs are the same as the dates of shipment.

Department's Position: For home market sale we used the date of invoice as the date of sale. Although not mentioned in the verification report, the verification exhibits confirm that most of Borusan's dates of invoice and shipment were identical. In those instances where the dates of invoice and shipment were not identical the date of shipment preceded the date of invoice by one day.

Comment 5: Petitioner argues that Borusan is not entitled to the full claimed amount of duty drawback because it did not fulfill the required export commitment to be eligible for duty drawback. Petitioner questions the correctness of Borusan's calculation of the eligibility ratio (the ratio of the raw material imported compared to the raw material used in proudction) used to prorate the amount of duty drawback for all imported raw materials. Borusan argues that its claim for duty drawback was verified and that the Department should allow the entire claim, as it did in the preliminary results.

Department's Position: We agree with Borusan. We verified that Borusan's various claimed duty drawback amounts were accurate and we used them in our final calculations. We note that the petitioner submitted an additional comment on duty drawback on July 18, 1988, one month after the comment period expired. We did not consider that comment because it was untimely.

Comment 6: Borusan argues that the Department should add the actual amount of countervailing duties to U.S. price in its final calculations.

Department's Position: We agree. Article VI. 5 of the General Agreement on Tariffs and Trade provides that "[no] product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Tariff Act. In our calculations we added to U.S. price the *ad valorem* countervailing duty assessment rate for 1986 entries (*see* Final Results of Countervailing Duty Administrative Review, Certain Welded Carbon Steel Pipes and Tube Products from Turkey, 53 FR 9791, March 25, 1988), which is 12.67% of the f.o.b. price. For 1987 entries we added to the U.S. price the *ad valorem* rate of 17.80% of the f.o.b. price since, because there was no countervailing duty review requested for 1987, countervailing duties will be assessed at that rate.

Comment 7: Yucel Boru argues that the Department should not have used the best information available for its shipments. The firm explained the need for additional time on several occasions, offered to supply balance sheet and summarized sales data and to accept margin determinations based on the Department's evaluation of the details submitted by another Turkish company.

Department's Position: While subsequent requests were denied, the Department agreed to Yucel Boru's initial request for an extension of time. We explained that submission of balance sheets and summarized sales information would not constitute an adequate response to our questionnaire. The Department reiterated the need to submit a response as soon as possible. When the extended deadline expired, the Department proceeded to use best information available, which was the highest rate for a responding firm.

Final Results of the Review

As a result of the comments received, we have revised our preliminary results and the final margins are as follows:

Manufacturer	Time period	Margin (percent)
Borusan	1/3/86§501.63–4/30/87	0.03
Erkboru	1/3/86–4/30/87	28.28
Yucel Boru	1/3/86–4/30/87	28.28

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

As provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above cash deposit rates shall be required for these firms. Since the margin for Borusan is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for Borusan. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for each of these firms (51 FR 17784, May 15, 1986). For any future entries of this merchandise from a new exporter, not covered in this or prior reviews, whose first shipments occurred after April 30, 1987, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of estimated antidumping duties of 28.28 percent shall be required. We note that these are in addition to any required cash deposits of estimated countervailing duties. These deposit requirements are effective for all shipments of Turkish welded carbon steel pipe and tube products entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review, waiver, and notice are in accordance with sectons 751(a) (1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and 19 CFR 353.53a.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: September 30, 1988.

[FR Doc. 88–23380 Filed 10–7–88 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Intent To Conduct a Public Hearing for the Nomination of Sites to Comprise the Virginia Estuarine Research Reserve

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of intent to conduct a public hearing for the Virginia Estuarine Research Reserve.

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972 as amended, the Commonwealth of Virginia intends to conduct a public hearing to discuss the proposed nomination of two sites as components in a Virginia Estuarine Research Reserve System.

DISCUSSION: The Commonwealth of Virginia is studying the feasibility of establishing a National Estuarine Research Reserve System in the Virginia portion of the Chesapeake Bay and its tributaries. Research reserves will provide natural coastal habitats as field

laboratories for baseline ecological studies and education programs. Research and monitoring programs will be designed to enhance basic scientific understanding of coastal environments and aid in resource management decision-making. Information derived from sponsored studies will provide a basis for measuring progress in Chesapeake Bay clean-up efforts and will be used to increase public awareness of coastal issues. The Virginia Institute of Marine Science (VIMS) has the lead role in developing and managing the reserve system.

Fifty (50) percent of the funding for establishing and managing the reserve system is provided by the National Oceanic and Atmospheric Administration (NOAA) under the Coastal Zone Management Act of 1972 as amended. Additional funds for research and education are provided by NOAA on a continuing, competitive basis for the life of the program. There are 17 research reserves nationwide, including one in Maryland.

VIMS has evaluated one hundred and thirteen (113) possible reserve sites, being assisted in this effort by panel of the Commonwealth's leading coastal ecologists. Sites were evaluated on the basis of their representation of typical coastal ecosystems found in the Bay and its tributaries, ecological value, lack of disturbance, importance to research and environmental education, and the Commonwealth's ability to protect and manage the site so that research can occur in an undisturbed setting.

VIMS has completed its evaluation of proposed reserve sites in the York River and is seeking comments on the merits of the program from landowners, local officials, and state and federal officials. VIMS has scheduled a series of public meetings to inform the public about the reserve system and the sites proposed for nomination to NOAA.

A public meeting will be conducted on: Tuesday, October 11, 1988 at 7:00 pm in Waterman's Hall, Virginia Institute of Marine Science, Gloucester Point, Virginia. The proposed Goodwin Island and Catlett Islands sites will be discussed at this hearing.

All interested individuals are encouraged to attend the public meeting. Invited speakers include representatives of VIMS, the Council on the Environment, and NOAA. Speakers will describe the importance of the proposed research programs to local, regional and/or statewide environment issues, and the opportunities for local involvement in reserve operations and management. Public comments on the reserve concept are invited.

An information packet on the proposed Chesapeake Bay National Estuarine Research Reserve in Virginia will be available at the public meetings or can be obtained in advance from the Virginia Institute of Marine Science, Gloucester Point, Virginia 23062 (804/624–7156).

[Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Estuarine Reserves]

Date: October 3, 1988.

John J. Carey,

Deputy Assistant Administrator, National Ocean Service.

[FR Doc. 88–23258 Filed 10–7–88; 8:45 am]

BILLING CODE 3510-08-M

Pacific Fishery Management Council; Public Meeting

AGENCY; National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Limited Entry Workshop Committee will convene a public meeting on October 20, 1988, at 10 a.m., at the Pacific Fishery Management Council's Conference Room (address below), to design a questionnaire on limited entry, to review the first draft of a white paper and press release, and to discuss composition of workshop teams.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 S.W. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Date: October 5, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–23391 Filed 10–7–88; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Endangered Species; Issuance of Permit; Steve Ross and Mary Moser (P423)

On August 5, 1988, Notice was published in the **Federal Register** (53 FR 29510) that an application has been filed with the National Marine Fisheries Service by Steve W. Ross and Mary L. Moser, Zoology Department, Box 7617, State University, Raleigh, NC 27695–7617 for a permit to take shortnose sturgeon (*Acipenser brevirostrum)* for scientific purposes.

Notice is hereby given that on October 4, 1988, and as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1407), the National Marine Fisheries Service issued a Scientific Purposes Permit for the above taking to Steve W. Ross and Mary L. Moser subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Act.

The Permit is available for review in the following Offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Ave. NW., Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702; and

Director, Norteast Region, National Marine Fisheries Service, 14 Elm Street, Federal Bldg., Gloucester. Massachusetts 01930.

Date: October 4, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Program, National Marine Fisheries Service.

[FR Doc. 88–23303 Filed 10–7–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit: Dr. J. Ward Testa (P420)

On July 20, 1988, notice was published in the **Federal Register** (53 FR 27380) that an application had been filed by Dr. J. Ward Testa, Institute of Marine Science, University of Alaska, Fairbanks, Alaska 99775–5106 to take 1000 Weddell seals (*Leptonychotes weddelli*), 30 each crabeater seals (*Lobodon carcinophagus*), leopard seals (*Hydrurga leptonyx*), Ross seals (*Ommatophoca rossii*), and southern elephant seals (*Mirounga leonina*) for scientific research.

Notice is hereby given that on September 29, 1988 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1401), 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 Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Date: September 29, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-23302 Filed 10-7-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Return of Application; Knie's Kinderzoo, Gebruder Knie (P266E)

On October 23, 1986, notice was published in the **Federal Register** (51 FR 3762) that an application had been filed by Knie's Kinderzoo, Gebruder Knie, CH-8640 Rapperswil, Switzerland, for a permit to take and maintain two Atlantic bottlenose dolphins (*Tursiops truncatus*) from the Florida west coast.

Notice is hereby given that on September 30, 1988 the application was returned because of inadequate response to the Marine Mammal Commission's concern regarding possible past behaviorial problems among Knie's animals. The Applicant may resubmit a complete application at any time according to the guidelines set forth in the Application Instructions, the MMPA and its regulations.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: September 30, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-23366 Filed 10-7-88; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Marine Mammals; Application for Permit; C. Rachael Howell (P432)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:*
   C. Rachael Howell, Graduate Student, Corpus Christi State University, 3140 Ocean Drive, Corpus Christi, Texas 78404
2. *Type of Permit:*
   Scientific Research
3. *Name and Number of Marine Mammals:*
   Atlantic bottlenose dolphins (*Tursiops truncatus*) 200
4. *Type of Take:*
   The Applicant proposes to begin boat-based photographic assessment of movements and occurrence of animals in the study area. Long-term studies include northerly, southerly, and offshore directions to add information about the range limits of some of the individuals identified. Also, continued photographic surveys will reveal the impact of ecological alterations such as the "Red Tide" phenomenon and migratory movement patterns of the Gulf Coast population.
5. *Location and Duration of Activity:*
   Port Aransas, Lydia Ann Channel, Redfish Bay, and Corpus Christi Bay over a 2-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Fisheries Service, U.S. Department of Commerce, Washington, DC, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1825 Connecticut Ave., NW., Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, Federal Bldg., 9450 Koger Blvd., St. Petersburg, Florida 33702.

Date: September 29, 1988.

Nancy Forster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-23367 Filed 10-7-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to United States Biochemical Corporation, having a place of business at Cleveland, Ohio, an exclusive right in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7-110,348, "New Recombinant Plasmid Containing HIV Reserve Transcriptase Gene". The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487-4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing National Technical Information Service U.S. Department of Commerce.

[FR Doc. 88-23378 Filed 10-7-88; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

The Addition of New Programmatic Features to the SDI Technology Applications Information System Data Base

AGENCY: The Strategic Defense Initiative Organization Office of Technology Applications.

ACTION: Publication of the Following Announcement in The Federal Register.

SUMMARY: The Strategic Defense Initiative Organization Office of Technology Applications (SDIO/TA) has developed the Technology Applications Information System (TAIS) to identify emerging Strategic Defense Initiative technologies with spinoff potential and expedite the transfer of these technologies. The SDIO TAIS is a data base with more than 780 unclassified, nonproprietary synopses of technology innovations available for review by researchers and developers in the Department of Defense (DOD), federal agencies, and the private sector. A new feature incorporated into the TAIS is descriptions of technological innovations originating from the Medical Free Electron Laser (MFEL) Program. The MFEL Program—initiated by SDIO at the direction of Congress to establish free electron laser research facilities and conduct biomedical and materials research—sponsors work in preclinical research, biophysics investigations in medical laser applications at the cellular level, and the study of lasers for use in surgery, medical treatment, and the diagnosis of disease. Any US citizen or corporation can access the TAIS by computer modem once a military critical technology data agreement has been completed and eligibility certified by the Defense Logistics Agency under provisions of DOD Directive 5230.25, *Control of Unclassified Technical Data with Military or Space Application.* Information regarding qualification and certification for access to militarily critical technology may be obtained by calling (800) DLA–DLSC. Information on use of the TAIS is available by calling SDIO/TA at (202) 693–1563.

FOR FURTHER INFORMATION CONTACT: SDIO/T/TA, Room 1E1023, The Pentagon, Washington, DC 20301–7100, (202) 693–1553.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 5, 1988.

[FR Doc. 88–23375 Filed 10–7–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations will meet in closed session on December 14, 1988 at the Institute for Defense Analyses, Alexandria, 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 this meeting the Task Force will examine the potential for achieving U.S. security objectives in the Pacific rim area through defense industrial cooperation with the nations of that area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 5, 1988.

[FR Doc. 88–23376 Filed 10–7–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Office of the Deputy Chief of Staff for Personnel; Meeting

In accordance with section 10(a)(20) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting.

Name of Committee: Chief of Staff's Special Commission on the Honor Code and Honor System at the United States Military Academy

Date of Meeting: 31 October 1988

Place of Meeting: U.S. Court of Military Appeals, 5th and E Streets, NW., Washington, DC.

Time: 0930–1630

Proposed Agenda:

1. Review of the Borman Report
2. Presentation on Ethics
3. Organizational Meeting

Point of Contact: LTC James O. Younts III, Office of the Deputy Chief of Staff for Personnel, Washington, DC 20310, (202–695–1983).

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer With the Federal Register.

[FR Doc. 88–23515 Filed 10–7–88; 8:45 am]

BILLING CODE 1310–DS–M

Corps of Engineers, Department of the Army

Intent To Prepare a Joint Federal and State Draft Environmental Impact Statement for Flood Control Mitigation in Kawainui Marsh, Oahu, HI

August 31, 1988.

Lead Federal Agency: U.S. Army Corps of Engineers, DOD, Honolulu Engineer District.

Lead Local Agency: City and County of Honolulu, Dept. of Public Works.

Action: Notice of intent to prepare a draft environmental impact statement (Draft EIS).

1. In 1957, the U.S. Army Corps of Engineers completed the design of the Kawainui Marsh Flood Control Project. Construction of the project was completed in 1966 by creating a 640 acre flood storage basin with the construction of a protective levee (6,400 ft. long) on the seaward side of a Marsh and the widening of an outlet channel to Kailua Bay. The project was designed for 3000 acre feet of flood storage but the Marsh provided 4600 acre feet of available storage (including freeboard). The project was designed to provide a level of protection equivalent to the standard project flood.

The project was intended to protect low-lying residential areas (Coconut Grove) from the effect of periodic flooding. However, portions of Coconut Grove in Kailua, Oahu, Hawaii were severely damaged on the morning of 1 January 1988 by flood waters from the Marsh which overtopped the levee. Loss of flood storage capacity in the Marsh and the inability of water to reach the Oneawa outlet channel due to sediment and aquatic vegetation buildup are suspected as the causes.

The heavy growth of Marsh vegetation has drastically reduced water movement within the Marsh, further reducing portions of its flood storage capacity. Flood waters did not spread out over all portions of the Marsh and flood waters were not able to reach the Oneawa channel quickly. This caused water levels in the flooded part of the Marsh to rise above design levels and overtop the levee during the 1 Jan. 88 flood. At the present time a 2-year storm may provide enough water to overtop

the existing levee, an amount of which is equivalent to 8.0 inches of rainfall and 5.2 inches of runoff in a 24-hour period.

2. The U.S. Army Corps of Engineers (Honolulu Engineer District, HED) is in the process of evaluating a full range of feasible alternatives to improve the flood control features of the Kawainui Marsh Flood Control Project.

3. Objectives to address flood control mitigation in the Coconut Grove area adjacent to Kawainui Marsh include:

a. No action (respond only to future flooding emergencies)

b. Restore flood storage capacity of Marsh (ability to retain high levels of water safely in Marsh behind a levee to its original design condition.

c. Move flood waters more quickly to the outlet channel (Oneawa Canal) to reduce the need for additional flood storage.

The above objectives can be achieved according to evaluation and selection from the following array of possible alternatives:

Alternatives

a. Selective herbicide treatment and burning of Marsh Vegetation

b. Excavating sediment or vegetation, or combinations of both from the Marsh to clear a channel through the Marsh or increase flood storage

c. Raising of the existing leave

d. Widening of Oneawa Canal

e. Widening of the existing ditch next to the levee on the Marsh side

f. Flood proof homes (raise floor elevations of houses in flood prone areas)

g. Construction of a training dike in the Marsh to direct water flows into a channel

h. Combination of one or more of the above alternatives

i. Phasing of various aspects of a preferred alternative

j. No action (except for emergency actions during an actual flood)

A number of options as apart of the excavation alternative will also be evaluated as follows:

Removal of Vegetation, Sediments, or Both

1. Vegetation and/or sediment can be removed from a channel alignment,
2. Vegetation and/or sediment can be removed throughout larger areas of the Marsh.

A variety of removal techniques and equipment shall be evaluated including clam shell, dragline and hydraulic suction dredge, as well as options to allow temporary access of equipment to the work sites, including temporary fill causeways and floating equipment. Special mechanical techniques to remove aquatic vegetation will also be evaluated. A variety of channel options: Widths, single channel, multiple channels, straight channel, and meandering channels, etc., will be evaluated.

Many of the above alternatives are expected to require a water control structure, alternatives of which shall be evaluated according to anticipated life span, clogging potential and maintenance problems, navigational hazard, and aquatic species migration.

Sediment and vegetation to be removed from the Marsh must be disposed. Disposal sites to be evaluated shall include:

a. Model airplane field on fast land on the fringe of Marsh

b. Fast land adjacent to model airplane field

c. Sanitary landfill sites adjacent to the Marsh on fast land

d. Disposal in Marsh as a series of islands designed for waterbird habitat

e. Disposal of vegetation within Marsh and sediment disposal outside Marsh

f. Sites offered by existing landowners near the Marsh (e.g., ITT property), and

g. Other candidate sites to be identified or suggested later

4. Adverse environmental impact may result from one or more of the listed alternatives including: Important archaeological resources deemed eligible for or listed on the State and National Register of Historic places; impact on four species of endangered Hawaiian waterbirds and their habitat in the Marsh; existing and potential recreational uses of the Marsh; coastal water quality, sedimentation, and ecology of the Marsh and Kailua Bay; the sediment filtering characteristics of the Marsh, the socioeconomic welfare and health of people living adjacent to the project especially in flood prone areas; cultural uses of the Marsh; aesthetics of the Marsh; and other impacts.

5. Significant public involvement has occurred thus far through a series of ad-hoc committee meetings, a formal public meeting, and distribution of a draft Environmental Assessment to over one hundred individuals and organizations. Over twenty oral and over forty written comments have been received thus far and will be incorporated into the Draft EIS scheduled for distribution and public review in October, 1988.

Formal section 7 consultation in accordance with the Endangered Species Act has been initiated, and actions to comply with section 106 of the National Historic Preservation Act have been initiated. The project is also subject to permits in accordance with section 10 of the River and Harbor Act and section 404 of the Clean Water Act and requires compliance with provisions of the Coastal Zone Management Act. The project also requires approval from a variety of Hawaii State and Honolulu City and County agencies. The EIS will be prepared and coordinated to comply with both State and Federal EIS laws.

6. The following additional studies shall be performed to gain information for inclusion in the final EIS:

a. Additional baseline water quality monitoring in Marsh

b. Core samples and sediment analysis

c. Archaeological reconnaissance surveys for various alternatives

d. Additional hydraulic information and analysis

7. A number of organizations and agencies are expected to provide important information on the ecology of the Marsh, fish and wildlife, cultural resources, aesthetic values, recreational values and uses, and flooding characteristics of the Marsh and watershed as well as alternative designs and features, and measures to reduce or avoid impacts.

The public is being asked to provide advice and suggestions on additional alternatives, additional needed studies, other possible impacts, individuals and organizations that should be contacted, and other concerns and information.

During September, meetings are being planned to provide community groups and scientists with the opportunity to participate in the identification, evaluation, and design of alternatives and measures to reduce or avoid impacts. Interested parties are urged to identify themselves and their areas of expertise, concern or interest.

8. In light of the serious flood hazard which still exists in Coconut Grove, this EIS will be processed in the minimal possible time to comply with the spirit, intent, and provisions of applicable Federal and State laws. Hence, comments should be received by us within 30 days of the publication of this notice.

9. Questions and comments about the proposed action and the Draft EIS can be addressed to: Dr. James E. Maragos, Chief, Environmental Resources Section, Planning Branch, U.S. Army Engineer District, Honolulu, Building T–1, Fort Shafter, Hawaii 96858–5440, Telephone: (808) 438–2263.

[FR Doc. 88–23388 Filed 10–7–88; 8:45 am]
BILLING CODE 3710–NN–M

Defense Communications Agency

Scientific Advisory Group; Closed Meeting

The DCA Scientific Advisory Group will hold closed meetings on 9 and 10 November 1988 at the Xerox Corporation, International Center for Training and Management Development, Leesburg, Virginia 22075.

The subject of the meeting will be 21st century technology with regard to DoD's information systems and DCA's roles and missions.

Any person desiring information about the Advisory Group may telephone (area code 202–746–3643) or write Associate Director for Engineering and Technology, Defense Communications Agency, 8th Street and South Courthouse Road, Arlington, Virginia 22204.

These meetings are closed because the material to be discussed is classified requiring protection in the interest of National Defense. (5 U.S.C. 552b(c)(1)).

Robert E. Lyons,

Acting Associate Director for Engineering and Technology.

[FR Doc. 88–23290 Filed 10–7–88; 8:45 am]

BILLING CODE 3610-05-M

DELAWARE RIVER BASIN COMMISSION

Amendment of Comprehensive Plan and Water Code of the Delaware River Basin; Hearings

AGENCY: Delaware River Basin Commission.

ACTION: Notice.

SUMMARY: At its September 28, 1988 business meeting the Delaware River Basin Commission adopted three resolutions amending its Comprehensive Plan and Water Code.

The first resolution, No. 88–22 (Revised), dealt with criteria and operations formulae for emergency operations during a lower basin drought warning and drought. As noticed in the August 18, 1988 **Federal Register**, the Commission adopted a lower basin drought plan on August 3, 1988, subject to the approval of the Parties to the U.S. Supreme Court Decree in New Jersey v. New York, 347 U.S. 995 (1954). Subsequent to the August 3 action, several revisions to the lower basin drought plan were proposed and considered by the Commissioners and Decree Parties. On September 28, a resolution incorporating these revisions was adopted by the Commission and consented to in writing by the Decree Parties. In sum, the revisions now include the Decree Parties in the periodic review of the operating plan and clarify language in several of the definitions located in the plan's Glossary of Terms.

The second and third amendments to the Comprehensive Plan and Water Code adopted on September 28, Resolution Nos. 87–6 (Revised) and 87–7 (Revised), modified two regulations originally adopted on April 22, 1987: Leak detection and repair and service metering. As noticed in the May 4, 1987 **Federal Register**, agencies in each of the four Basin states were designated to administer and enforce the respective regulations. At that time, New York State designated the Department of Environmental Conservation as its implementing agency. The amendments adopted on September 28, 1988 substituted the Department of Health for the Department of Environmental Conservation.

EFFECTIVE DATE: These amendments shall be effective September 28, 1988.

ADDRESS: Copies of the Commission's Water Code are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, telephone (609) 883–9500.

(Delaware River Basin Compact, 75 Stat. 688)

Susan M. Weisman,

Secretary,

October 3, 1988.

[FR Doc. 88–23311 Filed 10–7–88; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, 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 November 10, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, 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 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

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 subsantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, 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) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) 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: October 5, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Reinstatement
Title: Early Estimates of Student Membership, Teachers, Graduates, and Current Revenues and Expenditures
Frequency: Annually
Affected Public: State and local governments
Reporting Burden:
Responses: 51
Burden Hours: 26
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This survey is designed to collect key statistics from State educational agencies on early estimates at the beginning of the current school year. The key statistics are numbers of teachers, students and high school graduates, and current expenditures for education by State. The Department uses the information to report education statistics and to provide policymakers with adequate data for planning.

Office of Postsecondary Education

Type of Review: Extension
Title: Certification of Project Costs for College Housing Program and Academic Facilities Programs
Frequency: One time only
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 155
Burden Hours: 155
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: Institutions of higher education that have participated under the College Facilities Loan Program and Academic Facilities Program are required to submit information on the costs incurred during project construction.

Office of Intergovernmental and Interagency Affairs

Type of Review: Extension
Title: Presidential Academic Fitness Awards Program (PAFA) Order Form
Frequency: Annually
Affected Public: State and local governments; non-profit institutions
Reporting Burden:
Responses: 50,000
Burden Hours: 16,500
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by public and private schools interested in participating in the Presidential Academic Fitness Awards Program. The Department will use the information to determine the number of award certificates required by each participant.

[FR Doc. 88-23397 Filed 10-7-88; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3195-003]

Sayles Hydro Associates; Intent To Prepare an Environmental Assessment and To Hold Public Meetings

October 4, 1988.

The Ninth Circuit Court of Appeals, in an opinion filed on March 18, 1988, and amended on July 5, 1988, remanded and suspended the license for the Sayles Flat Project (LaFlamme vs. FERC, 842 F.2d 1063 (9th Cir. 1988). In its opinion, the Court directed the Commission to further consider issues raised by Harriet LaFlamme regarding the project's impact on recreational use and visual quality, cumulative impacts of the project, and the need for a comprehensive plan. To address the Court's opinion, the Commission proposes to prepare an environmental assessment (EA) for the existing Sayles Flat Project. The EA will also address the cumulative impact of hydropower development in the Upper South Fork American River Basin area and will include, at a minimum, the Sayles Flat Project and the proposed Pyramid Creek Project (FERC Project No. 3188). The Forest Service has agreed to participate as a cooperating agency.

The Sayles Flat Project, located near Twin Bridges, California, on the South Fork American River, is almost fully constructed. The Ninth Circuit Court, however, has halted further construction and prohibited operation of the project until the issues raised have been satisfied consistent with the Court's opinion. The Pyramid Creek Project would be located on Pyramid Creek just upstream of the Sayles Flat Project. A site-specific EA for the Pyramid Creek Project was issued by the Commission on February 19, 1988.

Public Meetings

Interested agencies, officials, and members of the public are invited to express their views on the scope of the EA at two public meetings to be conducted by the Commission staff. The meetings will be held on Wednesday, October 19, 1988, at the Placerville Inn, 6850 Greenleaf Drive, Placerville, California. The first meeting will be held from 2:00 p.m. to 5:00 p.m. The second meeting will be held for 7:00 p.m. to 10:00 p.m. For further information, contact Suzanne Brown at 202-376-9820.

To assist the attendees in preparing for and participating in the public meetings, the staff is preparing an outline of the proposed EA, and a document entitled "Scoping Document I". These two documents will be sent to all recipients of this notice prior to the public meetings.

At the public meetings, persons may give their statements orally or in writing. The meetings will be recorded by a stenographer, and all statements (oral and written) will become part of the public meeting record. In addition, the public meeting record will remain open until November 21, 1988. Anyone may submit written comments until that time. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should clearly show the project names and numbers on the first page.

Lois D. Cashell,
Secretary.

[FR Doc. 88-23317 Filed 10-7-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP88-858-000, et al.]

Williams Natural Gas Co. et al.; Natural Gas Certificate Filings

October 5, 1988.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP88-858-000]

Take notice that on September 27, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-858-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to Section 7 of the Natural Gas Act for PSI, Inc. (PSI), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for PSI, on an interruptible basis, pursuant to a transportation agreement dated July 29, 1988. Williams explains that service commenced August 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5519. Williams further explains that the peak day quantity would be 56,000 MMBtu, the average daily quantity would be 56,000 MMBtu, and that the annual quantity would be 20,440,000 MMBtu. Williams explains that it would receive natural gas for PSI's account at 129 points located in Oklahoma, Colorado, Kansas,

Missouri, Texas, and Wyoming and would redeliver the gas for PSI's account at 23 points in Kansas, Missouri, Texas, and Oklahoma.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket Nos. CP88-840-000 [1], CP88-841-000, CP88-842-000, CP88-843-000, CP88-844-000, CP88-845-000, CP88-846-000, and CP88-847-000]

Take notice that on September 26, 1988, Northwest Pipeline Corporation (Northwest), P.O.Box 8900, Salt Lake City, Utah 84108-0900, filed in the above referenced dockets, requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide interruptible transportation service for various shippers under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests which are on file with the Commission and open to public inspection.

Northwest indicates that it would provide the service for each shipper as provided by an executed transportation agreement. In each case Northwest indicates that no new facilities would be required to implement the service. In addition, Northwest states that in each case it would charge rates and abide by the terms and conditions provided by its Rate Schedule TI-1. Northwest has provided other information applicable to eah transaction, including the identity of the shipper, the proposed term, the peak day, average day, and annual volumes, and the respective docket numbers and termination dates related to the 120-day transactions initiated under § 284.223 of the Commission's Regulations, which is attached as an appendix.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

Docket No.	Proposed term	Shipper	Volumes (MMBtu) peak day average day annual	Related ST Docket No.	Expiration date 120-day transaction
CP88-840-000	Month to Month	Kimback Oil & Gas Company	1,000 350 125,000	88-5686-000	12-04-88
CP88-841-000	02-10-90 Primary	Mobil Natural Gas Incorporated	300,000 17,500 6,300,000	88-5707-000	11-30-88
CP88-842-000	Ten Years Primary	Salmon Resources Ltd.	100,00 12,500 4,500,000	88-5708-000	12-08-88
CP88-843-000	04-30-98	Grand Valley Gas Company	200,000 5,000 1,800,000	88-5683-000	11-30-88
CP88-844-000	Month to Month	Mobile Natural Gas, Inc.	20,000 10,000 3,600,000	88-5684-000	12-02-88
CP88-845-000	Month to Month	Ladd Petroleum Corporation	2,500 1,800 670,000	88-5687-000	11-28-88
CP88-846-000	Ten Years Primary	Mock Resources, Inc.	100,000 4,500 1,600,000	88-5709-000	12-14-88
CP88-847-000	04-30-88	Grand Valley Gas Company	200,000 15,000 5,500,000	88-5685-000	11-28-88

3. Tennessee Gas Pipeline Company

[Docket No. CP88-829-000]

Take notice that on September 23, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-829-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for The Polaris Pipeline Corporation (Polaris), a marketer, under its blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 50,000 Dt of natural gas per day for Polaris on an interruptible basis pursuant to a transportation agreement dated August 19, 1988 between Tennessee and Polaris. Tennessee states that it would receive the gas for Polaris' account at various specified points of receipt and that it would deliver the gas for the account of Polaris at various specified delivery points.

Tennessee states that the estimated average daily quantity would be 3,603 Dt and that the annual quantities would be 1,315,095 Dt. It is further stated that service under § 284.223(a) commenced as reported in Docket No. ST88-5710. Tennessee indicates that the service would have a term of two years and continue on a monthly basis thereafter. Tennessee proposes to charge Polaris a rate pursuant to Tennessee's currently effective Rate Schedule IT. No new facilities are proposed herein.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP88-837-000]

Take notice that on September 26, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-837-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations of the Natural Gas Act (18 CFR 157.205 and 284.223) for authority to provide interruptible transportation service for EnTrade Corporation, (EnTrade), a marketer of natural gas, under United's blanket transportation certificate issued January

[1] These applications are not consolidated.

15, 1988, in Docket No. CP88-6-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to transport up to 51,000 MMBtu of gas per day or approximately 18,797,500 MMBtu annually. United indicates that transportation service commenced, under the 120-day automatic authorization of Section 284.223(a) of the Commission's Regulations on August 20, 1988, pursuant to a transportation agreement dated August 9, 1988. United indicates that it notified the Commission of the commencement of the transportation service in Docket No. ST88-5480 on September 1, 1988.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-23318 Filed 10-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-182-000]

Gas Research Institute; Filing

Issued: October 4, 1988.

On September 30, 1988, the National Research Council filed with the Commission Phase I of its Report styled "A Review of the Gas Research Institute's Research and Development Plan and Program." Participants wishing to file comments on Phase I of the Report must do so not later than October 14, 1988. Copies of the Report are available from the Public Reference Room, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88-23316 Filed 10-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TF89-1-7-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

October 5, 1988.

Take notice that on September 27, 1988, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No 1, with a proposed effective date of October 1, 1988:

Eighty-Second Revised Sheet No. 4A
Eleventh Revised Sheet No. 4B

Southern states that the proposed tariff sheets and supporting information are being filed pursuant to the Interim Adjustments provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff.

Southern further states that the proposed tariff sheets reflect a decrease in Southern's commodity cost of gas of 22.768¢ per Mcf from the levels reflected in its regularly scheduled PGA filing in Docket No. TQ89-1-7-000. Southern attributes the reduction in gas costs to the fact that its customers have entered into a best efforts purchase commitment with it permitting it to increase its purchases of lower cost gas.

Southern also requests two waivers. First, Southern has requested waiver of § 154.304 of the Commission's regulations to allow Southern to forego filing its quarterly PGA to be effective January 1, 1989. Second, Southern has requested waiver of Section 154.306 of the Commission's regulations to permit the assessment of Southern's performance in achieving the cost of gas projected based on the entire period from October, 1988 to March, 1989.

Copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures (Sections 38.214, 385.211). All such motions or protests should be filed on or before October 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 88-23320 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3460-6]

Science Advisory Board, Clean Air Scientific Advisory Committee; Open Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given of a public meeting of the Lead Exposure Subcommittee of the Clean Air Scientific Advisory Committee (CASAC) of the Environmental Protection Agency's Science Advisory Board. The meeting will be held from 9:30 a.m. to 4:00 p.m. on Tuesday, October 25, 1988 in Conference Room 3-North, Waterside Mall level, U.S. Environmental Protection Agency 401 M Street, SW., Washington, DC 20460.

Purpose: The purpose of the meeting is for the Subcommittee to review the August 1988 draft document "Review of the National Ambient Air Quality Standards for Lead: Exposure Analysis Methodology and Validation", prepared by the U.S. EPA, Office of Air Quality Planning and Standards.

SUPPLEMENTARY INFORMATION: The draft document was made available to the Subcommittee in August 1988 for review and written comment. Written comments were submitted in September 1988 and will be used to revise the draft document, as appropriate. Copies of these written comments are available from the U.S. EPA Central Docket Section (Clean Air Act), (202) 382-7549, ask for Docket Number A-83-22. Copies of the draft report may be obtained from Mr. Jeff Cohen, Air Quality Management Division (MD-12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, (919) 541-5282. Written comments will be accepted through November 25, 1988 and should be sent to Mr. Cohen at the above address.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the

meeting should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A–101F), U.S. EPA, Washington, DC 20460, (202) 382–2552, (FTS) 382–2552. Persons wishing to make a brief presentation (8–10 minutes) at the meeting must contact Mr. Flaak no later than Octoer 19, 1988 to reserve space on the agenda. It is requested that 10 copies of a written statement for the record be submitted to Mr. Flaak at the time of the meeting for distribution to the members of the Subcommittee. Oral presentations should supplement and not repeat the written statement.

Dated: October 3, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88–23372 Filed 10–7–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3460–5]

Science Advisory Board, Sediment Criteria Subcommittee of the Environmental Effects, Transport and Fate Committee; Meeting

Under the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that a two-day meeting of the Sediment Criteria Subcommittee of the Environmental Effects, Transport and Fate Committee of the Science Advisory Board (SAB) will be held on October 27 and 28, 1988. The meeting will begin at 9:00 a.m. and will be held in the Conference Facilities (Room 12A) of the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. The meeting will adjourn no later than 5:00 p.m. on Friday.

The Subcommittee has been charged with evaluating the scientific and technical foundations of methodologies available to the Agency for estimating sediment toxicity and the biological impact of inplace contaminated sediments. In addition, the Subcommittee has agreed to comment on the feasibility of utilizing each methodology to determine the extent of contamination and risk posed to the environment and human health. Research directions will also be identified for strengthening each methodology reviewed.

Specifically, the purpose of this meeting is to review the Apparent Effects Threshold (AET) Method. This methodology has been extensively applied in Region 10 and may be used as the basis for establishing sediment quality criteria by the State of Washington. The AET method compares field data on biological effects with sediment concentrations of individual chemicals deriving a value above which biological effects are always observed.

Future plans for the Subcommittee to review other methods for establishing sediment criteria will be discussed, including the Equilibrium Partitioning Method in January, 1989. This meeting will be open to the public. Any member of the public who wishes to attend, present information, or receive further details should contact Ms. Janis C. Kurtz, Executive Secretary or Mrs. Lutithia Barbee, Staff Secretary (A–101 F) Science Advisory Board, U.S. EPA, 401 M Street, SW., Washington, DC Telephone (202) 382–2552 or FTS–8–382–2552. Written comments will be accepted and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than October 24, 1988, to be assured of space on the agenda.

Dated: October 3,1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88–23371 Filed 10–7–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Notice of 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.: 212–010286–016

Title: South Europe/U.S.A. Pool Agreement

Parties:

Compania Trasatlantica Espanola, S.A.
Costa Line (Costa Container Lines, S.P.A., Genoa)
Evergreen Marine Corporation
Farrell Lines, Inc.
Italia di Navigazione, S.P.A.
Jugoliniaja
Lykes Lines
A. P. Moller-Maersk Line
Nedlloyd Lines
Sea-Land Service, Inc.
Trans Freight Lines
Zim Israel Navigation Company, Inc.

Synopsis: The proposed modification would adjust the Maximum Pool Share of Lykes Lines.

Agreement No.: 212–010689–033

Title: Transpacific Westbound Rate Agreement

Parties:

American Presidnet Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine, Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed modification would eliminate language which presumes that the meetings of U.S. port voting groups will be held within certain specified geographic locations.

Agreement No.: 203–011160–004

Title: Agreement No. 11160

Parties:

Atlantic Container Line B.V.
Compagnie Generale Maritime (CGM) n.v. CMB s.a.
Orient Overseas Container Line (UK) Ltd.
Hapag Lloyd AG
Johnson Scanstar
Gulf Container Line (GCL), B.V.
Nedlloyd Lijnen, B.V.
P. & O Containers (TFL) Limited
Polish Ocean Lines
South Atlantic Cargo Shipping, N.V.
Deppe Linie GmbH & Co.
Sea-Land Service, Inc.
Pacific Europe Express

Synopsis: The proposed modification would add Lykes Bros. Steamship Co., Inc., as a party to the agreement.

By Order of the Federal Maritime Commission.

Dated: October 5, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–23308 Filed 10–7–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the

Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091988 AND 100388

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Hahnemann University, United Hospitals, Inc., United Hospitals, Inc	88-2508	09/19/88
Michael George DeGroote, Blockbuster Entertainment Corporation, Blockbuster Entertainment Corporation	88-2533	09/19/88
General Electric Company, Lear Siegler Holdings Corporation, Lear Siegler Seating Corp., et al	88-2541	09/19/88
Commercial Credit Group, Inc., Primerica Corporation, Primerica Corporation	88-2548	09/19/88
General Electric Company, LSS Holdings Corp., LSS Holdings Corp	88-2556	09/19/88
Pennsylvania Blue Shield, Plan Investment Fund, Inc., Plan Investment Fund, Inc	88-2570	09/19/88
Kenneth E. Behring, Professional Football Limited Partnership, The Seattle Professional Football Club	88-2602	09/19/88
Kenneth E. Behring, Seattle Seahawks, Inc., Seattle Seahawks, Inc	88-2608	09/19/88
Robert A. Kathary, USX Corporation, Marathon Properties, Inc	88-2390	09/21/88
The Neiman-Marcus Group, Inc., Mr. S. Roger Horchow, Horchow Mail Order, Inc	88-2467	09/21/88
Siemens AG, Allied-Signal, Inc., Bendix Electronics Division of Allied-Signal, Inc	88-2468	09/21/88
Dietrich M. Gross, Winton M. Blount, Kramo Corp. & Washington Steel Corp	88-2479	09/21/88
Norwest Corporation, General Electric Company, Gelco Corporation/Gelco Payment Systems Division	88-2525	09/21/88
Alberto-Culver Company, Windmere Corporation, Windmere Corporation	88-2536	09/21/88
Fuddruckers, Inc., Daka, Inc., Daka, Inc	88-2557	09/21/88
The Fulcrum III Limited Partnership, Foodmaker, Inc., Foodmaker, Inc	88-2561	09/21/88
The Fulcrum III Limited Partnership, Foodmaker, Inc., Foodmaker, Inc	88-2562	09/21/88
Daka, Inc., Fuddruckers, Inc., Fuddruckers, Inc	88-2563	09/21/88
Brunswick Corporation, Starcraft Corporation, Starcraft Power Boat Corporation	88-2567	09/21/88
Wingate Partners, L.P., Redman Industries, Inc., Redman Industries, Inc	88-2587	09/21/88
Mobil Corporation, Newmont Mining Corporation, Newmont Oil Company	88-2603	09/21/88
Colonial Commercial Corp., Ronald O. Perelman, Devon Capital Corp	88-2605	09/12/88
Texas Eastern Corporation, Arthur M. Goldberg, TPG, Inc	88-2480	09/22/88
Leucadia National Corporation, Seven Oaks International, Inc., Seven Oaks International, Inc	88-2545	09/22/88
The Dow Chemical Company, Essex Chemical Corporation, Essex Chemical Corporation	88-2588	09/22/88
H. Wayne Huizenga, Blockbuster Entertainment Corporation, Blockbuster Entertainment Corporation	88-2596	09/22/88
BankAmerica Corporation, Mobil Corporation, Clayton Bank and Trust Company	88-2600	09/22/88
Exxon Corporation, Mesa Limited Partnership & Mesa Operating Ltd. Ptnrship, Mesa Limited Partnership & Mesa Operating Ltd. Ptnrship	88-2299	09/23/88
United Cable Television Corporation, Blockbuster Entertainment Corporation, Blockbuster Entertainment Corporation	88-2463	09/23/88
Integrated Resources, Inc., Philips N.V., The Selmer Company	88-2497	09/23/88
Pearson plc, TRW Inc., Reda Pump Division and the Oilwell Cable Division	88-2518	09/23/88
The Statesman Group, Inc., Castle & Cooke, Inc., C&C-Kohala	88-2526	09/23/88
Pacific Telesis Group, ABI American Businessphones, Inc., ABI American Businessphones, Inc	88-2537	09/23/88
Jeffrey H. Smulyan, Milton Maltz, Malrite Communications Group, Inc	88-2612	09/23/88
Nestle S.A., The Prudential Insurance Company of America, The Prudential Insurance Company of America	88-2621	09/23/88
The Quaker Oats Company, Sysco Corporation, Continental Coffee Company of Houston	88-2623	09/23/88
Presidio Oil Company, The British Petroleum Company plc, Sohio Petroleum Company, d/b/a Standard Oil Prod. Comp	88-2627	09/23/88
IFINT S.A., Fireman's Fund Corporation, Fireman's Fund Corporation	88-2630	09/23/88
Lomas & Nettleton Financial Corporation, Bright Banc Savings Association, Bright Banc Savings Association	88-2640	09/23/88
Tele-Communications, Inc., Blockbuster Entertainment Corporation, Blockbuster Entertainment Corporation	88-2658	09/23/88
Dowty Group PLC, CASE Group plc, CASE Group plc	88-2448	09/25/88
The Penn Central Corporation, Tyco Laboratories, Inc., Allied Tube & Conduit Corporation	88-2498	09/26/88
W.R. Grace & Co., Canonie Environmental Services Corp., Canonie Environmental Services Corp	88-2559	09/26/88
AMAX Inc., Quantum Chemical Corporation, SPG Exploration Corp	88-2569	09/26/88
Columbia Pictures Entertainment, Inc., J.F. Theatres, Inc., J.F. Theatres, Inc	88-2579	09/26/88
Damson Income Energy Limited Partnership, Crescent Master Limited Partnership, Crescent Master Limited Partnership	88-2597	09/26/88
Damson Energy Company, L.P., Crescent Master Limited Partnership, Crescent Master Limited Partnership	88-2598	09/26/88
IFINT S.A., General Electric Company, LSS Holdings Corporation	88-2631	09/26/88
Healthcare Services Group, Inc., Southmark Corporation, American Services Company	88-2635	09/26/88
Vincent J. Ryan, Bell & Howell Company, Bell & Howell Records Management, Inc	88-2642	09/26/88
Kohler Co., USG Corporation, USG Industries, Inc	88-2369	09/27/88
Johnson Controls, Inc., Nelson Peltz, American National Can Company	88-2543	09/27/88
Johnson Controls, Inc., Peter W. May, American National Can Company	88-2544	09/27/88
PepsiCo, Inc., UniBev Inc., UniBev Inc	88-2549	09/27/88
PepsiCo, Inc., John A. Robertshaw, Jr., Laurel Group Limited	88-2550	09/27/88
PepsiCo, Inc., John E. Britton, Erie Bottling Corporation	88-2551	09/27/88
PepsiCo., Inc., Wilchart, Ltd., Wilchart, Ltd	88-2552	09/27/88
PepsiCo., Inc., Richard H. Confair, Confair Bottling Co., Inc	88-2553	09/27/88
James M. Goldsmith, c/o General Oriental Investment Ltd., James M. Goldsmith, c/o General Oriental Investment Ltd., GU Acquisition Corporation	88-2580	09/27/88
American Continental Corporation, James M. Goldsmith, General Oriental Investments Limited	88-2581	09/27/88
The Laird Group Public Limited Company, Panel Prints, Inc., Panel Prints, Inc	88-2582	09/27/88
Steven M. Rales, GenCorp, Inc., GRADH-104 Inc	88-2613	09/27/88
Mitchell P. Rales, GenCorp, Inc., GRADH-104, Inc	88-2614	09/27/88
Merrill Lynch & Co., Inc., Bain Capital Fund Limited Partnership, Calumet Acquisition Corp	88-2632	09/27/88
Gerald Tsai, Jr., Commercial Credit Group, Inc., Commercial Credit Group, Inc	88-2644	09/27/88
Holmes Protection Group, Inc., Sovereign Group, Inc., Guardian Industries, Inc	88-2511	09/28/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 091988 AND 100388—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Ladbroke Group PLC, Pacific Racing Association, Pacific Racing Association	88-2622	09/28/88
Weiss, Peck Greer Corporate Development Assoc., LP, Beker Industries Corp., Beker Industries Corp	88-2654	09/28/88
Arthur Goldberg, Timpte Industries, Inc., Timpte Industries, Inc	88-2433	09/29/88
McDonnell Douglas Corporation, Frank Giordano, Emerald Industrial Leasing Corp	88-2535	09/29/88
McDonnell Douglas Corporation, Harold Neiman, Emerald Industrial Leasing Corp	88-2536	09/29/88
Houston Industries, Incorporated, Edward S. Rogers, RCA Cablesystems Holdings Co	88-2554	09/29/88
Stoneridge Resources, Inc., Stoneridge Resources, Inc., Orange-co, Inc	88-2577	09/29/88
Sophus Berendsen A/S, Gerard F. Leider, The Leider Companies, Inc	88-2610	09/29/88
Sophus Berendsen A/S, M. James Leider, The Leider Companies, Inc	88-2611	09/29/88
KKR Associates, c/o Kohlberg Kravis Roberts & Co., Macmillan, Inc., Macmillan, Inc	88-2652	09/29/88
Unifi, Inc., Martin N. Rosen, United Yarn Products Co., Inc	88-2574	09/30/88
Lucas Industries plc, Allied-Signal Inc., Utica Power Systems, Inc	88-2575	09/30/88
TPI Enterprises, Inc., Stanley H. Durwood, American Multi-Cinema, Inc	88-2645	09/30/88
RTZ Corporation PLC, Kerr-McGee Corporation, Quivira Mining Company	88-2649	09/30/88
New England Mutual Life Insurance Company, Santa Fe Southern Pacific Corporation, Southern Pacific Transportation Company	88-2651	09/30/88
Presidio Oil Company, The Atlantic Foundation, General Atlantic Energy Corporation	88-2657	09/30/88
Aoki Corporation, R-H Hilton Head, Ltd., R-H Hilton Head, Ltd	88-2662	09/30/88
Polly Peck International PLC, Corporate Data Sciences, Inc., Corporate Data Sciences, Inc	88-2664	09/30/88
Daniel C. Lee, Southmark Corporation, Southmark Vancouver Corp., A.E.B. Holdings Ltd	88-2667	09/30/88
Ted Arison, c/o Carnival Cruise Lines, Inc., Royal Admiral Cruises Ltd., Royal Admiral Cruises Ltd.	88-2671	09/30/88
Clyde Petroleum plc, Newmont Mining Corporation, Newmont Oil International, Newmont Holland, Inc	88-2672	09/30/88
National Education Corporation, Spectrum Interactive Incorporated, Spectrum Interactive Incorporated	88-2676	09/30/88
Sandoz Ltd., McLaren Environmental Engineering Holding Corp., McLaren Environmental Engineering Holding Corp	88-2678	09/30/88
Derby International Corporation S.A., Medalist Industries, Inc., Medalist Trading Co., Inc	88-2679	09/30/88
E.I. duPont de Nemours & Co., Mobil Corporation, Mobil Exploration & Producing North America Inc	88-2686	09/30/88
Formosa Plastics Corporation, USA, Aluminum Company of America, Neumin Production Company and Lavaca Pipe Line Company	88-2697	09/30/88
Victor K. Kiam II, William H. Sullivan, Jr., New England Patriots Football Club, Inc	88-2711	09/30/88
ITEL Corporation, George M. Acker, Cable TV Industries	88-2582	10/03/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 88-23370 Filed 10-7-88; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Consortium of Federal, Academic, and Industry Logistic Experts

Renewal of Advisory Committee. This notice is published in accordance with the provisions of section 14(b)(1) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the renewal of the Consortium of Federal, Academic, and Industry Logistics Experts. The Administrator of General Services has determined that renewal of the Committee is in the public interest.

The fundamental purpose of the Committee is to: (1) Reduce costs, (2) improve efficiency and effectiveness, and (3) increase productivity in Federal logistics operations. It seeks opportunities for savings through warehouse consolidation and cross-servicing, increased automation, system and process improvements, and enhanced professional standards and training in the field of logistics science.

The Federal Supply Service (FSS) is the organization within the General Services Administration (GSA) which is sponsoring this Committee. For additional information, contact William B. Foote, Assistant Commissioner for Customer Service and Marketing, FSS, GSA, Washington, DC 20406, telephone (703) 557-7970.

Dated: September 30, 1988.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 88-23267 Filed 10-7-88; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-497-N]

Medicare Program; Request for Comments on Payment for Chemotherapy in Physicians' Offices

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of request for comments.

SUMMARY: Section 4056(d) of the Omnibus Budget Reconciliation Act of 1987 requires the Secretary to study and report to Congress by April 1, 1989 on possible modifications to the Medicare Part B payment policy to more appropriately reflect the costs associated with providing chemotherapy to patients in physicians' offices. The purpose of this notice is to solicit comments from the public that would aid us in completing the study.

DATE: We are requesting that comments be forwarded to the address below by November 25, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-497-N, P.O. Box 26676, Baltimore, Maryland 21207.

FOR FURTHER INFORMATION CONTACT: Helaine Jeffers, (301) 966-4652.

SUPPLEMENTARY INFORMATION: Changes in treatment methods and advances in technology now allow chemotherapy to be furnished to many patients in the physician's office, thus reducing the need for hospitalization to administer chemotherapy. Furnishing these services in the physician's office is more convenient for some patients and may provide other benefits as well.

Current Medicare Part B payment rules for physicians' services, however, may fail to compensate adequately for these services because the usual reasonable charge payment methodology may not fully recognize the overhead costs involved in these procedures. Some sources of additional costs include employment of nurse oncologists, special patient rooms, and

safety equipment required because of the toxicity of the chemotherapeutic agents and safety procedures issued by the Occupational Safety and Health Administration.

Because Congress believes that inadequate Medicare payments for chemotherapy furnished in physicians' offices may preclude the most advantageous use of this service, Congress enacted section 4055(d) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). This section was subsequently redesignated as section 4056(d) by section 411(f)(14) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360), enacted on July 1, 1988. Section 4056(d) of Pub. L. 10–203 requires the Secretary to conduct a study of ways of modifying Medicare Part B payment policy to result in more appropriate payments for chemotherapy furnished in physicians' offices. A report on the study is due to Congress by April 1, 1989.

Because of the lack of data and other information concerning this issue, we are soliciting comments from the public to help us in completing this study. We are requesting written suggestions, comments, or any relevant information regarding the following issues:

- Any outcome-based results of studies demonstrating benefits or effectiveness of treatment for patients receiving chemotherapy in physicians' offices, rather than on an inpatient or outpatient bases in hospitals.
- Any existing comparative data regarding the outcomes of office-based and hospital-based chemotherapy treatment.
- Resources such as specialized personnel, equipment, supplies, and disposal facilities required to administer chemotherapy in physicians' offices.
- The costs associated with these and other resources required to administer chemotherapy in physicians' offices.
- Information on whether specialized personnel, equipment, and other facilities will be effectively used in the physicians' offices.
- Unpublished reports or studies on alternative methods of determining physicians' payments for chemotherapy services or administering chemotherapy in the office setting.

We are particularly interested in receiving comments from oncologists, other medical experts, providers, and health insurers with experience in such issues. Those who submit comments are requested to provide the name of a contact person, with address and phone number, who can provide additional information as necessary.

(Section 4056(d) of Pub. L. 100–203, as amended (42 U.S.C. 13951 (note))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: August 3, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 14, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–23309 Filed 10–7–88; 8:45 am]

BILLING CODE 4120–01–M

[BPO–077–N]

Medicare Program, Carrier Bonuses for Increasing Physicians' Participation or Payments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice describes the methodology we will use to award fiscal year 1988 incentive payments to carriers that successfully increase the number of participating physicians, i.e., physicians who agree to accept Medicare's reasonable charge for all Part B services that they provide to Medicare beneficiaries. It implements provision of the Omnibus Budget Reconciliation Act of 1986, the Omnibus Budget Reconciliation Act of 1987, and the Medicare Catastrophic Coverage Act of 1988 which require us to publish a notice in the **Federal Register** describing our system for providing payment of a bonus to carriers based on their perfomance in increasing the number of participating physicians or the proportion of payment for participating physicians' services in their service areas.

FOR FURTHER INFORMATION CONTACT: Louis Palmieri, Jr., (301) 966–7542.

SUPPLEMENTARY INFORMATION:

I. Background

A. Contracts with Carriers

Under section 1842 of the Social Security Act (the Act), we enter into contracts with carriers to fulfill various functions in the administration of Part B of the Medicare program (Supplementary Medical Insurance). Beneficiaries, physicians and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the reimbursable amount (usually on the basis of reasonable charges) for the services or supplies, and then make payment to the appropriate party. Under section 1842(c)(1) of the Act we provide advances of funds to the carrier for making payments, and pay the administrative costs of the carriers for carrying out the necessary and proper functions covered by the contract.

B. Participating Physicians' Program

Section 2306 of Pub. L. 98–369, the Deficit Reduction Act of 1984 (DRA) established the Medicare participating physician program. Participating means accepting assignment on all Medicare claims. Accepting assignment means physicians accept Medicare's approved charge as full payment. The main goal of the program is to reduce the impact of medical costs upon beneficiaries by establishing incentives for physicians to accept assignment on all Medicare claims. The provisions give all physicians an annual opportunity to enroll or disenroll as a Medicare participating physician. A participating physician is one who voluntarily enters into an agreement to accept assignment annually for all services provided to Medicare patients for the 12-month period beginning January 1, of a particular year. However, section 4041 of Pub. L. 100–203, the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) amended section 2306 of DRA and provides that, for 1988, the participation period is for the 9 months from April 1988 to December 1988. The physicians' prior agreements were extended through March 31, 1988.

C. Recent Legislation

Section 9332(a) of Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986, (OBRA 86), and section 4085(i)(21)(B) of OBRA 87, require Medicare carriers to implement programs to recruit and retain physicians as participating physicians. These programs include educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and programs to familiarize beneficiaries with the participating physician program and to assist the beneficiaries in locating participating physicians. Section 9332(a) also requires the Secretary to establish an incentive payment pool equal to one percent of the total payments to carriers for claims processing in any fiscal year, to be paid to those carriers that had success in increasing the proportion of participating physicians or increasing the proportion of total payments for participating physicians' services in their service areas. Section 9332(a)(4)(B) requires the Secretary to establish a system for evaluating the carrier's

performance in fulfilling these responsibilities.

Section 9332(a)(4)(C) originally required carrier bonus payments to be paid no later than April 1, 1988 to reflect performance of carriers during the enrollment period at the end of 1987. As noted earlier, section 4041 of OBRA 87 delayed the effective date of 1988 participating physician agreements until April, to coincide with the updating of fee screens (the amounts of approved payments). The date for making bonus payments to carriers was further revised twice. Section 4041(a)(3)(B) of OBRA 87 amended section 9332(a)(4)(C) to delay the date from April 1 to not later than July 1, 1988. Section 411(f)(1)(C) of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100-360, amended section 4041(a)(3)(B) of OBRA 87 to revise the effective date for issuing carrier bonus payments from July 1, 1988 to not later than September 30, 1988. The payment is to reflect performance of carriers during the enrollment period ending before April 1, 1988.

II. Methodology for Awarding Payments to Medicare Carriers

We intend to pay incentive bonuses for fiscal year 1988 to any carrier that achieved an increase of at least one tenth of one percent in the number of participating physicians or proportion of total payments for participating physicians' services in the carrier's total service area.

Data used to measure changes in those payments for physicians' services, which are payments for services provided by participating physicians, are reported to HCFA by carriers on Form HCFA-1565C, Quarterly Supplement to the Carrier Performance Workload Report, Table 8, titled "Participation Rate Based on Covered Charges". For purposes of this report, covered charges means that portion of participating physician submitted charges determined to be covered under Medicare.

Data used to measure increases in percent of physicians signing participation agreements is based on participation count data submitted by the carriers.

A. Establishment of Incentive Payment Pool

As required by section 9332(a) of OBRA 86 and section 4085 of OBRA 87 the amount of the total incentive payment payable to carriers is one percent of their total claims processing costs. Claims processing costs are reported by the carriers on line 1 of their Final Administrative Cost Proposal, Form HCFA-1524, for each fiscal year (FY). For 1987, the incentive pool amount is $4.1 million and was calculated by summing the amounts reported by each carrier and multiplying the total by one percent.

Since funds are taken from all carriers to form the incentive payment pool, carriers in States which mandate that physicians will participate are entitled to share in the pool in the first year and all subsequent years. They are entitled to the incentive payment plus any bonus payments they earn.

B. Evaluation of Carrier Performance

For the purpose of determining each carrier's eligibility for an incentive payment, we make two comparisons. We compare the carrier's physician participation rate after the latest enrollment period (e.g., as of April 1988) with its physician participation rate after the prior enrollment date (e.g., as of January 1987) and we make a similar comparison of the proportion of covered charges for services by participating physicians during the quarter following the enrollment period (e.g., the quarter ending June 30, 1988) with those of the quarter following the prior enrollment period (e.g., the quarter ending March 31, 1987). We intend to use whichever difference yields the higher percentage increase for the purpose of determining eligibility for award of the incentive payment. We believe these comparisons reveal the carrier's success in increasing the proportion of total payments for physician services which are payments for such services furnished by participating physicians in its service area. These are the criteria established by section 9332(a) of OBRA 86 and section 4085(i)(21)(B) of OBRA 87 for awarding incentive payments.

As a means of recognizing variations in the level of success among carriers, we will compare each carrier's increase with a standardized goal. We have established a 5 percentage point increase in participation as an attainable goal for this year which all carriers should strive to exceed. We believe it was the intent of Congress not only to expand the number of participating physicians, but to give every carrier a reasonable chance of earning a bonus. Based on historical performance from increasing enrollments, a 5 percentage point increase was determined to be a reasonable goal. Consequently, we will compare all carrier increases with the 5 percentage point goal in determining the amount of each carrier's incentive bonus, as discussed in section III, below. Those who attain exactly a 5 percentage point increase will receive a full incentive payment, as described below.

In order to reward the success of those carriers who increase the participation rate by less than 5 percentage points, we will award partial incentive payments to any carrier that achieves at least a one-tenth of one percent increase. Carriers that increase provider participation by more than 5 percentage points will receive the full incentive payment and be eligible for bonus incentive payments. All calculations involving the participation rate will be made to the nearest one-tenth of a percent. (If the incentive payments plus the bonus incentive payments calculated under this approach exceed the incentive pool, we will proportionately adjust the incentive bonus payments to bring the total in line with the available incentive payment pool. For example, if the total bonus incentive payments exceed the available pool for bonus incentives by 10 percent, then each carrier that earned a bonus payment will have that payment reduced by 10 percent.)

III. Calculation of Incentive Payments

We separate carrier performance as measured during the most recent enrollment period or payment period, as described above (e.g., April 1988 or April-June 1988, respectively) into four categories for purposes of calculating incentive payments.

- Category I—Carriers that increase their participation rate between 0.1 and 5 percentage points or increase the covered charges of participating physicians between 0.1 and 5 percentage points.

For each full one-tenth of a percentage point increase in the participation rate, we will pay one-fifth of each tenth of a percentage point increase times the full incentive payment. For example, if a carrier increased its participation rate by three-tenths of 1 percent, the formula used to calculate its incentive payment will be three-tenths times one-fifth the full incentive payment which is 1 percent times line 1 cost.

Example:

—January 1987 participation rate 30 percent.
—April 1988 participation rate 33.4 percent.
—Increase in participation rate is 3.4 percentage points, which is greater than the percentage increase in covered charges.
—Carrier entitled to receive 68 percent of full incentive payment. If, for example, the carrier had a $10 million line 1 cost, it would receive a $68,000 incentive payment (that is,

68 percent of the total $100,000 incentive payment).

• Catgegory II—Carriers that increase their participation rate by more than 5 percentage points.

We anticipate that some carriers will achieve substantial increases.

Carriers in this category will be paid the full incentive payment. Also, we will award one-fourth of the full incentive payment for each additional 3 pecentage point increase.

Example 1:

—January 1987 participation rate 30 percent.
—April 1988 participation rate 39 percent.
—Increase in participation rate by 9 percentage points. (See Example 2 for comparison of percentage increase of covered charges.)

Carriers in this category are entitled to receive the full incentive payment for achieving the goal (the first 5 percentage point increase). In addition, the example carrier would receive one-fourth of the full incentive payment (one-fourth for each extra 3 point increase). In this example a carrier with a $10 million line 1 cost would receive a $125,000 incentive payment (that is, 1 percent of line 1 ($100,000) plus 25 percent of the $100,000 incentive payment).

Example 2:

—This is the same hypothetical carrier used in example 1.
—March 31, 1987 participation based on covered charges of 35 percent.
—June 30, 1988 participation based on covered charges of 46 percent.
—Increase in participation rate based on covered charges is 11 percentage points.
—As indicated in example 1, the increase in the participation rate was 9 percentage points.
—Since the percentage point rate increase based on covered charges is greater than the percentage point rate increase based on participating physicians, the higher percentage point rate increased based on covered charges would be used.

The carrier is entitled to the full incentive payment for achieving the goal (the first 5 percentage point increase) plus two-fourths of the full incentive payment (one-fourth for each extra 3 point increase). In this example, a carrier with a $10 million line 1 cost would receive $150,000, this amount being higher than the $125,000 based on their physician participation rate increase in example 1.

• Category III—Carriers that achieve a participation rate of 95 percent.

We anticipate very few carriers will achieve this goal. Carriers in this category will be paid the full incentive payment plus an additional one-fourth of the full incentive payment for achieving this plateau. This same full incentive payment plus an additional one-fourth of the full incentive payment will be paid each year to carriers who maintain the 95 percent or higher plateau. If a carrier in this category has increased its participation rate by more than 5 percentage points, it also will be paid any increments earned as calculated under category II.

Example:

—January 1987 participation rate 69 percent.
—April 1988 participation rate 95 percent.
—Increase in participation by 26 percentage points which is greater than the increase in covered charges.

Carriers in this category are entitled to receive the full incentive payment plus one-fourth of incentive payment for reaching 95 percent. In this example, the carrier would receive an additional seven-quarters of the incentive payment based on its 21 percentage point increase over the goal. If for example, the carrier had a $10 million line 1 cost, it would receive a $300,000 incentive payment.

In order to give recognition to carriers who have achieved and sustained a high level of participation, we are considering changes in the future that would lower the participation rate percentile in this category.

• Category IV—Carrier participation and covered charge rate declines.

We anticipate that few or no carriers will be in this category. Carriers in this category are not entitled to receive an incentive payment.

IV. Issuance of Incentive Payments

We intend to issue the first incentive payments on or before September 30, 1988 and all subsequent incentive payments by the September 30 following the annual enrollment period. The amount of these payments will be included in line 10 of the Notice of Budget Approval Form HCFA–1524. In this way, the amount of incentive payments are excluded from all claims processing unit cost calculations since unit costs are one of the measures used under the Contractor Performance Evaluation Program (CPEP) to evaluate carriers' acceptable performance in claims processing.

Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This notice is not a major rule under E.O. 12291 criteria, and a final regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are treated as small entities, while carriers are not.

The provisions of this notice primarily will affect Medicare carriers and are statutorily mandated by section 9332(a) of Pub. L. 99–509, sections 4041(a)(3)(B) and 4085(i)(21)(B) of Pub. L. 100–203, and section 411(f)(1)(C) of Pub. L. 100–360. We have not prepared a regulatory flexibility analysis since carriers are not considered small entities under the RFA and since we do not believe that this notice will have a significant impact on a substantial number of physicians. However, we believe that this notice will indirectly affect physicians to the extent that it provides carriers with an added financial incentive not only to maintain the number of participating physicians currently in their service area but also encourages them to convince non-participating physicians to become participating physicians. Finally, we did not prepare a regulatory flexibility analysis since most of the provisions of this notice are mandated specifically by statute and thus, are a result of the statute and not this notice itself.

In additon, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice

may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area. This notice will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing a rural hospital impact statement.

VI. Paperwork Reduction Act

This notice contains no information collection requirements subject to EOMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

(Sec. 1102, 1816, 1842, and 1871 of the Social Security Act 42 U.S.C. 1302, 1395h, 1395a, and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medicare Insurance.)

Dated: September 6, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-23385 Filed 10-7-88; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Program Announcement for Nurse Anesthetist Traineeship Grants, Professional Nurse Traineeship Grants and Proposed Special Consideration for Professional Nurse Traineeship Grants

The Health Resources and Services Administration announces that applications for Fiscal Year 1989 Nurse Anesthetist Traineeship Grants and Professional Nurse Traineeship Grants will be accepted under the authorities of sections 831 and 830 of the Public Health Service Act, as amended. Comments are invited on the proposed special consideration for Professional Nurse Traineeship Grants.

Nurse Anesthetist Traineeships

Section 831 of the Public Health Service Act, as amended, authorizes grants for traineeships to prepare licensed, registered nurses to be nurse anesthetists in eligible nurse anesthetist programs.

Eligible Applicants

To be eligible to receive support, an applicant must be a public or private nonprofit institution which provides registered nurses with full-time nurse anesthetist training. The training program must be accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools and must currently have full-time students who are registered nurses who are beyond the 12th month of study.

Approximately $782,000 is being made available by the Department of Health and Human Services Appropriations for Fiscal Year 1989. (Pub. L. 100-436). It is estimated that 61 awards will be made with grants ranging from approximately $5,700 to $37,000.

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The qualifications of the program director;

(b) The number of full-time registered nurse students enrolled in the program who have completed 12 months of study; and

(c) The level of student support for nurse anesthetist training provided by the applicant.

In determining the amount of the grant award, the Department will use a formula based on the number of approved applications and the number of full-time registered nurses who are beyond the 12th month of study.

This program is listed at 13.124 in the *Catalog of Federal Domestic Assistance.*

Funding Preference

In determining the funding of applicants which have been recommended for approval, preference will be given to applications which satisfactorily demonstrate a commitment to increased enrollment and retention of minority and financially needy students in their programs or show evidence of efforts to recruit minority and financially needy students. "Minority" means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black or Hispanic. "Financially needy" means a student has exceptional financial need. For purposes of this program a student will have exceptional financial need if the school determines that the student's resources do not exceed the lesser of $5,000 or one-half of the cost of attendance at the school. Student summer earnings, educational loans, veterans (G.I.) benefits, and earnings during the school year will not be considered resources for purposes of determining whether a student has exceptional financial need. This funding preference was published for comment and implemented in Fiscal Year 1987. The Department notes that all eligible applications will be reviewed and given consideration for funding.

Professional Nurse Traineeships

Section 830 of the Public Health Service Act, as amended, authorizes grants for:

(1) Traineeships to prepare registered nurses in masters' degree and doctoral degree programs which educate such nurses to serve as nurse practitioners, nurse administrators, nurse educators, nurse researchers, or other professional nursing specialties determined by the Secretary to require advanced education; and

(2) Traineeships to educate nurses for practice as nurse midwives.

Eligible Applicants

To be eligible to receive support an applicant must be a public or nonprofit private institution providing registered nurses with full-time advanced education leading to a graduate degree in professional nursing specialties, or a public or nonprofit private school of nursing or an entity which prepares registered nurses to practice as nurse midwives. The nurse midwife program must be approved by the American College of Nurse Midwives.

Approximately $12.7 million is being made availalbe by the Department of Health and Human Services Appropriations for Fiscal Year 1989. (Pub. L. 100-436). It is estimated that 185 awards averaging $65,000 will be supported.

Review Criteria

The review of application will take into consideration the following criteria:

(a) The program(s) offered;

(b) The qualifications of the program director; and

(c) The number of full-time registered nurse students enrolled in the program(s).

This program is listed at 13.358 in the *Catalog of Federal Domestic Assistance.*

Special Consideration

The Secretary shall give special consideration to applications for Nurse Practitioner Traineeship programs which conform to guidelines established by the Secretary under section 822(a)(2)(B) of the PHS Act.

Proposed Additional Special Consideration

Also it is proposed to give special consideration to schools which currently enroll minority graduate nursing students or can demonstrate an increase in enrollment of minority graduate nursing students. Minority means an

individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black or Hispanic.

The Department believes that continued efforts must be made to increase the number of minority students in schools of nursing.

A school will be considered as having met special consideration criteria if it can:

(1) Demonstrate a three year average enrollment of minority students in the graduate nursing program in excess of the national average; or

(2) Demonstrate an increase in the enrollment of full-time graduate minority students as of October 15 in the current school year from the number enrolled full-time as of October 15 in the preceding school year.

Interested persons are invited to comment on this proposed special consideration. Normally the comment period would be 60 days but due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before November 10, 1988, will be considered before the special consideration for minority enrollment is established. No funds will be allocated or final selections made until a final notice is published stating whether the special consideration for minority enrollment will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Application Deadlines

Nurse Anesthetist Traineeships—November 21, 1988.

Professional Nurse Traineeships—November 21, 1988.

Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline date and received in time for submission for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

For specific guidelines and information regarding these programs contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–13, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6333.

Requests for application materials, questions regarding grants policy and completed applications should be directed to: Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

These programs are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented by 45 CFR Part 100).

Dated: August 31, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88–23272 Filed 10–7–88; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Advisory Committee to Director; Meeting

Notice is hereby given that the Human Fetal Tissue Transplantation Research Panel, an ad hoc group of consultants to the Advisory Committee to the Director, NIH, will meet on October 20–21, 1988 to provide advice on questions relating to the use of human fetal tissue in transplantation research. The Human Fetal Tissue Transplantation Research Panel consists of 21 individuals with scientific, legal, and ethical expertise; representing a broad range of views and backgrounds. It originally met on September 14–16, 1988 (as published in the **Federal Register** on June 29, 1988 [53 FR 24500]). The October meeting of the consultants will continue the examination of scientific, legal, and ethical issues surrounding this area of research and the drafting of responses to the questions provided to the NIH by the Assistant Secretary for Health on March 22, 1988.

The panel will convene at 8:30 a.m. on Thursday, October 20, 1988. The meeting will include a working session on Thursday evening and will continue on Friday, October 21, 1988 until 12:30 p.m. It wil be located in Building 31, Conference Room 10, at the NIH in Bethesda, MD.

Public testimony on these issues has already been solicited and received by the panel at its September meeting. All sessions will be open to the public for observation on a first-come, first-served basis. The panel will make its final report to the Advisory Committee to the Director, NIH, in a public meeting on December 1–2, 1988. This meeting also will be announced in the **Federal Register.** The Advisory Committee to the Director, NIH, will convey the report of the panel to the Director, NIH, along with any comments it may wish to provide.

Dated: September 29, 1988.

James B. Wyngaarden,

Director.

[FR Doc. 88–23271 Filed 10–7–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Telecommunications Demonstration Projects; Delegation of Authority; Administrator, Health Resources and Services Administration

Notice is hereby given that in furtherance of the delegation of authority of September 20, 1988 from the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has redelegated the authorities delegated to him under Title IV, Subtitle A, Part 4, section 4094(e) of Pub. L. 100–203, The Omnibus Budget Reconciliation Act of 1987, pertaining to Telecommunications Demonstration Projects to the Administrator, Health Resources and Services Administration.

Redelegation: This authority may be redelegated.

Effective Date: This delegation became effective on October 3, 1988.

Dated: October 3, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–23312 Filed 10–7–88; 8:45 am]

BILLING CODE 4160–15–M

Secretary's Council on Health Promotion and Disease Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet November 10, 1988.

Name: Secretary's Council on Health Promotion and Disease Prevention.

Date and Time: November 10, 1988, 9:00 a.m. to 5:00 p.m.

Place: Fogarty International Center, National Institutes of Health, Building 38A, Bethesda, Maryland.

Open November 10, 9:00 a.m. to 1:00 p.m. and 2:30 to 3:30 p.m.

Closed from 1:00 to 2:30 p.m. and from 3:30 to 5:00 p.m.

Purpose: The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion.

Agenda: This will be the second meeting of the Secretary's Council. The Council will receive briefings on prevention activities from the Centers for Disease Control, the Indian Health Service, and the Health Resources and Services Administration. They will hear reports from Council working groups on the Year 2000 Objectives, Clinical Preventive Services, and a prevention agenda for the next administration.

During the closed sessions at the lunch hour and at the end of the day, the Council will consider recommendations presented by the working groups for submission to the Secretary.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Linda M. Harris, Ph.D., Staff Director for the Council, Office of Disease Prevention and Health Promotion, Department of Health and Human Services, Washington, DC 20201. Telephone (202) 472–5370.

Agenda items are subject to change as priorities dictate.

Dated: September 30, 1988.

James A. Harrell,

Acting Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 88–23384 Filed 10–7–88; 8:45 am]

BILLING CODE 4160–17–M

Food and Drug Administration

[Docket No. 86P–0224]

LD_{50} Test Policy

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing this general statement of policy concerning the use of the "classical" LD_{50} test by the agency. That test is not an FDA-required procedure for determining safety, and its use is not part of agency testing policy. This general statement of policy is being issued in response to a citizen petition (86P–0224/CP) submitted on May 15, 1986, by the American Society for the Prevention of Cruelty to Animals and other animal welfare organizations requesting FDA to issue a regulation or regulations concerning the subjects addressed by this policy and by other agency pronouncements on the "classical" LD_{50} test.

ADDRESS: Comments on this general statement of policy should be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard P. Bradbury, Center for Veterinary Medicine (HFV–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4557.

SUPPLEMENTARY INFORMATION: As a part of FDA's responsibility for administration of the Federal Food, Drug, and Cosmetic Act (the act), the agency is required to evaluate safety data submitted in support of applications for research or marketing permits for products regulated by FDA, including new drugs, biological products, new animal drugs, food additives, color additives, and certain medical devices intended for human use. Because it is unreasonable that people be exposed to substances whose safety has not been established, initial safety studies, by necessity, are conducted on animals.

Safety testing has evolved over several decades. Some useful tests have been modified and retained; other safety tests have become recognized as being inappropriate or unnecessary. An example of the latter category is the "classical" LD_{50} test. The "classical" LD_{50} test requires large numbers of animals (usually rodents), ranging from 60 to more than 120 animals per test substance. Large numbers of animals are needed to attain a statistically precise median number with 95 percent confidence limits. Normally, the "classical" test uses six dose levels with five animals per sex per dose level. Following the receipt of a dose, all animals are observed over a period of 14 days for signs of toxicity and other effects.

The "classical" LD_{50} test became generally accepted during the 1930's for standardization of toxic plant and biological extracts and other chemicals. Subsequently, FDA incorporated it into its acute toxicology testing requirement for new compounds. When the "classical" LD_{50} test became generally recognized as unnecessarily precise, the agency ceased to require such data. In 1985, the agency revoked its only regulatory requirements for that test (See the Federal Register of May 10, 1985 (50 FR 19675)), eliminating the requirement of the "classical" LD_{50} test for batch comparison of three antitumor antibiotics and providing for nonbiological alternative means of assessing batches of these antibiotics.

For several years, FDA has initiated or participated in activities to clarify that the "classical" LD_{50} test is not an FDA-required procedure for determining the safety of products regulated by the agency, and that its use is not part of agency testing policy. In 1983, the agency sponsored an Acute Studies Workshop (Ref. 1), which was open to the public, to discuss agency testing requirements including the uses of and the rationale for LD_{50} tests in acute toxicity studies. The discussions at the workshop revealed that although FDA regulations require acute toxicity data for new compounds, they do not require that such data include the results of the "classical" LD_{50} test.

In January 1984, the agency established a Steering Committee on Animal Welfare Issues to determine, among other things, whether FDA was indirectly perpetuating the use of the "classical" LD_{50} test. The Committee's Final Report to the Commissioner, Food and Drug Administration (Ref. 2) discusses this issue in great detail. The report concludes that, in general, the agency does not directly or indirectly perpetuate the use of LD_{50} determinations by statistically precise methods. The report also concludes that the "classical" LD_{50} test was not required by FDA in quality control procedures (with the exception noted above), and that its use is not encouraged in agency testing policy for assessing the acute toxicity of new chemicals.

On May 15, 1986, in a citizen petition (86P–0224/CP) submitted by the American Society for the Prevention of Cruelty to Animals and 20 cosponsors, petitioners requested that FDA issue regulations to:

1. Require all FDA centers to promptly complete revisions of guideline test protocols for acute toxicity, making clear that the "classical" LD_{50} test is not an FDA-required procedure for determining safety, and that data

gathered from the "classical" LD_{50} test will not be used or considered by FDA for determining safety of compounds, drugs, or products, after 1 year from the date of promulgation of the regulation or regulations;

2. Inform all persons submitting acute toxicity data to FDA that the "classical" LD_{50} test is no longer considered scientifically necessary, wastes animal life, and is not required; and that the "classical" LD_{50} test will not be used by FDA for determining safety after 1 year from the date of promulgation of the regulation or regulations;

3. Describe and define acceptable alternative testing methods to replace the "classical" LD_{50}; and

4. Prohibit FDA from using or conducting the "classical" LD_{50} test within its own centers including, but not limited to, the National Center for Toxicological Research.

In a letter dated November 12, 1986 (Ref. 4), the agency denied the petition on the grounds that regulations are neither appropriate nor necessary to grant the relief requested. The agency denied petitioners' first and second requests insofar as they sought to bar FDA from accepting or reviewing data from the "classical" LD_{50} test. Under the act, the agency may not refuse to accept or review data, including acute toxicity data from the "classical" LD_{50} test, if they are relevant to a decision FDA must make on the safety of a regulated article. For example, the agency could not refuse to accept or review acute toxicity data showing a significant histopathological change in an internal organ resulting from the administration of one nonlethal dose of a noncorrosive compound. Thus, FDA cannot revise guideline test protocols or regulations to state that it will never use or consider any "classical" LD_{50} data in making safety determinations. The agency stated, however, that it would publish in the **Federal Register** a notice explaining that the "classical" LD_{50} test is not a required procedure for use in safety determinations within the agency. FDA further stated that it had been and would be imlementing most of the requests by policy statements, guideline modifications, and other publications, and in discussions with representatives of regulated industry, rather than by regulations.

The scientific community agrees that the "classical" LD_{50} test is not necessary for determining acute toxicity. In agreement, FDA has adopted the policy that the "classical" LD_{50} test is not a required toxicity study. The agency supports efforts to eliminate continued conduct of the "classifical" LD_{50} test and to reduce the numbers of animals used in acute toxicity testing without sacrificing information necessary in the interest of human safety.

This policy will be further emphasized by the agency through its inclusion in the FDA Staff Manual Guide, in agency safety testing guidelines, in agency publications, and through discussions by agency officials and personnel with representatives of the regulated industry, as appropriate.

References

The following information has been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday.

1. "Report on Acute Studies Workshop Sponsored by the Food and Drug Administration," November 9, 1983.

2. "Final Report to the Commissioner, Food and Drug Administration, Agency Steering Committee on Animal Welfare Issues," August 15, 1984.

3. Citizen Petition 86P–0224.

4. Letter from John M. Taylor, FDA, to Barbara K. Pequet, American Society for the Prevention of Cruelty to Animals, November 12, 1986.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this general statement of policy. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 5, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–23504 Filed 10–6–88; 4:11 pm]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance office and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Indian business Development Program Applications and Requirements (25 CFR Part 286).

OMB Approval Number: 1076–0093.

Abstract: The information being requested relates to protential for success of businesses on Indian reservations for which grant funds have been requested. Information will be used to select applicants with best potential and to monitor progress so technical assistance can be provided when needed. Indian tribes and individuals will be affected.

Bureau Form Numbers: BIA Forms 8001.

Frequency: On occasion.

Description of Respondents: Indian tribes, Indian organizations, and Indian individuals.

Estimated Completion Time:

Form and Time
8001—1 hour

Annual Responses: 900.

Annual Burden Hours: 700.

Bureau Clearance Officer: Cathie Martin (202) 343–3577.

Joe C. Christie,

Acting Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development).

[FR Doc. 88–23307 Filed 10–7–88; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[UT–920–08–4121–14; U–63214]

Public Hearing and Call for Public Comment on Fair Market Value and Maximum Economic Recovery; Coal Lease Application U–63214

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management announces a public hearing on a proposed coal lease sale and requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale.

The lands include in Coal Lease Application U–63214 are located in

Sevier County, Utah, approximately 5 miles west of the town of Emery, Utah and are described as follows:

T. 21, S., R. 4 E., SLM, Utah,
Sec. 12, E½SE¼;
Sec. 13, E½NE¼, S½;
Sec. 14, E½,SW¼, SE¼;
Sec. 23, E½, E½W½;
Sec. 24, all.
T. 21, S., R. 5 E., SLM, Utah,
Sec. 15, W½;
Secs. 16, 17, 18, 19, 20, and 21, all;
Sec. 22, W½;
Sec. 26, W½NW¼SW¼, SW¼SW¼;
Sec. 27, all;
Sec. 28, N½, N½SW¼, SE¼;
Sec. 29, E½NE¼, NE¼SE¼;
Sec. 30, lot 1, N½NE¼;
Sec. 33, lots 2–4, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 34, all;
Sec. 35, lots 1, 2, W½NW¼, N½SW¼.
T. 22, S., R. 5 E., SLM, Utah,
Sec. 3, lots 1–4, S½N½, NE¼SW¼, S½SW¼, N½SE¼, SW¼SE¼;
Sec. 4, lots 1, 2, S½NE¼, SE¼SE¼;
Sec. 9, NE¼NE¼;
Sec. 10, W½NE¼, NW¼, N½SW¼.
Containing 9,905.46 acres.

Two economically minable beds, the Upper Hiawatha and Lower Hiawatha are found in this tract. The Upper Hiawatha seam averages 12.4 feet in thickness and the Lower Hiawatha seam averages 5.4 feet in thickness. This tract contains an estimated 72.8 million tons of recoverable high volatile C bituminous coal. The range of coal quantity in the seams on an as received basis is as follows: 11,100–11,480 BTU/lb. 7.5–8.04 percent moisture, .44–1.5 percent sulfur, and 9.54–12.57 percent ash, 41.37–45.92 percent fixed carbon, and 36.24–38.11 percent volatile matter.

The public is invited to the hearing to make public comment and also to submit written comments on the fair market value and the maximum economic recovery of the tract.

DATES: The public hearing will be held October 26, 1988 and comments on fair market value and maximum economic recovery must be received by November 31, 1988.

ADDRESSES: For more complete data on this tract, please contact Max Nielson, (telephone 801–524–3004), Bureau of Land Management, Utah State Office, 324 South State Street, Salt Lake City, Utah 84111.

The public hearing will be held at the Sevier County Courthouse, Downstairs Conference Room, 250 North Main Street, Richfield, Utah at 7:00 pm.

FOR FURTHER INFORMATION CONTACT: Max Nielson, (801) 524–3004.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR 4322 and 4325, a public hearing shall be held on the proposed sale to allow public comment on and discussion of the potential effects of mining the proposed lease. Not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the above address during regular business hours (8:00 am to 4:00 pm) Monday through Friday.

Comments on fair market value and maximum economic recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to, the following information:

1. The quality and quantity of the coal resource;

2. The mining method or methods which would achieve maximum economic recovery of the coal, including specification of seams to be mined and the most desirable timing and rate of production.

3. The quantity of coal;

4. If this tract is likely to be mined as part of an existing mine and therefore be evaluated, on a realistic incremental basis, in relation to the existing mine to which it has the greatest value;

5. If this tract should be evaluated as part of a potential larger mining unit and evaluated as a portion of a new potential mine (i.e., a tract which does not in itself form a logical mining unit);

6. The configuration of any larger mining unit of which the tract may be a part;

7. Restrictions to mining which may affect coal recovery;

8. The price that the mined coal would bring when sold;

9. Costs, include mining and reclamation, of producing the coal and the times of production.

10. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given;

11. Depreciation and other tax accounting factors;

12. The value of any surface estate where held privately;

13. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area; and

14. Any comparable sales data of similar coal lands.

Coal values developed by BLM may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Kemp Conn,

State Director, Acting.

Dated: September 30, 1988.

[FR Doc. 88–23270 Filed 10–7–88; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-020-89-4212-21]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: This notice of realty action is to allow for applications to be filed to permit the use of public land in connection with brine shrimp harvesting on the Great Salt Lake.

DATE: The date of the permit bidding is October 21, 1988.

ADDRESS: Comments concerning the permit issuance will be accepted until October 19, 1988 by the: Salt Lake District Manager, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Terry Catlin, Pony Express Realty Specialist, (801) 524–5348.

SUPPLEMENTARY INFORMATION: Public land has been identified on the west side of Stansbury Island, which povides access to Great Salt Lake brines in Stansbury Basin from a county road. This land is suitable for use in connection with brine shrimp harvesting on the Great Salt Lake. The following public land in Tooele County, Utah has been found suitable for the issuance of three permits on a competitive basis pursuant to section 302 of the Federal Land Policy and Management Act (43 U.S.C. 1732; 90 Stat. 2762):

Tract A:
T. 1 N., R. 6 W., SLM, Section 17, S½ of Lot 9 (app. 23 acres) Minimum Bid $2,600
Tract B:

T. 1 N., R. 6 W., SLM, Section 17, N½ of Lot 9 (app. 17 acres) Minimum Bid $1,800

Tract C:

T. 1 N., R. 6 W., SLM, Section 17, S½ of Lot 8 (app. 17 acres) Minimum Bid $1,500

Included in each permit will be the use of a common area as follows:

T. 1 N., R. 6 W., SLM, Section 20, Lots 1, 2, 6, SE¼NE¼, Section 21, Lots 1, 4, E½NW¼ (157.28 acres)

The sale of the permits will be conducted by competitive sealed bidding followed by oral bids. Bids may be made by a principal or duly qualified agent. Qualified bidders include: Citizens of the United States 18 years of age or over; a corporation subject to the laws of any state or of the United States; a state, state instrumentality or political subdivision authorized to hold property; and any entities legally capable of holding lands or interests therein under the laws of the state within which the lands to be permitted are located. Entities include but are not limited to associations, partnerships, and other legal entities.

Each successful applicant will be required to pay for the actual costs of processing and monitoring the permit. The estimate of this cost is $1,800 for each permit. If actual costs exceed this amount, the permittee will be required to pay an additional amount to cover the actual costs; if the actual costs are less than collected, any excess amounts will be refunded.

Sealed bids must conform to the following conditions:

1. All bids must be delivered to the Salt Lake District, Bureau of Land Management at the above address by 10:00 am on October 21, 1988.

2. Each bid must be contained in a sealed envelope, one bid per envelope. The envelope must be clearly identified as a sealed bid and must display the serial number and the tract number to which it appears, as follows: "Bid for Permit, U–64199, Tract ____, Tooele County."

3. Each bid must identify the name and address of the bidder and, if applicable, his or her agent's name and address.

4. Each bid must identify the tract number and the amount of the bid and must include all the land in a tract. No bid will be accepted for less than the minimum bid price.

5. A certified check, money order, bank draft or cashier's check made payable to the U.S. Department of the Interior for not less than 20% of the amount of the bid must be included with the bid.

6. Each bid must include a statement certifying that the bidder is a U.S. citizen, or that a business is under the legal jurisdiction of a U.S. state.

7. The bid must be signed and dated by the bidder.

All bids will be opened on October 21, 1988 at 11:00 am at the BLM Salt Lake District Office Conference Room, 2370 South 2300 West, Salt Lake City, Utah. The highest bid over the minimum bid price will establish the oral bid price. Oral bids will then be accepted in increments of $100, until the high bid has been established. At the close of the bids each high bidder must provide a certified check, money order, bank draft or cashier's check made payable to the U.S. Department of the Interior for not less than 20% of the amount of the bid. All unsucessful bidders will have their payment returned at the close of the bids. Final applicant selection and issuance of permits will take place as soon as possible after the submission of the following information:

1. A completed Land Use Application (Form 2920–1).

2. Remainder of rent as determined in the bid.

3. Payment of $1,800 for cost-reimbursement associated with the issuance and monitoring of each permit.

4. Cash or surety bond in the amount of $5,000.

5. If the applicant is a corporation, a copy of the Articles of Incorporation must be provided, along with corporation by-laws and evidence of certification from the State of Utah Department of Business Regulation. If the applicant is a partnership, evidence of a partnership agreement must be provided.

If no bids are received for a tract offered, applications will be accepted on an over-the-counter basis beginning Monday, Ocotber 24, 1988. The same information as stated above will be required for over-the-counter applications.

The authorized officer may reject the highest bid and release the bidder from any obligation and withdraw the tract from permit issuance, if it is determined that execution of the permit would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered or restrained free and open bidding, or execution of the permit would encourage or promote speculation for the use of public lands. The following terms and conditions will apply to the permits issued:

1. The term of the permits will be from the date of execution through June 15, 1989.

2. The permits will be subject to State regulations, and a copy of current seining permit from the Utah Division of Wildlife Resources shall be furnished upon request.

3. The permits will be non-exclusive in that access cannot be restricted across any of the public land included in the permit. Access to Tract C will be via Tracts A and B; access to Tract B will be via Tract A; access to all three tracts will be via the common use area described in all of the permits.

4. Harvesting on the permit areas will be solely by the permittee. No agreements for co-harvesting by other operators shall be recognized, and harvesting by more than one operator on any tract shall constitute grounds for revocation of the permit.

5. A 30 day storage period will be allowed for harvested brine shrimp eggs beginning the day of the harvest.

6. Access to and from the Great Salt Lake will be by existing roads. Tracked vehicles, trucks and ATVs will be permitted to use the beach area where little or no vegetation occurs. Any vegetated areas shall be avoided.

7. Camp sites shall be located in previously disturbed areas where vegetation is minimal. No new roads will be permitted to any camp site. Camp sites and storage areas shall be kept in a clean and orderly manner.

8. Trailers used for camping shall be self-contained and waste materials shall be disposed of at an approved disposal site.

9. At the end of harvesting season, or prior to the expiration of the permit, all camp areas shall be cleaned up and garbage removed from the area.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 88–23269 Filed 10–7–88; 8:45 am]

BILLING CODE 4310–DQ–M

Bureau of Reclamation

Meeting of the Colorado River Floodway Task Force

SUMMARY: The Colorado River Floodway Protection Act, Pub. L. 99–450, requires the Secretary of the Interior to establish a federally declared floodway along the Colorado River between Davis Dam on the Arizona/Nevada border and the southerly international border between the United States and Mexico. The Act requires that a task force be established to assist in the development of the floodway boundaries.

At the first Task Force meeting held on June 30, 1987, 41 members made presentations and offered comments on problems associated with the River. A steering committee was formed and working groups or subcommittees were

organized to work on the tasks or issues identified in the Act. The second Task Force meeting was held on July 27, 1987, where an overview of the Colorado River was provided. Presentations were made by Reclamation, the International Boundary and Water Commission, the Federal Emergency Management Agency, and the Bureau of Land Management. The third meeting of the Task Force was held on September 17, 1987, where a briefing was provided by the subcommittee responsible for developing specific design criteria for the establishment of the floodway boundaries. Also, the chairpersons of the other subcommittees were identified with schedules and activities developed for the accomplishment of the remaining tasks.

The fourth meeting of the Task Force is scheduled for October 25, 1988, at Lake Havasu City, Arizona. At this meeting the subcommittee reviewing the methodology for the development of the 100-year flood and mapping on the lower Colorado River will make a presentation and will provide recommendations to the Task Force. The other subcommittees, whose work is based on the flood mapping, will provide an update on their activities and schedule for accomplishing the remaining assigned tasks.

An open meeting will be held as described below:

Date: October 25, 1988.

Time: 10:00 a.m.

Address: Holiday Inn, 245 London Bridge Road, Lake Havasu City, Arizona 86403, (602) 855-4071.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brose, Bureau of Reclamation, Nevada Highway and Park Street, P.O. Box 427, Boulder City, Nevada 89005, (702) 293-8520.

C. Dale Duval,

Commissioner.

Date: September 30, 1988.

[FR Doc. 88-23061 Filed 10-7-88; 8:45am]

BILLING CODE 4310-09-M

National Park Service

[FES 88-43]

Environmental Statements; Availability etc.: Denali National Park and Preserve, AK

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Wilderness Recommendation Denali National Park and Preserve, Alaska.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service has prepared a final environmental impact statement (EIS) relating to the wilderness recommendation for Denali National Park and Preserve, Alaska.

SUPPLEMENTAL INFORMATION: Single copies of the final EIS may be obtained from the Regional Director, Alaska Region, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, Attention: Division of Planning. Copies may also be requested by Telephone: (907) 257-2654.

Copies of the final EIS will also be available for public reading and inspection at the Alaska Regional Office, address above; at the Office of the Superintendent, Denali National Park and Preserve Headquarters, P.O. Box 9, McKinley Park, Alaska; telephone: (907) 683-2294; at the Alaska Public Lands Information Office in Fairbanks, Alaska, 3rd and Cushman Streets; at the Alaska Resources Library in Anchorage, Alaska, 701 C Street; and at the Office of Public Affairs, National Park Service, United States Department of the Interior in Washington, DC, 18th and C Streets. NW.

Gerald D. Patten,

Associate Director, Planning and Development.

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

Date October 4, 1988

[FR Doc. 88-23305 Filed 10-7-88; 8:45 am]

BILLING CODE 4310-70-M

[FES 88-44]

Environmental Statements; Availability etc.: Katmai National Park and Preserve, AK

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Wilderness Recommendation Katmai National Park and Preserve, Alaska.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service has prepared a final environmental impact statement (EIS) relating to the wilderness recommendation for Katmai National Park and Preserve, Alaska.

SUPPLEMENTAL INFORMATION: Single copies of the final EIS may be obtained from the Regional Director, Alaska Region, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503, Attention: Division of Planning. Copies may also be requested by Telephone: (907) 257-2654.

Copies of the final EIS will also be available for public reading and inspection at the Alaska Regional Office, address above; at the Office of the Superintendent, Katmai National Park and Preserve Headquarters at P.O. Box 7, King Salmon, Alaska 99614; telephone: (907) 246-3305; at the Alaska Public Lands Information Office in Fairbanks, Alaska, 3rd and Cushman Streets; and at the Office of Public Affairs, National Park Service, United States Department of the Interior in Washington, DC, 18th and C Street NW.

Gerald D. Patten,

Associate Director, Planning and Development

Date: October 4, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

[FR Doc. 88-23304 Filed 10-7-88; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park service before *October 1, 1988.* Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by *October 26, 1988.*

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pima County

Ronstade—Sims Adobe Warehouse (Spring, John, MRA), 911 N. 13th Ave., Tucson, 88002133

Sabedra—Huerta House (Spring, John, MRA), 1036—1038 N. 13th Ave., Tucson, 88002132

Spring, John, Neighborhood Historic District (Spring, John, MRA), Roughly bounded by W. Speedway Blvd., N. Ninth Ave., W. Fifth St., N. Main Ave., W. Second St., and N. Tenth St., Tucson, 88002131

CALIFORNIA

Los Angeles County

Mission San Fernando Rey de Convento Building, 15151 San Fernando Mission Blvd., Los Angeles, 88002147

FLORIDA

Dade County

Building at 10108 NE 1 Avenue (Miami Shores TR), 10108 NE 1 Ave., Miami Shores, 88002111
Building at 107 NE 96 Street (Miami Shores TR), 107 NE 96 St., Miami Shores, 88002094
Building at 121 NE 100 Street (Miami Shores TR), 121 NE 100 St., Miami Shores, 88002107
Building at 1291 NE 102 Street (Miami Shores TR), 1291 NE 102 St., Miami Shores, 88002110
Building at 145 NE 95 Street (Miami Shores TR), 145 NE 95 St., Miami Shores, 88002093
Building at 253 NE 99 Street (Miami Shores TR), 253 NE 99 St., Miami Shores, 88002103
Building at 257 NE 91 Street (Miami Shores TR), 257 NE 91 St., Miami Shores, 88002086
Building at 262 NE 96 Street (Miami Shores TR), 262 NE 96 St., Miami Shores, 88002095
Building at 273 NE 98 Street (Miami Shores TR), 273 NE 98 St., Miami Shores, 88002101
Building at 276 NE 98 Street (Miami Shores TR), 276 NE 98 Street, Miami Shores, 88002102
Building at 284 NE 96 Street (Miami Shores TR), 284 NE 96 St., Miami Shores, 88002096
Building at 287 NE 96 Street (Miami Shores TR), 287 NE 96 St., Miami Shores, 88002097
Building at 310 NE 99 Street (Miami Shores TR), 310 NE 99 St., Miami Shores, 88002105
Building at 353 NE 91 Street (Miami Shores TR), 353 NE 91 St., Miami Shores, 88002087
Building at 357 NE 92 Street (Miami Shores TR), 357 NE 92 St., Miami Shores, 88002088
Building at 361 NE 97 Street (Miami Shores TR), 361 NE 97 St., Miami Shores, 88002100
Building at 379 NE 94 Street (Miami Shores TR), 379 NE 94 St., Miami Shores, 88002090
Building at 384 NE 94 Street (Miami Shores TR), 384 NE 94 St., Miami Shores, 88002091
Building at 389 NE 99 Street (Miami Shores TR), 389 NE 99 St., Miami Shores, 88002106
Building at 431 NE 94 Street (Miami Shores TR), 431 NE 94 St., Miami Shores, 88002092
Building at 477 NE 92 Street (Miami Shores TR), 477 NE 92 St., Miami Shores, 88002089
Building at 540 NE 96 Street (Miami Shores TR), 540 NE 96 St., Miami Shores, 88002098
Building at 553 NE 101 Street (Miami Shores TR), 553 NE 101 St., Miami Shores, 88002108
Building at 561 NE 101 Street (Miami Shores TR), 561 NE 101 St., Miami Shores, 88002109
Building at 577 NE 96 Street (Miami Shores TR), 577 NE 96 St., Miami Shores, 88002099

INDIANA

Delaware County

City Hall (Downtown Muncie MRA), 220 E. Jackson St., Muncie, 88002114
Fire Station No. 1 (Downtown Muncie MRA), 421 E. Jackson St., Muncie, 88002126
First Baptist Church (Downtown Muncie MRA), 309 E. Adams St., Muncie, 88002125
Gilbert, Goldsmith C., Historic District (Downtown Muncie MRA), Roughly bounded by Hysor St., N. Madison St., E. Washington St., and Mulberry St., Muncie, 88002113
Goddard Warehouse (Downtown Muncie MRA), 215 W. Seymour St., Muncie, 88002121
Hoover, Eli, House and Confectionary (Downtown Muncie MRA), 316 W. Main St., Muncie, 88002128
Judson Building (Downtown Muncie MRA), 300 W. Main St., Muncie, 88002127
Peacock Apartments (Downtown Muncie MRA), 414 S. Jefferson St., Muncie, 88002119
Shirk, W. W., Building (Downtown Muncie MRA), 219 E. Jackson St., Muncie, 88002116
Union Station (Downtown Muncie MRA), 630 S. High St., Muncie, 88002120
Walnut Street Historic District (Downtown Muncie MRA), Roughly Walnut St. from Washington to Victor Sts., Muncie, 88002112
YWCA (Downtown Muncie MRA), 310 E. Charles St., Muncie, 88002117

IOWA

Buchanan County

Walter, Lowell, House (Iowa Usonian Houses by Frank Lloyd Wright, 1945–1960, MPS), IA W35, Quasqueton vicinity, 88002139

Floyd County

Miller, Alvin, House (Iowa Usonian Houses by Frank Lloyd Wright, 1945–1960, MPS) 1107 Court St., Charles City, 88002144

Linn County

Grant, Douglas and Charlotte, House (Iowa Usonian Houses by Frank Lloyd Wright, 1945–1060, MPS) 3400 Adel St. SE, Marion, 88002145

Mahaska County

Alsop, Carroll, House (Iowa Usonian Houses by Frank Lloyd Wright, 1945–1960, MPS) 1907 A Avenue East, Oskaloosa, 88002142
Lamberson, Jack, House (Iowa Usonian Houses by Frank Lloyd Wright, 1945–1960), 511 N. Park Ave., Oskaloosa, 88002146

Marshall County

Sunday, Robert H., House (Iowa Usonian Houses by Frank Lloyd Wright, 1945–1960, MPS) 1701 Woodfield Rd., Marshalltown, 88002141

Polk County

Trier, Paul J. and Ida, House (Iowa Usonian Houses by Frank Lloyd Wright, 1945–1960, MPS) 6880 NW Beaver Dr., Johnston, 88002148

LOUISIANA

Bienville Parish

Hill, The, 700 Line St., Arcadia, 88002055

Catahoula Parish

Catahoula Parish Courthouse, LA 124, Harrisonburg, 88002056

De Soto Parish

Mansfield Historic District, Texas and Adams Sts. at Courthouse Sq., Mansfield, 88002067

MARYLAND

Charles County

St. Thomas Manor, SR 427/Chapel Point Rd., Port Tobacco vicinity, 8002050

Harford County

Mount Adams, 1912 Fountain Green Rd., Bel Air vicinity, 88002062

Montgomery County

Dowden's Luck, 18511 Beallsvile Rd., Poolesville vicinity, 88002143

Prince George's County

Hamilton, James, House, 1311 Crain Hwy. N. Mitchellville, 88002064

Somerset County

Adams Farm, Princess Anne-Westover Rd., Princess Anne vicinity, 88002140
Catalpa Farm, Old Princess Anne—Westover Rd., Princiess vicinity, 88002049

MINNESOTA

Beltrami County

District School No. 132, CR 500, Pinewood vicinity, 88002083

Big Stone County

Larson, Matt and Kristina, Round Barn, CR 69, Clinton vicinity, 88002080

Chippewa County

Chicago, Milwaukee and St. Paul Depot, S. First St. at Park Ave., Montevideo, 88002079

Dakota County

Marthaler, Jacob, House 1746 Oakdale Ave., West St. Paul, 88002136

Hubbard County

Park Rapids Jail, 205 W. Second St., Park Rapids, 88002053

Jackson County

District School No. 92, Co. Hwy. 9, Jackson vicinity, 88002082
Winter Hotel, 111 Main St., Lakefield, 88002081

Lac Qui Parle County

Holtan, Ole and Maren, and Smaagaard, Peder and Anne, Farmhouses, CR 25 and CR 26, Dawson vicinity, 88002078

Watonwan County

Voss, Alfred R., Farnstead, Co. Hwy. 14, St. James vicinity, 88002054

NEW JERSEY

Burlington County

Whitesbog Historic District, N of SR 70 and S of Fort Dix, Browns Mills vicinity, 88002115

Camden County

Newton Union Schoolhouse, Collins and Lynne Aves., Camden, 88002122
White Horse Pike Historic District, Roughly bounded by Fourth Ave., High and Haddon Sts., E. Atlantic St., and Kings Hwy. and Green St., Haddon Heights, 88002104

Essex County

Glen Ridge Historic District (Boundary Increase), N side roughly along Ridgewood and Forest Ave. from Bay to Gray St., S side along Hawthorne, Carteret, and Midland Ave., Glen Ridge, 88002155

Hunterdon County

Oldwick Historic District, Roughly along CR 517, Church, King, James, Joliet and William Sts., Oldwick, 88002153

Middlesex County

Laing House of Plainfield Plantation, 1707 Woodland Ave., Edison, 88002124

Somerset County

Linn, Alexander and James, Homestead, Rt. 202/Mine Brook Rd., between Sunnybranch Rd. and Lake Rd., Far Hills, 88002057

Warren County

Miller Farmstead, NJ 57, Anderson vicinity, 88002118

NEW YORK

Lewis County

Collins, Jonathan C., House and Cemetery, West Rd., Constableville, 88002137

Suffolk County

Suydam House (Huntington Town MRA), 1 Ft. Salonga Rd., Centerport, 88002135

NORTH CAROLINA

Wilson County

Broad-Kenan Streets Historic District, Roughly bounded by Pine, Broad, Hines and Cone, Wilson, 88002084

PENNSYLVANIA

Allegheny County

McKees Rocks Bridge (Highway Bridge Owned by the Commonwealth of Pennsylvania, Department of Transportation TR), LR 76, Spur 2, over Ohio River at Bellevue, Bellevue, 88002168

Franklin County

Yeakle's Mill Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR), LR 28042 over Little Cove Creek, Yeakle Mill, 88002169

Lebanon County

Waterville Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR), Appalachian Trail over Swatara Creek, Swatara Gap, 88002171

Pike County

Pond Eddy Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR), LR 51013 over Delaware River, Pond Eddy vicinity, 88002170

Wayne County

Millanville—Skinners Falls Bridge (Highway Bridges Owned by the Commonwealth of Pennsylvania, Department of Transportation TR), LR 63027 over Delaware River at Millanville, Millanville, 88002167

TEXAS

Dallas County

Gilbert, Samuel and Julia, House, 2540 Farmers Branch Rd., Farmers Branch, 88002063

De Witt County

May—Hickey House, FM 682 1.7 mi. S of jct. with TX 111, Yoakum vicinity, 88002129

Hudspeth County

Alamo Canyon—Wilkey Ranch Archeological District, Address Restricted, Fort Hancock vicinity, 88002151

Hunt County

Camp, William and Medora, House, 2620 Church St., Greenville, 88002130

VERMONT

Bennington County

Center Shaftsbury Historic District, Vt 7A, Shaftsbury, 88002052

Holden-Leonard Mill Complex, 160 Benmont Ave., Bennington, 88002085

Orange County

Thetford Hill Historic District, Roughly Rt. 113 and Academy Rd., Thetford, 88002134

Rutland County

Allen, Nathan, House, VT 30, Pawlet vicinity, 88002069

Washington County

Joslin Farm, E. Warren Rd., 1.5 mi. E of jct. with Bridge St., Waitsfield, 88002058

Windham County

Adams Gristmill Warehouse (Bellows Falls Island MRA), Bridge St., Rockingham, 88002162

Bellows Falls Co-operative Creamery (Bellows Falls Island MRA), Island St., Rockingham, 88002164

Bellows Falls Time Building (Bellows Falls Island MRA), Bridge and Island Sts., Rockingham, 88002160

Fall Mountain Paper Company Stockhouse (Bellows Falls Island MRA), Bridge St., Rockingham, 88002158

Gas Station at Bridge and Island Sts. (Bellow Falls Island MRA), Bridge and Island Sts., Rockingham, 88002161

Howard Hardware Storehouse (Bellows Falls Island MRA, Bridge St., Rockingham, 88002163

Robertson Paper Company Factory (Bellows Falls Island MRA), Island St., Rockingham, 88002165

South Windham Village Historic District, TH 1 and TH 26, Windham 88002061

VIRGINIA

Hanover County

Beaverdam Depot, On C & O RR tracks at jct. of VA 715 and 739, Beaverdam, 88002060

Orange County

Ballard—Marshall House, 158 E. Main St., Orange, 88002138

WISCONSIN

Washington County

Kissel's Addition Historic District (Kissel, Louis, & Sons of Hartford TR), Rural St. and W. Root Ave., Hartford, 88002071

Kissel's Wheelock Addition Historic District (Kissel, Louis, & Sons of Hartford TR), Roughly bounded by Church St., Wheelock and Linden Aves., Branch St., and Teddy Ave., Hartford, 88002072

Kissel, George A., House, (Kissel, Louis, & Sons of Hartford TR) 215 E. Sumner, Hartford, 88002075

Kissel, Louis, House (Kissel, Louis, & Sons of Hartford TR), 407 E. Sumner, Hartford, 88002077

Kissel, Otto P., House (Kissel, Louis, & Sons of Hartford TR), 124 South St., Hartford 88002074

Kissel, William L., House (Kissel, Louis, & Sons of Hartford TR), 67 South St., Hartford, 88002073

[FR Doc. 88-23306 Filed 10-7-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31325]

The North Carolina Department of Transportation and the Great Smoky Mountains Railway, Inc.; Acquisition and Operation Exemption; Certain Lines of the Southern Railway Co.

The North Carolina Department of Transportation ("NCDT"), a public agency within the State of North Carolina, and the Great Smoky Mountains Railway, Inc. ("GSMR") have filed for a notice of exemption under 49 CFR 1150.31 for NCDT to acquire and for GSMR to operate one mile of track from the Southern Railway Company ("Southern").[1] The one mile of track is located in Dillsboro, NC, between milepost T-47.0 and milepost T-48.0, a total distance of 1.0 miles.

GSMR has filed a concurrent notice of exemption under 49 CFR 1150.31(a)(4) for the acquisition by GSMR of incidental trackage rights on Southern track at Slyva, NC, between mileposts T-45.3 and T-45.4 a distance of 0.1-mile.[2] Any comments must be filed with the Commission and served on William W. Cobery, Jr., Deputy Secretary, State of North Carolina, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611-5201; Richard A. Allen, Zuckert, Scoutt & Rasenberger, 888 17th St., NW., Suite 600, Washington, DC 20006-3959; and the Southern Railway Company, One Commercial Place, Norfolk, VA 23510-2191.

If the notice contains false or misleading information, the exemption is

[1] The NCDT submitted a letter to the Commission, dated September 15, 1988, in which it stated its desire to be a co-applicant along with GSMR in Finance Docket No. 31325.

[2] GSMR has also concurrently filed for a modified certificate of public convenience and necessity to operate 67.2 miles of track abandoned by Southern and acquired by NCDT between Dillsboro (milepost T-47.0) and Murphy (milepost T-114.2). The modified certificate is docketed as Finance Docket No. 31326.

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.

Dated: September 28, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-23197 Filed 10-7-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 77X)]

Missouri Pacific Railroad Co.; Abandonment Exemption in Marion County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Missouri Pacific Railroad Company (MP) of 2 miles of rail line in Salem, Marion County, IL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 10, 1988. Petitions to stay must be filed by October 26, 1988. Petitions for reconsideration must be filed by November 7, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 21, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-3 (Sub-No. 77X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359, (assistance for the hearing impaired is available through TDD service (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: September 16, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Simmons, joined by Commissioner Lamboley dissented with a separate expression.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-23369 Filed 10-7-88; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, November 3, 1988, Room N-3437C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider reports of the individual work groups, selected policy issues and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before November 1, 1988, to William E. Morrow, Deputy Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals wishing to address the Advisory Council should forward their request to the Deputy Executive Secretary or telephone (202/523-8753). Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Deputy Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 1, 1988.

Signed at Washington, DC this 4th day of October 1988.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefit Administration.

[FR Doc. 88-23368 Filed 10-7-88; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-528, STN 50-529 and STN 50-530]

Arizona Public Service Co., et al., Palo Verde Nuclear Generating Station, Units 1, 2 and 3; Exemption

I.

Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority (the licensees) are the holders of Facility Operating Licenses No. NPF-41, No. NPF-51 and No. NPF-74, which authorize operation of the Palo Verde Nuclear Generating Station, Units 1, 2, and 3, respectively. The licenses provide, among other things, that they are subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of three pressurized water reactors at the licensees' site located in Maricopa County, Arizona.

II.

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also requried these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these

comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i), extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(a)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensees shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensees will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in section III. Therefore, the Commission hereby grants the following exemption:

The licensees for Palo Verde Nuclear Generating Station, Units 1, 2 and 3 are exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensees shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38368).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-23321 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-313 and 50-368

Arkansas Power & Light Co.

(Arkansas Nuclear One, Units 1 and 2), Exemption

I.

Arkansas Power & Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-51 and NPF-6, which authorizes operation of the Arkansas Nuclear One, Units 1 and 2. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of pressurized water reactors at the licensee's site located in Pope County, Arkansas.

II.

On August 5, 1987, the NRC published in the Federal Register a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the

applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of Section 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited–II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the enviornment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Arkansas Power & Light Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38369).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September, 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects–III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–23335 Filed 10–7–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–440]

The Cleveland Electric Illuminating Co. et al. (Perry Nuclear Power Plant Unit 1); Exemption

I.

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (the licensees) are the holders of Facility Operating License No. NPF–58, which authorizes operation of the Perry Nuclear Power Plant, Unit No. 1 (the facility). The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor (BWR) located at the licensees' site in Lake County, Ohio.

II.

On August 5, 1987, the NRC published in the Federal Register a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose.

Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident

occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company are exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38370).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October, 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director Division of Reactor Projects III, IV, V, and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-23356 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-465 and 50-457]

Commonwealth Edison Co., Braidwood Station, Units 1 and 2; Exemption

I

Commonwealth Edison Company (the licensee) is the holder of Facility Operating License Nos. NPF-72 and NPF-77, which authorizes operation of the Braidwood Station, Units 1 and 2. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized water reactors at the licensee's site located in Will County, Illinois.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licenses. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for including that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if as serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Commonwealth Edison Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result

in any significant environmental impact (53 FR 38371).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-23322 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-237 and 50-249]

Commonwealth Edison Co.; Dresden Nuclear Power Station; Exemption

I.

Commonwealth Edison Company (the licensee) is the holder of Facility Operating License Nos. DPR-19 and DPR-25, which authorizes operation of the Dresden Nuclear Power Station, Units 2 and 3. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two boiling water reactors at the licensee's site located in Grundy County, Illinois.

II.

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54 (w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Commonwealth Edison Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38374).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of Otober 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-23323 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-373 and 50-374]

Commonwealth Edison Co., LaSalle County Station; Exemption

I.

Commonwealth Edison Company (the licensee) is the holder of Facility Operating License Nos. NPF-11 and NPF-18, which authorizes operation of the LaSalle County Station. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two boiling water reactors at the licensee's site located in LaSalle County, Illinois.

II.

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried

by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporateed into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 40.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occuring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Commonwealth Edison Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later that April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption wil not result in any significant environmental impact (53 FR 38375).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23324 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-254 and 50-265]

Commonwealth Edison Co., Quad Cities Nuclear Power Station; Exemption

I.

Commonwealth Edison Company (the licensee) is the holder of Facility Operating License Nos. DPR-29 and DPR-30, which authorizes operation of the Quad Cities Nuclear Power Station. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two boiling water reactors at the licensee's site located in Rock Island County, Illinois.

II.

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR

50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR part 50], which are . . . Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited–II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Commonwealth Edison Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38373).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–23325 Filed 10–7–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co., Zion Nuclear Power Station; Exemption

I.

Commonwealth Edison Company (the licensee) is the holder of Facility Operating License Nos. DPR–39 and DPR–48, which authorizes operation of the Zion Nuclear Power Station. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized water reactors at the licensee's site located in Lake County, Illinois.

II.

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are . . . Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that

delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited–II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Commonwealth Edison Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38373).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–23326 Filed 10–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–454 and 50–455]

Commonwealth Edison Co., Byron Station, Units 1 and 2; Exemption

I.

Commonwealth Edison Company (the licensee) is the holder of Facility Operating License Nos. NPF–37 and NPF–66, which authorizes operation of the Byron Station, Units 1 and 2. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized water reactors at the licensee's site located in Ogle County, Illinois.

II.

On August 5, 1987, the NRC published in the Federal Register a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, their is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described

in Section III. Therefore, the Commission hereby grants the following exemption:

Commonwealth Edison Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38373).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 3rd day of October 1988.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23327 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co. (Haddam Neck Plant); Exemption

I

Connecticut Yank Atomic Power Company (the licensee) is the holder of Facility Operating License No. DPR-61, which authorizes operation of the Haddam Neck Plant. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Middlesex County, Connecticut.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rules, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulations."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the appplicable regulation.

As noted by the Commission in the **SUPPLEMENTARY INFORMATION** accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the priorization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Connecticut Yankee Atomic Power Company is exempt from the requirments of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38808).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For The Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 23326 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co. (Big Rock Point Plant); Exemption

I.

Consumers Power Company (the licensee) is the holder of Facility Operating License No. DPR-6, which authorizes operation of the Big Rock Point Plant. The license provides, among

other things, that the Big Rock Point Plant is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Charlevoix County, Michigan.

II.

On August 5, 1987, the Commission published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by the Commission's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988, insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the Commission has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50–54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50–54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50–54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II polices. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, the Commission would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption.

Consumers Power Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38118).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–23353 Filed 10–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–20 issued to the Consumers Power Company (the licensee), for operation of the Palisades Plant (the facility), located in Van Buren County, Michigan.

In accordance with the licensee's application for amendment dated August 4, 1988, the proposed amendment would change and add Technical Specifications related to the operability and surveillance for certain post-accident monitoring instrumentation. Specifically, the operability requirements for the Subcooling Margin Monitor will be extended from 515 °F and greater to 325 °F and greater, and operability and surveillance requirements for the Reactor Vessel Level Monitoring System are being added to the Technical Specifications to cover the system which is being installed for the first time during the 1988 refueling outage.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or

consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated whether this amendment involves a significant hazards consideration. The licensee determined that since incorporating instrumentation operability and surveillance requirements in Technical Specifications provides additional assurance that the equipment will be available for use in the unlikely event of an accident, it cannot increase the probability of an accident or malfunction of equipment and may reduce the consequences of an accident. The licensee also determined that the addition of these operability and surveillance requirements does not reduce the margin of safety provided by any of the existing instrumentation systems. The licensee, therefore, concludes that a significant hazards consideration is not involved.

The Commission's staff also notes that since both these changes incorporate additional restrictions over those presently contained in the Technical Specifications, they match Example (ii) given by the Commission as an example of amendments not likely to involve significant hazards considerations (53 FR 7751). Example (ii) is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement.

In addition, these changes involve instrumentation which are passive, monitoring systems and do not create the possibility of a new accident or malfunction of equipment not previously analyzed. The Commission's staff, therefore, agrees with the licensee and proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commisison is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies or written comments received may be examined at the NRC Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 10, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the prehearing, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene became parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witness.

If a hearing is requested, the Commisison will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, and hearing held would take place before the issuance of any payment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–6000 (in Missouri 1–800–343–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore Quay: (petitioner's name and telephone number); (date petition was mailed); (plant name), and (publication date and page number of the **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for Consumers Power Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 4, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated t Rockville, Maryland, this 4th day of October, 1988.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Project Manager, Project Directorate III–1, Division of Reactor Project-III, IV, V and Special Projects.

[FR Doc. 88–23361 Filed 10–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co.; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–20 issued to the Consumers Power Company (the licensee), for operation of the Palisades Plant (the facility), located in Van Buren County, Michigan.

In accordance with the licensee's application for amendment dated August 19, 1988, the proposed amendment would revise the Technical Specifications to reflect the changes in the pressurizer level instrumentation to provide two environmentally qualified, wide range channels to meet the criteria of Regulatory Guide 1.97, "Instrumentation to Follow the Course of an Accident." The surveillance requirement would also be revised to specifiy comparison of channels of similar range of pressurizer level for the once per shift check.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reported its analysis of whether this amendment involves a significant hazards consideration, in part, as follows:

The upgrade of Loop LT–0102A to Category 1 and the removal of loops LT–0102B, C and D will not increase the probability of an accident previously evaluated in the FSAR; nor can it make possible the occurrence of an accident of a different type than any previously evaluated in the FSAR. The upgrade of the LT–0102A transmitter to that of an environmentally qualified device will provide a second independent instrument for post accident evaluation.

The consequences of an accident previously evaluated in the FSAR will not be increased as there will not be two environmentally qualified, independent loops of pressurizer level indication.

After the modification, LT–0102 will remain in containment, LIA–0102A, will remain in the control room and LI–0102B will be on the C–150 panel. The LT–0103, LI–0103A and B loop remains unchanged. The removal of LT–0102B, C and D LI–0102B, C and D has no effect on the requirements of FSAR, Section 7.4.1.8.

The margin of safety, as defined in the basis of any Technical Specification, will not be reduced as the LT–0102B, C and D transmitters are not included in the Basis Statement of any Technical Specifications.

The Commission's staff has reviewed this analysis and agrees with it conclusions. Therefore, the Commission proposes to determine that this proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 10, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing an petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the

petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore Quay: (petitioner's name and telephone number); (date petition was mailed); (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for Consumers Power Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 19, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 4th day of October 1988.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–23362 Filed 10–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co.; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–20 issued to the Consumers Power Company (the licensee), for operation of the Palisades Plant (the facility), located in Van Buren County, Michigan.

In accordance with the licensee's application for amendment dated August 24, 1988, the proposed amendment would change the Technical Specifications related to the method of the monthly surveillance test to be performed on the Area Radiation Monitors. This change is required because a new digital monitor is being installed to replace an Area Monitor at the Evaporator Control Panel. The existing test consists of inserting a remotely operated integral check source while the proposed test applies an electronic check of the monitor response and continuous self diagnostic testing and the immediate display of error codes if a problem exists.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of

a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment to determine whether it involves a significant hazards consideration. The licensee has determined that it does not involve a significant hazards consideration. This is based on the following discussion by the licensee:

> The proposed Technical Specifications Change of surveillance method does not involve an increase in the probability or consequences of an accident. The new digital monitor is not prone to instrument drift from calibrated values which will improve the reliability over the old monitor. The new monitor has malfunction displays and performs continuous self diagnostics. The Technical Specifications will continue to require daily checks and an 18 month calibration via an external source. These, in combination with the electronic check source, will ensure proper operation of the area monitor. The new monitor range and sensitivity are equivalent to the present monitor.
>
> The new monitor system surveillance method will not create the possibility of a new or different kind of accident than previously evaluated as the change in the monthly test method does not affect any accident analysis.
>
> The new monitor provides the same function as the old monitor and the change in the surveillance test method has no effect on the margin of safety defined in the basis for any Technical Specification.

The Commission's staff agrees with the licensee's evaluation and, therefore, proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 10, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional oprating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factor: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person wo has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to invervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no signficant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free

telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore Quay (petitioner's name and telephone number); (date petition was mailed); (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for Consumers Power Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 24, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 4th day of October 1988.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–23363 Filed 10–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co.; Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–20 issued to the Consumers Power Company (the licensee), for operation of the Palisades Plant (the facility), located in Van Buren County, Michigan.

In accordance with the licensee's application for amendment dated August 4, 1988, the proposed amendment would change the Technical Specifications related to the secondary system safety valve setpoint tolerances. The proposed change would raise these tolerances from 985 psig (±10 psig) and 1025 psig (±1%) to 985 psig (±30 psig) and 1025 psig (±3%).

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change to determine whether a significant hazards consideration is involved. The licensee's evaluation states:

> Based on the ANF–67–150(P) analysis for "Loss of External Load," the change in set pressure tolerance is (sic) to ± 30 psi for the 985 psia and ± 3% for the 1025 psia Main Steam Relief Valves is acceptable. Changing the set pressure tolerance as proposed does not cause the loss of external load event to occur more often than a moderate frequency event. This frequency is defined in Section 15.0.1.1 of the report. Therefore, there is no increase in the probability of a previously evaluated accident.
>
> Because all acceptance criteria are met with margin to documented limits, the consequences of a loss of external load or the failure of equipment important to safety are not increased. Analysis shows the Main Steam Relief Valves operating in conjunction with other safety equipment, as specified in the report, provide acceptable levels of protection to limit primary system pressure rise, primary to secondary system pressure, and MDNBR within the design capability of all components. Therefore, the consequences of a previously analyzed accident are not increased.
>
> According to the ANF report, the change to the expanded tolerance does not create the potential for a new accident. This is because the primary and secondary systems are maintained within their design limits. Therefore, a new or different kind of accident is not created.
>
> The ANF report predicts a maximum differential pressure of 1604.4 psi. However, based on the Safety Evaluation entitled, "TSCR RPS Modification" for Technical Specifications Section 3.1.1c(1), the Technical Specifications maximum transient differential pressure limit of 1530 psi is being deleted. According to the RPS safety evaluation, the increased differential pressure value is due to improved analytical techniques, not by changes to Palisades hardware. The structural integrity of the S/Gs is assured by appropriately selecting the tube plugging criteria. The NRC has approved current tube plugging criteria in the SER dated June 11, 1984. Therefore, the maximum differential pressure of 1604.4 does not significantly reduce the margins of safety for the Palisades plant.

The Commission's staff agrees with the licensee's evaluation and, therefore, proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 10, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the

Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amendment petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commision will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore Quay: (petitioner's name and telephone number); (date petition was mailed); (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for Consumers Power Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding office or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 4, 1988, which is avilable for public inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC 20555, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 4th day of October 1988.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–23364 Filed 10–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co. (Palisades Plant); Exemption

I.

Consumers Power Company (the licensee) is the holder of Provisional Operating License No. DPR–20, which authorizes operation of the Palisades Plant. The license provides, among other things, that the Palisades Plant is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Van Buren County, Michigan.

II.

On August 5, 1987, the Commission published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by the Commission's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988, insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the Commission has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has

proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power faiclities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, the Commission would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

> Consumers Power Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not resulting any significant environmental impact (53 FR 38118).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September, 1988.

For The Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–23354 Filed 10–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co., Wolverine Power Supply Cooperative Inc., (Fermi-2); Exemption

I

Detroit Edison Company and the Wolverine Power Supply Cooperative, Incorporated (the licensees) are the holders of Facility Operating License No. NPF–43, which authorizes operation of Fermi-2. The license provides, among other things, that Fermi-2 is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Monroe County, Michigan.

II

On August 5, 1987, the Commission published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by the Commission's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988, insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the Commission has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action wil be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensees shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee

has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensees will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, the Commission would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Detroit Edison Company and Wolverine Power Supply Cooperative, Incorporated, are exempt from the requirements 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensees shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38119).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September, 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23341 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-334 and 50-412]

Duquesne Light Co. (Beaver Valley Power Station, Units 1 and 2); Exemption

I

Duquesne Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-66, and NPF-73 which authorize operation of the Beaver Valley Power Station, Units 1 and 2. The licenses provide, among other things, that the Beaver Valley Power Station is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of pressurized water reactors at the licensee's site located in Shippingport, Pennsylvania.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to

substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption.

Duquesne Light Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38809).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October, 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23337 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. (Oyster Creek Nuclear Generating Station); Exemption

I

GPU Nuclear Corporation (the licensee) is the holder of Provisional Operating License No. DPR-16, which authorizes operation of the Oyster Creek Nuclear Generating Station. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Ocean County, New Jersey.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply wtih the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

GPU Nuclear Corporation is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38810).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October, 1988.

For the Nuclear Regulatory Commission.
Steven A. Varga,
Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 88-23338 Filed 10-7-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-289]

GPU Nuclear Corp. (Three Mile Island, Unit 1); Exemption

I

GPU Nuclear Corporation (the licensee) is the holder of Facility Operating License No. DPR-50, which authorizes operation of the Three Mile Island, Unit 1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Dauphin County, Pennsylvania.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply wtih the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electronic Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

GPU Nuclear Corporation is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (50 FR 38810).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October, 1988.

For the Nuclear Regulatory Commission.
Steven A. Varga,
Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 88-23339 Filed 10-7-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities (River Bend Station, Unit 1); Exemption

I

Gulf States Utilities (the licensee) is the holder of Facility Operating License No. NPF-47, which authorizes operation of the River Bend Station, Unit 1. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in West Feliciana Parrish, Louisiana.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup

before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electronic Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environement.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Gulf States Utilities is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38377).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September, 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23340 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-498]

Houston Lighting & Power Co. (South Texas Project, Unit 1); Exemption

I

Houston Lighting & Power Company (the licensee) is the holder of Facility Operating License No. NPF-76, which authorizes operation of the South Texas Project, Unit 1. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Matagorda County, Texas.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the

requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electronic Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Houston Lighting & Power Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact [53 FR 38377].

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September, 1988.

For The Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23342 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

The Illinois Power Co., Clinton Power Station, Unit 1; Exemption

I

The Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. (the licensee) is the holder of Facility Operating License No. NPF-62, which authorizes operation of the [facility name]. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of boiling water reactor at the licensee's site located in DeWitt County, Illinois.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of one-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licenses to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the contamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months [53 FR 36338, September 19, 1988]. However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only and extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, Commission hereby grants the following exemption:

The Illinois Power Company et al. is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38376).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects III, IV, V, and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-23355 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

The Illinois Power Co. et al.; Issuance of Amendent to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 11 to Facility Operating License No. NPF-62 issued to the Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensee), for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

This amendment includes a proposed change to Technical Specification Tables 2.2.1-1 and 3.3.2-2 for the main steam line radiation-high full power background radiation levels and associated trip setpoints. The proposed change consists of the addition of footnote to the text regarding the hydrogen injection test and its effect on the main steam line radiation-high trip function. This proposed change will permit the main steam line radiation monitor setpoints to be temporarily changed based on either calculations or measurements of actual radiation levels resulting from the hydrogen injection test. Illinois Power Company intends to perform a hydrogen injection test on the reactor coolant system at the Clinton Power Station. The purpose of the test is to determine the feasibility of hydrogen water chemistry control as a means of reducing intergranular stress corrosion cracking of stainless steel piping.

The application for the amendment complies with the standards and requirements of the Atomic Energy Action of 1954, as amendment (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 28, 1988 (53 FR 24385). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare and environmental impact statement. Based upon the Environmental Assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For futher details with respect to the action see (1) the application for amendment dated May 18, 1988, as supplemented on June 2, 1988, (2) Amendment No. 11 to License No. NPF-62, and (3) the Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washinton, DC; and at Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland this 27th day of September 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-23365 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DRP-58 and DRP-74, issued to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, located in Berrien County, Michigan.

In accordance with the licensee's application for amendments dated August 19, 1988, the amendments would revise Technical Specification sections 5.3.1 (Fuel Assemblies), 5.6.1.2 (Criticality-Spent Fuel), 5.6.2 (Criticality-New Fuel) and license conditions such that Advanced Nuclear Fuels Corp. (ANF) fuel assemblies with enrichments of up to 4.23 weight percent U-235 may be used for Unit 2. The changes are necessary to allow fuel delivery, placement of the fuel in the new fuel storage vault and then the spent fuel pool.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the

Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 10, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L St., NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated August 19, 1988, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, 20555, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 4th day of October 1988.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Acting Director, Project Directorate III–1 Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–23359 Filed 10–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–315 and 50–316]

Indiana Michigan Power Co. (Donald C. Cook Nuclear Plant Units Nos. 1 and 2); Exemption

I

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating Licenses Nos. DPR–58 and DPR–74, which authorize operation of the Donald C. Cook Nuclear Plant, Units Nos. 1 and 2. The licenses provide, among other things, that Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of pressurized water reactors at the licensee's site located in Berrien County, Michigan.

II

On August 5, 1987, the Commission published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by the Commission's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988, insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the Commission has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for

rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but no later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there ae several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of §50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, the Commission would be able to take appropriate enforcement action to accure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Indiana Michigan Power Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38123).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September, 1988.

For The Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23343 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-382]

Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3); Exemption

I

Louisiana Power & Light Company (the licensee) is the holder of Facility Operating License No. NPF-38, which authorizes operation of the Waterford Steam Electric Station, Unit 3. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in St. Charles Parrish, Louisiana.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stablization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. That is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited–II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Louisiana Power & Light Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38379).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–23344 Filed 10–7–88; 8:45 am]

BILING CODE 7590–01–M

[Docket No. 50–298]

Nebraska Public Power District (Cooper Nuclear Station); Exemption

I

Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DPR–46, which authorizes operation of the Cooper Nuclear Station. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Nemaha County, Nebraska.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a) that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Nebraska Public Power District is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38381).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September 1988.

For The Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–23345 Filed 10–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–245, 50–336 and 50–423]

Northeast Nuclear Energy Co. (Millstone Units 1, 2, and 3); Exemption

I

Northeast Nuclear Energy Company (the licensee) is the holder of Facility Operating License Nos. DPR–21, DPR–65, and NPF–49, which authorize operation of Millstone Units 1, 2, and 3. The licenses provide, among other things, that they are subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of a boiling water reactor (Millstone 1) and pressurized water reactors (Millstone 2 and 3) at the licensee's site located in New London County, Connecticut.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occuring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Northeast Nuclear Energy Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38814).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For The Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–23346 Filed 10–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-263]

Northern States Power Co. (Monticello Nuclear Generating Plant); Exemption

I

Northern States Power Company (the licensee) is the holder of Facility Operating License No. DPR-22, which authorizes operation of the Monticello Nuclear Generating Plant. The license provides, among other things, that Monticello Nuclear Generating Plant is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Wright County, Minnesota.

II

On August 5, 1987, the Commission published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance requried to be carried by the Commission's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988, insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the Commission has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, the Commission would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Northern States Power Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i)(until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38124).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September, 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Divsion of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23347 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-282 and 50-306]

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2); Exemption

I

Northern States Power Company (the licensee) is the holder of Facility Operating Licenses Nos. DPR-42 and DPR-60, which authorize operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2. The licenses provide, among other things, that Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of pressurized water reactors at the licensee's site located in Goodhue County, Minnesota.

II

On August 5, 1987, the Commission published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by the Commission's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988, insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and

provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the Commission has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, the Commission would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Northern States Power Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38125).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September, 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23348 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District (Fort Calhoun Station, Unit 1); Exemption

I

Omaha Public Power District (the licensee) is the holder of Facility Operating License No. DPR-40, which authorizes operation of the Fort Calhoun Station, Unit 1. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Washington County, Nebraska.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the

requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Omaha Public Power District is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38382).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September, 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23349 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275 and 50-323]

Pacific Gas and Electric Co., Diablo Canyon Nuclear Power Plant, Units 1 and 2; Exemption

I

Pacific Gas and Electric Company (the licensee) is the holder of Facility Operating Licenses No. DPR-80 and No. DPR-82, which authorize operation of the Diablo Canyon Nuclear Power Plant, Units 1 and 2. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized water reactors at the licensee's site located in San Luis Obispo County, California.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implemenation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial

cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Pacific Gas and Electric Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38382).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October, 1988

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23350 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co. et al., Trojan Nuclear Plant; Exemption

I

Portland General Electric Company, the City of Eugene, Oregon and Pacific Power and Light Company (the licensees) are the holders of Facility Operating License No. NPF-1, which authorizes operation of the Trojan Nuclear Plant. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two boiling water reactors at the licensees' site located in Columbia County, Oregon.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensees will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

The licensees for Trojan Nuclear Plant are exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989.

Upon completion of such rulemaking the licensees shall comply with provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38383).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23351 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-267]

Public Service Company of Colorado (Fort St. Vrain Nuclear Generating Station); Exemption

I

Public Service Company of Colorado (the licensee) is the holder of Facility Operating License No. DPR-34, which authorizes operation of the Fort St. Vrain Nuclear Generating Station. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a high temperature gas-cooled reactor at the licensee's site located in Weld County, Colorado.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Public Service Company of Colorado is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38384).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23352 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas and Electric Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 31 to Facility Operating License No. DPR-18 issued to Rochester Gas and Electric Corporation (the licensee), which revised the Technical Specifications for operation of the R.E. Ginna Nuclear Power Plant located in Wayne County, New York. The amendment was effective as of the date of issuance.

The amendment revised the Technical Specifications to reflect replacement of

steam generator snubbers with rigid structural supports (bumper).

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 25, 1988 (53 FR 27913). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated May 13, 1988, (2) Amendment No. 31 to License No. DPR-18, and (3) and Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington DC and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Project Manager, Project Directorate I-3, Division of Reactor Project I/II.

[FR Doc. 88-23374 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Exemption

I

Ssacramento Municipal Utility District (the licensee) is the holder of Facility Operating License No. DPR-54, which authorizes operation of the Rancho Seco Nuclear Generating Station. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Sacramento County, California.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a) that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Sacramento Municipal Utility District is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38385).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–23332 Filed 10–7–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–206]

Southern California Edison Co., San Diego Gas and Electric Co. (San Onofre Nuclear Generating Station, Unit No. 1); Exemption

I

Southern California Edison Company and San Diego Gas and Electric Company (the licensees) are the holders of Facility Operating License No. DPR–13, which authorizes operation of San Onofre Nuclear Generating Station, Unit No. 1. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensees' site located in San Diego County, California.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

The licensees for San Onofre Nuclear Generating Station, Unit 1 are exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38386).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October, 1988.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88–23333 Filed 10–7–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co. et al. (San Onofre Nuclear Generating Station, Units 2 and 3); Exemption

I.

Southern California Edison Company, San Diego Gas and Electric Company, the City of Anaheim, California and the City of Riverside, California (the licensees) are the holders of Facility Operating Licenses No. NPF–10 and NPF–15, which authorize operation of San Onofre Nuclear Generating Station, Units 2 and 3, respectively. The licenses provide, among other things, that they are subject to all rules, regulations, and

orders of the Commission now or hereafter in effect.

The facilities consist of two pressurized water reactors at the licensees' site located in San Diego County, California.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensees shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensees will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

The licensees for San Onofre Nuclear Generating Station, Units 2 and 3 are exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensees shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38386).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–23334 Filed 10–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co. and San Diego Gas and Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 109 to Provisional Operating License No. DPR–13, issued to Southern California Edison Company, *et al.* (the licensee), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit 1, located in San Diego County, California. The amendment was effective as of the date of issuance.

The amendment revised the Control Room Emergency Air Treatment System surveillance requirements to (1) include testing with the newly-added duct heaters and (2) more closely follow the Standard Technical Specifications and current regulatory guidance for charcoal filter surveillance. The amendment also allows for suspension of pressurized power-operated relief valve (PORV) block valve exercising during periods when the block valve is closed due to an inoperable PORV.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chaspter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 8, 1988 (53 FR 25713). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact

statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated May 27, 1987, (2) Amendment No. 109 to Provisional Operating License No. DPR–13, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW, Washington, DC and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 26th day of September 1988.

For the Nuclear Regulatory Commission.

Charles M. Trammell,

Senior Project Manager, Project Directorate V Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88–23360 Filed 10–7–88 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station Unit No. 1); Exemption

I

Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees) are the holders of Facility Operating License No. NPF–3, which authorizes operation of the Davis-Besse Nuclear Power Station, Unit No. 1. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Ottawa County, Ohio.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, becuase it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited–II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be asble to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Toledo Edison Company and The Cleveland Electric Illuminating Company are exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38388).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects III, IV, V, and Special Projects Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 3rd day of October 1988.

[FR Doc. 88–23328 Filed 10–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-483]

Union Electric Co. (Callaway Plant, Unit 1); Exemption

I

Union Electric Company (the licensee) is the holder of Facility Operating License No. NPF-30, which authorizes operation of the Callaway Plant, Unit 1. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Callaway County, Missouri.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i); but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are . . . Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Union Electric Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38389).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23331 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System, Nuclear Project No. 2; Exemption

I

Washington Public Power Supply System (the licensee) is the holder of Facility Operating License No. NPF-21, which authorizes operation of the Nuclear Project No. 2. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a boiling water reactor at the licensee's site located in Benton County, Washington.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increase the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after the accident and provided for payment of proceeds to an independent trustee who would disbure funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response

to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 5012(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would proivide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontamination and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Washington Public Power Supply System is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38390).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of October 1988.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc 88-23357 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corp. et al. (Kewaunee Nuclear Power Plant); Exemption

I

Wisconsin Public Service Corporation (the licensee) is the holder of Facility Operating License No. DPR-43, which authorizes operation of the Kewaunee Nuclear Power Plant. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Kewaunee County, Wisconsin.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensees shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee

has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Wisconsin Public Service Corporation is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38392).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 3rd day of October, 1988.

[FR Doc. 88-23329 Filed 10-7-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units No. 1 and No. 2); Exemption

I

Wisconsin Electric Power Company (the Licensee) is the holder of Facility Operating License Nos. DPR-24 and DPR-27, which authorize operation of the Point Beach Nuclear Plant, Units, No. 1 and No. 2. The licenses provide, among other things, that the Point Beach Plant is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of pressurized water reactors at the licensee's site located in Manitowoc County, Wisconsin.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stablization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose.

Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to

substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

The Wisconsin Electric Power Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38391).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 3rd day of October 1988.

[FR Doc. 88-23330 Filed 10-7-88: 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Wolf Creek Nuclear Operating Corp. (Wolf Creek Nuclear Generating Station); Exemption

I

Wolf Creek Nuclear Operating Corporation (the licensee) is the holder of Facility Operating License No. NPF-42, which authorizes operation of the Wolf Creek Nuclear Generating Station. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Coffey County, Kansas.

II

On August 5, 1987, the NRC published in the **Federal Register** a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry $1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Wolf Creek Nuclear Operating Corporation is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38392).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of September 1988.

For the Nuclear Regulatory Commission
Gary M. Holahan,
Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.
[FR Doc. 88-23358 Filed 10-7-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co., Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF-4 and NPF-7 issued to the Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2), located in Louisa County, Virginia.

By letter dated September 20, 1988, as supplemented October 6, 1988, the licensee proposed amendments which would modify the NA-1&2 Technical Specifications (TS) to permit conducting the third Type A test of the first 10-year service period during the 1989 refueling/10-year ISI outage. Currently, because of the TS requirements to conduct Type A tests at a 40±10 month frequency, the third Type A test would be due on or before November 11, 1988 for NA-1 and on or before December 14, 1988 for NA-2. The TS also specify that the "third test of each set shall be conducted during the shutdown for the 10-year plant inservice inspection." The NA-1 outage is currently scheduled to begin in April 1989 and the NA-2 outage is currently scheduled to begin in February 1989.

The second interval overall integrated leakage rate test for NA-1 was completed on September 11, 1984. The test demonstrated that the containment leakage rate was 43% of the maximum allowable leakage rate permitted by the NA-1 TS. In addition, the test took into account leakage from individual valves and penetrations. Subsequent testing of these valves and penetrations has demonstrated no degradation.

The second interval overall integrated leakage rate test for NA-2 was completed on October 14, 1984. The test demonstrated that the containment leakage rate was 92% of the maximum allowable leakage rate permitted by the NA-2 TS. In addition, the test took into account leakage from individual valves and penetrations. Subsequent testing of these valves and penetrations has demonstrated no degradation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed extension of the surveillance interval for the third Type A test does not involve a significant increase in the probability or consequences of an accident previously evaluated. The last measured Types A, B, and C leakage rates indicate that NA-1&2 containment integrity is adequate. In addition, leakage from containment penetrations and valves, including air locks, is measured in accordance with Technical Specifications 3/4.6.1.2 and 3/4.6.1.3 whenever changes or activities occur (e.g., valve maintenance or modification, containment entries) which may affect leakage rate. Thus, the combined leakage of penetrations subject to Types B and C tests will continue to be maintained within Technical Specifications' limits. Therefore, the proposed extension in the surveillance interval for the Type A test will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed extension of the surveillance interval does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not impact the design basis of the containment and does not modify the response of the containment during a design basis accident.

The proposed extension of the surveillance interval does not involve a significant reductdion in the margin of safety. The 1984 Type A test results indicate that the containment integrity is adequate. In addition, leakage from containment penetrations and valves, including air locks, is measured in accordance with Technical Specifications 3/4.6.1.2 and 3/4.6.1.3 whenever changes or activities occur (e.g., valve maintenance or modification, containment entries) which may affect leakage rate. Thus, the combined leakage of penetrations subject to Types B and C tests will continue to be maintained within the Technical Specifications' limits. Therefore, the proposed extension in the surveillance interval for the Type A test will not result in a significant reduction in the margin of safety.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By November 10, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing

Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no signficant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards considerations, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If a final determination is that the amendment involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated September 20, 1988, as supplemented October 6, 1988, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 6th day of October 1988.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23528 Filed 10-7-88; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 802; Docket No. A88-9]

Banco, Virginia 22711 (Susan S. Lowenfeld and Tom Scott, Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued October 4, 1988.

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc III.

Docket Number: A88-9.

Name of Affected Post Office: Banco, Virginia 22711.

Name(s) of Petitioner(s): Susan S. Lowenfeld and Tom Scott.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: September 22, 1988.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may

incorporate by reference any such memoranda previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before October 7, 1988.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

September 22, 1988—Filing of Petition.
October 4, 1988—Notice and order of Filing of Appeal.
October 17, 1988—Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b)).
October 27, 1988—Petitioners' Participant Statement or Initial Brief (*see* 39 CFR 3001.115 (a) and (b)).
November 16, 1988—Postal Service Answering Brief (*see* 39 CFR 3001.115(c)).
December 1, 1988—Petitioners' Reply Brief should Petitioners choose to file one (*see* 39 CFR 3001.115(d)).
December 8, 1988—Deadline for motions by any party requesting oral argument. The Commissin will schedule oral argument only when it is a necessary addition to the written filing (*see* 39 CFR 3001.116).
January 19, 1988—Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 88-23313 Filed 10-7-88; 8:45 am]
BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26155; File No. SR-CBOE-88-17]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to the Proposed Joint Venture With the Chicago Board of Trade

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on September 20, 1988, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commissioin") 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.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Italics indicate addition.

Rule 1.1 Add paragraph (kk) as follows.

Joint Venture Participant

(kk) The term "joint venture participant" means a member or non-member of lthe Exchange who is qualified to execute in person transactions in joint venture contracts in a trading crowd on the floor of the Exchange. A non-member joint venture participant shall be treated as a member for purposes of Rules 6.7 and 6.20 (a)(b) and (c) and Interpretations and Policies .01 and .04 (iv), (v) and (vi) unless otherwise specified.

Rule 1.1 Add Paragraph (ll) as follows:

Inter-Regulatory Spread Order

(ll) An inter-regulatory spread order is an order involving the simultaneous purchase and/or sale of at least one unit in contracts each of which is subject to different regulatory jurisdictions at stated limits, or at a stated differential, or at market prices on the floor of the Exchange.

Rule 6.7 Use of Facilities of the Exchange. No change.

* * * Interpretations and Policies

.01 No change.

.02 The provisions of Rules 6.7 are applicable to non-member joint venture participants and any persons associated therewith.

Admission to and Conduct on the Trading Floor

Rule 6.20 No change.

* * * Interpretations and Policies:

.07 Non-member joint venture participants are subject to the provisions of Rule 6.20 (a)(b) and (c) and Interpretations and Policies .01 and .04 (iv), (v) and (vi).

Orders Required To Be in Written Form

Rule 6.24. No change.

* * * Interpretations and Policies:

.02(b) Until further notice the following are exempt options classes under this Interpretation: OEX, *SPX and NSX*

Reporting Duties

Rule 6.51 No change.

* * * Interpretation and Policies:

.01 No change.

.02 For purposes of Rule 6.51(d), trade information shall inclued the proper account origin codes, which are as follows: "c" for a customer account, "f" for a firm properitary account, "m" for a member market-maker account, *"j" for a non-member joint venture participant transaction in Exchange options contracts,* "y" for any options account of a stock specialist relating to his assignment as specialist on the primary market for the underlying stock, "b" for a customer range account of a broker-dealer, and "n" for any account of a non-member market-maker or specialist relating to his assignmet in a class of options listed for trading both at this Exchange and at the exchange of the market-maker or specialist.

Floor Broker Defined

Rule 6.70 No change.

* * * Interpretations and Policies:

.01 *For purpose of Rule 6.70, a Floor Broker may accept orders entered by non-member joint venture participants while on the Exchange trading floor provided that such orders are for joint venture contracts or related option contracts. The Exchange shall determine the contracts that are related to the joint venture contracts.*

Crossing Orders

Rule 6.74 (a)–(c) No change.

* * * Interpretations and Policies:

.01 and .02 No change.

.03 Spread, straddle, stock-option (as defined in Rule 1.1 (ii)), *or inter-regulatory spread as defined in Rule 1.1 (kk)* or combination orders on opposite sides of the market may be crossed, provided that the Floor Broker holding such orders proceeds in the mammer described in paragraphs (a) or (b) above as appropriate. Members may not prevenlt a spread, straddle, stock-option, *inter-regulatory spread* or combination cross from being completed by giving a competing bid or offer for one component of such order.

.04 *With the exception of inter-regulatory spreads,* where a related transaction must be effected in another market, that transaction must be effected prior to effecting the options transaction.

Obligations for Orders

Rule 7.4. (a) Acceptance. A Board Broker or Order Book Official shall ordinarily be expected to accept orders for all option contracts of the class or classes to which his appointment extends. A Board Broker or Order Book Official shall not accept orders from any source other than a member. For the

[1] Amendment No. 1 to the proposed rule change was filed with the Commission on September 29, 1988.

purposes of this rule, an order shall be deemed to be from a member if the order is placed with a Board Broker or Order Book Official by a person associated with a member or through the telecommunications system of a member firm. The Floor Procedure Committee may specify the manner in which orders are routed to the Board Broker or Order Book Official for entry into the book. No member shall place, or permit to be placed, an order with a Board Broker or Order Book Official for an account in which such member, any other member, *any non-member joint venture participant* or any non-member broker/dealer has an interest.

Chapter IX

Doing Business with the Public

Rule 9.1 Exchange Approval No change

* * * Interpretations and Policies:

.01 No member organization shall conduct customer business with a non-member joint venture participant as defined in Rule 1.1 (kk) while such participant is on the Exchange trading floor without the specific written approval of the Regulatory Services Division of the Exchange.

.02 Member organizations who have been approved to conduct business with non-member joint venture participants pursuant to Interpretation .01 above are granted limited exemptive relief to certain Chapter IX rules as indicated below. The exemptive relief is specifically limited to the customer relationship that exists between the non-member joint venture participant and the member organization carrying the participant's account respecting joint venture contracts or related option contracts. The Exchange shall determine the contracts that are related to the joint venture contacts.

With the exception of the following rules all other Chapter IX rules remain in full force: CBOE Rules 9.1, 9.2, 9.3, 9.4, 9.7, 9.8, and 9.21.

.03 This proposed Interpretation has been deleted.

Chapter XIX

Hearings and Review

Scope of Chapter

Rule 19.1 No change.

* * * Interpretations and Policies:

.01 No change.

.02 For purposes of this Chapter "persons aggrieved by Exchange action" may include non-member joint venture participants only in connection with Exchange action taken pursuant to Rule 6.20.

Regulatory Agreement

The Board of Trade of the City of Chicago ("CBOT") and the Chicago Board Options Exchange, Inc. ("CBOE"), on December 18, 1987, entered into a Regulatory Agreement to facilitate the intermarket surveillance of stock index trading. The Regulatory Agreement provides that the CBOE and CBOT will promptly exchange market surveillance data and related information on an "as needed basis" with respect to joint venture and related contracts.

An Addendum to that Agreement was executed on September 28, 1988 which provides for the daily exchange of audit trail data in connection with joint venture and related contracts.

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 the Statutory Basis for, the Proposed Rule Change

Proposed Rule 1.1 (kk): Joint Venture Participant

The purpose of this proposed rule change is to define the individuals and/or organizations who are permitted to execute transactions in joint venture contracts and to specify certain Exchange Rules whereby non-member joint venture participants are to be treated as members. A joint venture participant may be either a member or a non-member of the Exchange.

All regular members of the Exchange will have access of all joint venture contracts. In order to trade joint venture futures contracts in person, regular members must become futures qualified by:

(1) Completing a CBOT orientation seminar and exam program and

(2) Filing a joint venture application.

In addition, if the regular member intends to act as a floor broker in joint venture futures or futures option contracts, the member must also be registered with the National Futures Association.

Certain non-members will also have access to joint venture contracts. (CBOT full members will have full access to all joint venture securities products provided they acquire regular CBOE membership through exercise of their privileges under Article V of the CBOE Certificate of Incorporation; however non-exercising CBOT full members and CBOT partial members must not be able to enter CBOE trading crowds or to effect in-person transactions in CBOE options products.) In order to trade Commodity Futures Trading Commission-regulated joint venture contracts in person on the Exchange trading floor, such non-members must file a joint venture application and agree to be bound by CBOE rules restricting access to trading crowds as well as rules respecting floor decorum and security.

The proposed rule change is consistent with the Act and, in particular section 6(b)(5) thereof in that the rule change removes impediments to the mechanism of a fair and open market by permitting joint venture contracts to be traded in person on the Exchange by qualified members and non-members.

Proposed Rule 1.1 (11): Inter-Regulatory Spread Order

The purpose of this proposed rule is to identify for regulatory purposes those orders whose very nature will involve regulation by more than one jurisdiction. As such, these orders will be regulated by each respective jurisdiction.

The proposed rule change is consistent with the Act and, in particular, section 6(b)(5) thereof in that the rule change will clarify regulatory responsibility, expedite the enforcement of each jurisdiction's regulations, and foster coordination and cooperation between the jurisdictions involved.

Proposed Change to Rule 6.7: Use of Facilities of the Exchange

The purpose of this proposed rule change is to extend the Exchange's limit of liability to non-member joint venture participants and person associated therewith should they incure losses as a result of their use of Exchange facilities. This proposed rule change is particularly necessary in view of the advent of the joint venture and its related systems and facilities.

The proposed rule change is consistent with the Act and, in particular, section 6(b)(5) thereof in that the rule change enables the Exchange to facilitate transactions in securities while protecting itself against losses which might be incurred by non-member joint venture participants and persons associated therewith as a result of their use of Exchange systems and facilities.

Proposed Rule 6.20 .07: Admission to and Conduct on the Trading Floor

The purpose of this proposed rule change is to ensure that the floor trading activity of non-member joint venture participants will be restricted to authorized trading crowds, and to ensure that they will be bound by Exchange rules respecting conduct on the Exchange trading floor. Non-member joint venture participants who are adversely affected by a determination made under Rule 6.20 may obtain a review thereof in accordance with the provisions of Chapter XIX.

The proposed rule change is consistent with the Act, and, in particular, section 6(b)(5) thereof in that it promotes just and equitable principles of trade and protects investors and the public interest by restricting non-member joint venture participant access on the Exchange floor and by requiring those non-members to abide by Exchange rules respecting security, decorum and conduct on the floor.

Proposed Change to Rule 6.24 .02(b): Orders Required To Be in Written Form

The purpose of this proposed rule is to facilitate transactions by avoiding unnecessary congestion and confusion among multiple trading pits by exempting orders moving among such pits from the requirement that orders transmitted to a floor broker by hand signal be immediately followed up by a written order ticket.

With the advent of the joint venture, a substantial amount of hedge trading is anticipated between the CBOE 250 Stock Index Futures and the OEX, SPX and NSX. Indeed, the purpose of the joint venture is to facilitate transactions by placing derivative products on a side-by-side basis to allow more fair and efficient markets.

The CBOE 250 Stock Index Futures will create an additional source of order origination. Floor brokers in the SPX, NSX and CBOE 250 Stock Index Futures pits undoubtedly will be receiving orders from each other, from the OEX and from other floor locations. This cross trading inflow could create the same type of confusion and congestion problems that existed in OEX before it was exempted by the Exchange (See SR–CBOE–87–10 for a fuller description of OEX exemption.). In order to achieve consistency and avoid impediments, the same exemption granted to OEX should be extended to SPX and NSX.

As was the case with the proposal that OEX be exempt from immediate delivery of a follow-up written ticket, this proposed rule change also does not alter the requirement that all orders be in written form. Similarly, all the rules concerning order preparation and reporting remain in effect.

The proposed rule change is consistent with the Act and, in particular, section 6(b)(5) thereof in that the rule change facilitates transactions by increasing the efficiency of order handling while preserving record-keeping amd reporting safeguards.

Proposed Change to Rule 6.51 .02: Reporting Duties

The purpose of this proposed rule change is to add an account origin code "j", for certain joint venture transactions for recording on trade tickets and reporting transactions to the Exchange. The "j" code will permit the Exchange effectively to monitor trading activity of non-member joint venture participants in Exchange options contracts.

The proposed rule change is consistent with the Act and, in particular, section 6(b)(5) thereof in that the rule change will foster cooperation and coordination with persons engaged in regulating, clearing, settling, producing information with respect to securities, and will also protect investors and the public interest.

Proposed Interpretation .01 to Rule 6.70: Floor Broker Refined

The purpose of this proposed rule change is to define the circumstances under which Exchange Floor Brokers are permitted to accept and execute orders received from non-member joint venture participants.

The proposed rule change is consistent with the Act and, in particular, section 6(b)(5) thereof in that the proposed rule facilitates transactions.

Proposed Change to Rule 6.74 .03 and .04: Crossing Orders

The purpose of the proposed rule change generally is to facilitate orderly markets by allowing inter-regulatory spread orders to be crossed. By definition, allowing these orders to be crossed narrows the bid-ask differential, thereby making the markets more efficient. The proposed change to Interpretation .04 also furthers the efficiency of the markets by not requiring the futures leg of an inter-regulatory spread to be effected before the options transaction. Thus, the futures and options leg will be effected simultaneously.

The proposed rule change is consistent with the Act and, in particular, section 6(b)(5) thereof in that the proposed rule facilitates transactions and protects investors and the public interest.

Proposed Change to Rule 7.4: Obligations for Orders

The purpose of the proposed rule change is to make it clear that option orders from or on behalf of non-member joint venture participants are not entitled to acceptance by a Board Broker or Order Book Official. Since RAES (retain automatic execution system) eligible orders are limited to those qualified for entry into the book pursuant to Rule 7.4(a), non-member joint venture participants are prohibited from placing orders for their own account on RAES.

This proposed rule change is consistent with the Act and, in particular, section 6(b)(5) thereof in that the rule change promotes just and equitable principles of trade by not permitting non-member joint venture participants to have a priority of execution over regular members by allowing them to place orders directly or indirectly with a Board Broker or an Order Book Official.

Proposed Change to Rule 9.1 .01, .02 and .03: Doing Business With the Public

The purpose of this proposed rule change is to exempt member organizations conducting business with non-member joint venture participants from various requirements set forth in Chapter IX. These exemptions will help accommodate the hedging transactions effected by non-member joint venture participants in OEX, SPX and NSX from on the Exchange floor and will enable individual Exchange members to transact business on the Exchange with non-member joint venture participants. These exemptions recognize the distinction between non-member professional traders and other non-members. Given the sophistication of the non-member joint venture professional traders, it is not necessary to require safeguards such as those provided in Chapter IX. The requirement that member organizations conducting business with non-member joint venture participants be approved in writing by the Exchange will allow the Exchange to monitor closely the activity between non-member joint venture participants and member organizations.

The proposed rule change is consistent with the Act and, in particular, section 6(b)(5) thereof in that the proposed rule facilitates transactions in securities and protects the investors and the public interest.

Proposed Rule 19.1 .02 Scope of Chapter Hearings and Review

The purpose of this proposed rule change is to afford non-member joint

venture participants who are adversely affected by a determination made under Rule 6.20 the right to a review in accordance with the provisions of Chapter XIX. This is consistent with the Act and, in particular, section 6(b)(5) thereof in that the proposed rule promotes just and equitable principles of trade by giving non-member joint venture participants who have consented to the Exchange's jurisdiction respecting conduct on the Exchange trading floor the same right of review as members in connection with Exchange action pursuant to Rule 6.20. Hence the proposed rule does not permit unfair discrimination between non-member joint venture participants and members in connection with rule 6.20 and Chapter XIX.

Regulatory Agreement

The purpose of the Regulatory Agreement is to ensure that the CBOE and CBOT each has adequate information in order to implement effectively their respective regulatory and enforcement programs in connection with stock index trading. The information to be exchanged includes information regarding positions and trading activity of individuals or organizations in options, futures or options on futures on stock indexes traded at the CBOT or the CBOE or options on stocks comprising these indexes as well as information regarding any disciplinary action taken by either exchange against individuals or organizations which relates to trading activity in any of the above categories. The audit trail information will enhance the Exchange's daily surveillance programs.

This is consistent with the Act and, in particular, section 6(b)(5) thereof in that the Regulatory Agreement will assist in preventing fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of 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 respect to the proposed rule change that are filed with the Commission, and all written commications 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 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 November 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 5, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-23394 Filed 10-7-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26156; File No. SR-NASD-88-39]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval To Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exhange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on September 20, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item I, II, and III below, which items have been prepared by the NASD. 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 Change

The proposed rule amendments increase the margin requirements applicable to listed stock, industry index and market index options put forth under section 4(a)(4), Appendix A, Article III, section 30 of the NASD's Rules of Fair Practice. In addition, the NASD is proposing to amend paragraph 2, section 4(a)(4) pertaining to margin requirements for straddle/combination orders.

II. Self-Regulatory Organization's Statement of the Purpose or, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD 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 NASD 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

Because of the increase in market volatility experienced since October 1987, the NASD proposes to increase customer margin requirements for short options positions in listed stock options, industry index options, and board-based or market index options. The NASD's rules to establish a premium-based customer margin system for "short" options positions were approved by the Commission on September 26, 1985 and became effective in January 1986. The rules provided a uniform margin system applicable to all options products based on the option premium plus a specified percentage of the current value of the underlying product.[1]

[1] In February 1988, the NASD increased its initial and maintenance customer margin requirements for short options positions in broad-based index options to 100 percent of the option premium plus 10 percent of the underlying index's aggregate value, reduced by the amount the option in out of the

Continued

Currently, initial and maintenance customer margin requirements for short options positions in listed stock and industry index options are 100 percent of the option premium plus 15 percent of the current value of the underlying product value. The margin requirement applicable to broad-based index options is 100 percent of the option premium plus 10 percent of the underlying aggregate value. In each case, customer margin is reduced by any out-of-the-money amount to a minimum of 100 percent of the premium value plus 5 percent of the current value of the underlying product. These percentage levels were established to cover 95 percent of all historical seven business days percentage price movements in the underlying product during the recent twelve month review period.

The proposed rule amendments raise the margin requirements for short options positions to 100 percent of the premium plus 20 percent of the underlying product value for listed stock options and industry index options, and to 100 percent of the premium plus 15 percent of the underlying product value for broad-based index options, less any out-of-the-money amount, with a minimum of premium plus 10 percent of the underlying product value in both cases. As a result of these increases, the confidence level will remain at 95 percent.

To be more responsive to recent market volatility, the NASD is reducing the applicable review period for these margin levels from twelve to six months. The proposed requirements are based on the six month review period and reflect the market volatility of the last quarter of 1987. The NASD, in conjunction with other self-regulatory organizations, plans to develop procedures to routinely monitor and adjust margin requirements so that both investors and firms are protected adequately based on current market volatilities.

In addition, the NASD is proposing to amend margin requirements for straddle/combination orders. Under the proposed amendment, customers holding short put and short call option positions on an industry or market index will be required to put up the greater margin amount of the short put option contract or short call option contract plus 100 percent of the current market value of the option option contract.

The proposed rule amendments are consistent with the requirements of section 15A(b) under the Act which provides, in pertinent part, that the rules of a registered securities association be designed to promote just and equitable principles of trade and to protect investors because the proposed rule amendments will provide increased margin protection for options customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendments will create any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in light of the increased stock market volatility since the October 1987 market break and its effect on margin adequacy. The Commission notes that the NASD's proposal is substantially identical to a proposal filed by the Chicago Board Options Exchange that was approved after being noticed for the full thirty-day period,[2] and to proposals by the American Stock Exchange, New York Stock Exchange, Pacific Stock Exchange, and Philadelphia Stock Exchange that were approved by the Commission.[3] In addition, the proposal is consistent with the recommendation contained in the Commission staff's Report on the October 1987 Market Break that the impact on the stock market of options margin levels should be reviewed.[4]

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 submissions, 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 NASD. All submissions should refer to the file number in the caption above and should be submited by November 1, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: October 5, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-23395 Filed 10-7-88; 8:45 am]

BILLING CODE 8010-01-M

money, but not less than the premium plus 5 percent of the aggregate value of the underlying index. *See* File No. SR-NASD-88-7, Securities Exchange Act Release No. 34-25461, March 15, 1988.

[2] Securities Exchange Act Release No. 25701 (May 17, 1988), 53 FR 20706.

[3] *Id.*

[4] *The October 1987 Market Break* at 3-22.

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1988).

[Release No. 34-26151; File No. SR-NASD-88-43]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change Relating to the Prohibition of the Entry of Professional Trades in the Small Order Execution 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 September 26, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commision") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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

Following is the text of the proposed rule change to Section (a) and (c) of the Rules of Practice and Procedures for the Small Order Execution System ("SOES Rules") to prohibit members from entering orders in the Small Order Execution System ("SOES") on behalf of

a professional trading account. Additions are italicized.

Rules of Practice and Procedure for the Small Order Execution system

(a) Definition

* * * * *

10. The term "professional trading account" shall mean—

(i) an account in which five or more day trades have been executed through SOES during any trading day; or

(ii) an account in which there has been a professional trading pattern in SOES as demonstrated by a pattern or practice of executing day trades, executing a high volume of day trades in relation to the total transactions in the account, or executing a high volume of day trades in relation to the amount and value of securities held in the account.

11. The term "day trade" or "day trading" shall mean the execution of offsetting trades in the same security for generally the same size during the same trading day.

* * * * *

(c) Participation Obligations is SOES

* * * * *

(3). SOES Order Entry Firms

* * * * *

(E)(i) No member or person associated with a member shall enter any order for execution in SOES on behalf of a professional trading account.

(ii) A member will be presumed to be in compliance with Subsection (i) if (a) the member instructs persons associated with the member that no such person shall knowingly accept any order for entry into SOES from a professional trading account, and (b) the Association has not notified the member that the account has been classified as a professional trading account pursuant to subsection (iii) hereof.

(iii) Upon receiving written notice from the Association a member shall report to the Association information concerning transactions entered into SOES by the firm and such other information as the Association may request. Based upon such information, the Association may identify to the member specific accounts as professional trading accounts.

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 NASD 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 NASD 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

SOES was designed to provide an efficient and economical facility for the execution of small, retail orders in NASDAQ securities. Thus, SOES was intended to further the investment objectives of retail customers who typically have longer term trading goals than those of professional traders. Therefore, SOES is available only for retail customer orders of specified, small size and the SOES Rules prohibit member firms from breaking up larger orders for execution in SOES.

As indicated in File No. SR–NASD–88–37, dated August 25, 1988, it has come to the attention of the NASD that SOES Order Entry Firms and their customers have been engaging in practices which could impact the viability of SOES. These practices include placing proprietary orders, the orders of professional traders of "day trades", through SOES. Most of these orders follow patterns of professional trades in that offsetting purchases and sales are made during the trading day. The orders typically constitute "day trading," i.e. offsetting orders aggregating geneally the same amount of the same security during a trading day. The NASD estimates that these abusive practices in SOES are increasing. The NASD is concerned that the execution in SOES of transactions of professional traders with superior access, in comparison to retail customers, may distort the price at which retail investors are able to obtain execution of their transactions. the NASD believes that the transactions of professional traders should not have an effect on the SOES market in which only retail orders were intended to be executed.

Therefore, the NASD is proposing to eliminate the entering and execution of orders in SOES by SOES Order Entry Firms on behalf of professional trading accounts. The NASD is proposing to amend Section (c)3. of the SOES Rules to adopt new Subsection (E) to prohibit SOES Order Entry Firms from entering orders in SOES on behalf of a professional trading account. Compliance with this requirement is presumed if the member's associated persons are instructed to not accept any order for entry into SOES from a professional trading account and the member has not been advised by the NASD that the account has been classified as professional trading account. The new provision also requires SOES Order Entry Firms, upon written request, to report information to the NASD concerning orders entered into SOES for the purpose of identification of specific accounts as professional trading accounts pursuant to the definition of that term.

The term "professional trading account" is proposed to be defined in new Subsection 10 of Section (a) of the SOES Rules to mean any account in which five or more day trades have been executed through SOES during any trading day. In the alternative, the term is defined to mean any account in which there has been a professional trading pattern in SOES. A professional trading pattern will be deemed to have been demonstrated by (1) a pattern or practice of executing day trades; (2) executing a high volume of day trades in relation to the total transactions in the account; or (3) executing a high volume of day trades in relation to the amount and value of securities held in the account.

The term "day trade" or "day trading" is proposed to be defined in new Subsection 11 of Section (a) of the SOES Rules to mean the execution of offsetting trades in the same security for generally the same size during the same trading day.

The NASD believes that the proposed rule change to the SOES Rules will eliminate the abusive practice of SOES Order Entry Firms utilizing SOES for the execution of transactions for professional trading accounts.

Because the proposed rule change would result in the elimination of abusive trading practices, the NASD believes that the proposed rule change is consistent with section 15A(b)(6) under the Act which mandates, in pertinent part, that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, facilitate transactions in securities and "to remove impediments to and perfect the mechanism of a free and open market and a national market system * * *."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD has neither solicited nor received any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** of within such longer period (i) as the Commmission may designate up to 90 days or 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 submissions, all subsequent amendments, all written statements with respects 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. Copes of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–88–43 and should be submitted by November 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: October 3, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–23297 Filed 10–7–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–5265]

Pacific Capital Fund, Inc.; Filing of an Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.701 of the Regulations governing small business investment companies (13 CFR 107.701 (1988)) for transfer of ownership and control of Pacific Capital Fund, Inc., 675 Mariner's Island Boulevard, San Mateo, California 94404, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of Pacific Capital Fund, Inc. (PCF), which was licensed July 27, 1981, is subject to the prior written approval of SBA.

PCF is owned and controlled by the following:

Name	Title	Percent of ownership
Eduardo B. Cu Unjieng.	Chairman, President, and Chief Financial Officer.	
David C. Kenny	Secretary	
Jose B. Colayco	Director	
Miguel L. Guerrero	Director	
PCF Holdings, Inc.	Shareholder	100

PCF Holdings, Inc. is owned by Benedicto V. Yujuico (36%) and PCI International Holdings, Ltd, (Hong Kong) (64%), which is wholly owned by Philippine Commercial Industrial Bank.

PCF Holdings, Inc. will surrender its shares and PCF's new ownership and control would be as follows:

Name	Title	Percent of Ownership
Eduardo B. Cu Unjieng, 602 Anacapa Lane, Foster City, California 94404.	President and Director.	
David C. Kenny, 50 San Marcos Avenue, San Francisco, California 94116.	Secretary	
Miguel L. Guerrero, 3515 Fleetwood Drive, San Bruno, California 94066.	Director	
Valentin L. Manglapus, 20 Underhill Road, Mill Valley, California 94941.	Director	
Jose Ching, 731 Pitcairn Drive, Foster City, California 94404.	Shareholder	22.2
Conrado B. Topacio, 1245 Monterey Boulevard, San Francisco, California 94127.	Shareholder	77.8

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new management, and the probability of successful operations of the company under their management including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is given that any person may, not later than October 26, 1988, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the San Mateo, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: October 3, 1988.

[FR Doc. 88–23314 Filed 10–7–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88–083]

Coast Guard Academy Advisory Committee; Meeting

AGENCY: U.S. Coast Guard, DOT.

ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Coast

Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London CT, on Monday and Tuesday, November 14–15, 1988. Open Sessions will be held from 10:30–11:45 a.m. and 1:45–3:15 p.m. on Monday, and 9:00–10:30 a.m. and 3:30–4:30 p.m. on Tuesday. The agenda for this meeting will include discussion of accreditation, curricula, and faculty. The Coast Guard Academy Advisory Committee was established in 1937, by Pub. L. 75–38, to advise on the course of instruction at the Academy and to make recommendations as necessary. Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than the day before the meeting. Any member of the public may present a written statement to the Committee at anytime.

FOR FURTHER INFORMATION CONTACT: Dr. William A. Sanders, Dean of Academics/Executive Secretary of the Academy Advisory Committee, U.S. Coast Guard Academy, New London, CT 06320, telephone (203) 444–8275.

Issued in Washington, DC, on September 30, 1988.

T. T. Matteson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel and Training.

[FR Doc. 88–23392 Filed 10–7–88; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–88–38]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before October 31, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 4, 1988.

Denise D. Hall,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 23176.
Petitioner: Tenneco Inc.
Regulations Affected: 14 CFR 91.169(a).
Description of Relief Sought: To extend Exemption No. 3691B that allows the inspection of helicopters owned or operated by petitioner and all its subsidiaries to take place under the provisions of § 91.169 (e) and (4).

Docket No.: 25630.
Petitioner: State of Hawaii Department of Transportation.
Sections of the FAR Affected: 14 CFR 45.29(h).
Description of Relief Sought: To allow civil aviation aircraft flying solely between the islands of Hawaii to continue to do so without altering the size of the aircraft identification.

Docket No.: 25640.
Petitioner: Aerospatiale Helicopter Corporation.
Sections of the FAR Affected: 14 CFR 21.195(a).
Description of Relief Sought: To allow petitioner, a foreign manufacturer's subsidiary, to apply for an experimental certificate to perform market surveys in the United States.

Docket No.: 25655.
Petitioner: Stoddard-Hamilton Aircraft Incorporated.
Sections of the FAR Affected: 14 CFR 21.191.
Description of Relief Sought: To allow the issuance of an experimental certificate for the purpose of operating amateur-built aircraft to customers who purchase petitioner's Glassair kit aircraft. In particular, this exemption would apply to two factory-owned and operated Glassair kit aircraft, N84AG and N540RG.

Docket No.: 15590.
Petitioner: Embry-Riddle Aeronautical University.
Sections of the FAR Affected: 14 CFR Part 141, Appendixes A, C, D, F, and H.
Description of Relief Sought/ Disposition: To extend Exemption No. 2329, as amended, that allows petitioner to continue to graduate students after they have been trained to a performance standard instead of requiring minimum total flight time. The exemption does not allow reduction of the minimum solo cross-country flight time of Part 141. *GRANT, September 26, 1988, Exemption No. 2329F.*

Docket No.: 23647.
Petitioner: Embry-Riddle Aeronautical University.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/ Disposition: To extend Exemption No. 3859, as amended, that allows petitioner to recommend graduates of its certified flight instructor courses without taking the FAA practical test. *GRANT, September 26, 1988, Exemption No. 3859D.*

Docket No.: 24761.
Petitioner: Executive Jet Aviation, Inc.
Sections of the FAR Affected: 14 CFR 91.191(a)(4) and 135.165(b).
Description of Relief Sought/ Disposition: To extend Exemption No. 4709 that allows petitioner to operate its turbojet powered aircraft, which are equipped with a single long-range navigation system (LRNS) and a single high-frequency (HF) communication radio), in extended overwater operations. *GRANT, September 26, 1988, Exemption No. 4709A.*

Docket No.: 25300.
Petitioner: Atlantic Southeast Airlines, Inc.
Regulations Affected: 14 CFR Part 135.293 and 135.297.
Description of Relief Sought/ Disposition: To allow petitioner's pilots to use a Phase I simulator to meet the requirements for initial and recurrent pilot testing and for instruments proficiency checking for pilots in command. *DENIAL, September 23, 1988, Exemption No. 4979.*

Docket No.: 25517.

Petitioner: Skydive Arizona, Inc.
Sections of the FAR Affected: 14 CFR 105.43.
Description of Relief Sought/ Disposition: To allow a foreign parachutist to operate his or her equipment in the United States under approval by a recognized national authority from his or her country.
DENIAL, December 20, 1988, Exemption No. 4976.
Docket No.: 25661.
Petitioner: American Trans Air, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought/ Disposition: To allow petitioner to use Hong Kong Aircraft Engineering Company (HAECO) to perform certain maintenance and overhaul work on one L-1011 aircraft, U.S. registration number N185AT, that is owned and operated by petitioner. *GRANT, September 28, 1988, Exemption No. 4981.*

[FR Doc. 88-23273 Filed 10-7-88; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-88-39]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before October 31, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 24093, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 4, 1988.

Denise D. Hall,
Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 24093.
Petitioner: Albuquerque International Balloon Fiesta.
Regulations Affected: 14 CFR 61.3(b) and 91.27.
Description of Relief Sought: To extend permanently, Exemption No. 4841 that allows petitioner to permit foreign balloon pilots and foreign balloons to participate in the annual Albuquerque International Balloon Fiesta without those pilots and balloons having to comply with the FAA's pilot certification and airworthiness requirements of the FAR.

[FR Doc. 88-23274 Filed 10-7-88; 8:45 am]
BILLING CODE 4910-13-M

[Summary Notice No. PE-88-40]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before October 31, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This noice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 4, 1988.

Denise D. Hall,
Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 25601.
Petitioner: McCarthy Air.
Regulations Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow pilots employed by petitioner to perform the preventive maintenance function of removing and/or replacing the passenger seats of aircraft used in FAR Part 135 operations.

Docket No.: 25651.
Petitioner: Toltec Aircraft Services, Inc.
Section of the FAR Affected: 14 CFR 145.35(c) and 145.37(b).
Description of Relief Sought: To allow petitioner to use housing facilities contracted from a local custodian to satisfy the permanent housing requirements in §§ 145.35 and 145.37.

Docket No.: 12227.
Petitioner: National Business Aircraft Association, Inc.
Regulations Affected: 14 CFR 91.169(f) and 91.181(a).
Description of Relief Sough/ Disposition: To extend Exemption No. 1637, as amended, that allows petitioner's members to use inspection programs required for large turbojet or turboprop-powered airplanes for their small civil airplanes and helicopters. The exemption also allows operation of their aircraft under Subpart D of Part 91. GRANT, September 7, 1988, Exemption No. 1637-0.

Docket No.: 23938.
Petitioner: Flying Tiger Line, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(8).
Description of Relief Sought/ Disposition: To extend Exemption No. 4110A that allows petitioner to carry employee dependents on its B–727–100 freighter aircraft under certain conditions set forth in the exemption. GRANT, August 31, 1988. Exemption No. 4110B.

Docket No.: 25487.
Petitioner: Donald E. Lyle.
Sections of the FAR Affected: 14 CFR 61.155 (b)(2) and (b)(2)(i).
Description of Relief Sought/ Disposition: To allow petitioner to substitute for the total time and cross country time requirements for the airline transport pilot certificate petitioner's aeronautical experience gained as a Naval Flight Officer and aircrew member of U.S. Navy aircraft. DENIAL, September 7, 1988, Exemption No. 4974.

[FR Doc. 88–23275 Filed 10–7–88; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Shelby County, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed project in Memphis, Shelby County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Wright B. Aldridge, Jr., Community Planner, Federal Highway Administration, Federal Building, U.S. Courthouse, 801 Broadway, Suite A–926, Nashville, Tennessee 37203, telephone (615) 736–5394.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Tennessee Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to improve Interstate 40/240 in Memphis, Tennessee. The proposed improvement would involve the reconstruction of the exising Interstate 40/240 from the I–40/I–240 Directional (Midtown) Interchange to the State Route 300 Interchange. Also included in this proposal is the redesign of the Midtown Interchange and the Jackson Avenue (State Route 14) Interchange. The proposed improvement would have a length of approximately 2.85 miles. The improvements are necessary to provide for existing and future traffic demand.

Alternatives under consideration include: (1) Taking no action: (2) widening the existing six-lane facility to ten lanes plus auxiliary lanes where required; (3) mass transit; (4) transportation systems management; and (5) improvement of the local street system.

Letters describing the proposed action and soliciting comments were sent to appropriate Federal, State, and local agencies and organizations on September 8, 1988. Appropriate local officials will be contacted to schedule one or more public meetings. These activities will provide input regarding the scope of the EIS. In addition, a corridor and design public hearing will be held. Public notice will be given as to the time place of the meetings and hearing. The draft EIS will be available for public and agency review and comment.

To insure that the full range of issues related to this proposed action are addressed and that all signficant issues are identified, comments and suggestions are encouraged from all interested parties. Comments and suggestions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Planning and Construction. The regualtions implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on October 3, 1988.

Wright B. Aldridge, Jr,

Community Planner, Tennessee Dvision, Nashville, Tennessee.

[FR Doc. 88–23310 Filed 10–7–88; 8:45 am]
BILLING CODE 4910–01–M

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9, 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Consolidated Rail Corporation

Waiver Petition Docket Number PB–88–2

The Consolidated Rail Corporation (Conrail) requests a waiver of compliance with certain provisions of the railroad power brake regulation (49 CFR Part 232). Conrail seeks a waiver of compliance with section § 232.19 entitled, "End of Train Device," which stipulates in § 232.19(f)(2) that the front unit "display shall be clearly visible and legible in daylight and darkness from the engineer's normal operating position."

Conrail states that the purpose of this petition is to allow "helper" locomotives not equipped with end-of-train telemetry receiver modules to be placed and operated on the head end of trains equipped with end-of-train telemetry transmitters.

The carrier states that in the interest of safer train operations, "helper" locomotives are coupled ahead of the hauling locomotives to assist the train over a grade. During this type of operation, an inbound train's hauling locomotive equipped with the telemetry receiver display module is no longer at the head end of the train, but behind the "helper" locomotive. The engineer of the "helper" locomotive is now operating the train at the head end, and the telemetry receiver's display module is not in front of him when the intermediate terminal train air brake test is performed after the train is made complete, as required by § 232.13 of the Power Brake Regulations.

Conrail asserts that the inbound train's engineer, positioned in the hauling locomotive's operating compartment while the "helper" locomotive is being used to assist a train over a grade, will remain in a position to monitor the telemetry receiver's display module of the condition of the brake pipe at the rear of the train when the brake test is performed. He can, in turn, communicate by radio with the engineer on the "helper" locomotive controlling the movement should conditions on the rear of the train warrant corrective action. In the event of an emergency, the engineer on the inbound hauling locomotive could initiate an emergency brake application of the train from his control stand. Therefore, Conrail feels safety is not compromised in any way by the use of a "helper" locomotive not equipped with a telemetry receiver's display module on the head end of a train equipped with an end-of-train device.

Continental Grain Company

Waiver Petition Number LI–88–3

The Continental Grain Company (CGC) of Westwego, Louisiana, requests a waiver of compliance with all the requirements of the Locomotive Safety Standards (49 CFR Part 229). The company operates its two locomotive over approximately 300 yards of the Union Pacific Railroad tracks to transfer cars between three yards on CGC property and to provide service to a feed company located in close proximity to CGC's plant. CGC states that its locomotives do not comply with the Locomotive Safety Standards. Railroad activity at its location is very sporadic; it relies mainly on barges to move grain into its elevator, and at times months go by between significant rail movements. Under these circumstances, CGC requests a waiver of compliance with the cited standards.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–88–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before November 25, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on October 3, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–23377 Filed 10–7–88; 8:45 am]

BILLING CODE 4910–06–M

Office of Hearings

[Docket 45663]

Robert O. Nay et al., Enforcement Proceeding

In the matter of Robert O. Nay, Emerald Tours, Ltd. (Virginia), World Classics, Ltd., and Emerald Tours, Ltd. (Illinois); Enforcement Proceeding; Order of Administrative Law Judge.

By motion dated October 4, 1988, Respondents request continuance of the prehearing conference from October 11, 1988 was published in the **Federal Register** October 5, 1988, 53 FR 39191, until October 19, 1988. As grounds for tht request, Respondents recite that its attorneys are or will be out of town and the consent of the Office of Aviation Enforcement and Proceedings to the continuance. Good cause having been shown, it is ordered that:

1. The motion of Respondents is granted.
2. The prehearing conference will be rescheduled for October 19, 1988.

Dated: October 5, 1988.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 88–23390 Filed 10–7–88; 8:45 am]

BILLING CODE 4910–62–M

VETERANS ADMINISTRATION

Evaluations by the Veterans Administration of Scientific Studies Related to the Effects of Exposure to Herbicides Containing Dioxin

AGENCY: Veterans Administration.

ACTION: Notice of evaluations.

SUMMARY: The "Veterans' Dioxin and Radiation Exposure Compensation Standards Act," Pub. L. 95–542, and implementing regulations, 38 CFR 1.17, require that there be published from time to time in the **Federal Register** evaluations by the Veterans Administration (VA) of scientific or medical studies relating to the adverse health effects of exposure to herbicides containing dioxin (specifically 2,3,7,8, Tetrachlorodibenzo-p-dioxin) or to ionizing radiation. This Notice of Evaluations is concerned with the scientific studies relating to the adverse health effects of exposure to dioxin which were reviewed in November 1986 and April 1987 by the Veterans' Advisory Committee on Environmental Hazards, an advisory committee established under the authority of Pub. L. 98–542.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Hobson, M.D., Ph.D., Director, Agent Orange Project Office (10B/A0), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–4117.

SUPPLEMENTARY INFORMATION: The following evaluation factors were used:

(a) Whether the study's findings are statistically significant and replicable.

(b) Whether the study and its findings have withstood peer review.

(c) Whether the study's methodology has been sufficiently described to permit replication.

(d) Whether the findings of the study are applicable to the veteran population of interest.

(e) The views of the Veterans' Advisory Committee on Environmental Hazards. (The views of the Advisory Committee are contained in the minutes of these meetings. Copies of the minutes may be obtained from Frederic Conway (02C), Special Assistant to the General Counsel, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2182.)

I. Studies Reviewed

(a) Anderson, H.A., Hanrahan, L.P., Jensen, M., Laurin, D., Yick, W.-Y., and Wiegman. 1986, Wisconsin Vietnam veterans mortality study. State of Wisconsin, Department of Health and Social Studies. Unpublished communication.

(b) Anon. 1986. Health survey of Massachusetts Vietnam veterans. Massachusetts Agent Orange Program. Unpublished communication.

(c) Hoar, S.K., Blair, A., Holmes, F.F., Boysen, C.D., Robel, R.J., Hoover, R. and Fraumeni, J.F. 1986. Agricultural herbicide use and risk of lymphoma and soft-tissue sarcoma. JAMA. 256 (9): 1141–1147.

(d) Hoffman, R.E., Stehr-Green, P.A., Webb, K.B., Evans, R.G., Knutsen, A.P., Schramm, W.F., Staake, J.L. Gibson, B.B., and Steinberg, K.K. 1986. Health effects on long-term exposure to 2,3,7,8-tetrachlorodibenzo-p-dioxin. JAMA. 255(15):2031–2038.

(e) Jones, R.E. and Chelsky, M. 1986. Further discussion concerning porphyria cutanea tarda and TCDD exposure. Arch. Environ. Health. 41(2):100–103.

(f) Lynge, E. 1985. A follow-up study of cancer incidence among workers in manufacture of phenoxy herbicides in Denmark. Br. J. Cancer. 52:259–270.

(g) Stehr, P.A., Stein, F., Falk, H., Sampson, E., Smith S.G. Steinberg, K., Webb, K. Ayers, S., Schramm, W., Donnell, H.C., and Gedney, W.B. 1986. A pilot epidemiological study of possible health effects associated with 2,3,7,8–tetrachlorodibenzo-p-dioxin in Missouri. Arch. Envir. Health. 41(1):16–22.

(h) Wiklund, K. and Holm, I-E. 1986. Soft tissue sarcoma risk in Swedish agricultural and forestry workers. JNCI. 76(2):229–234.

(i) Centers for Disease Control (Boyle, C.A. et al). 1987. Postservice mortality among Vietnam veterans. JAMA. 257(6):790–795.

(j) Constable, J.D., and Hatch, M.C. 1985. Reproductive effects of herbicide exposure in Vietnam: Recent studies by the Vietnamese and others. Feratogen. Carcinogen. Mutagen. 5:231–250.

(k) Environmental Protection Agency, 1985. Health Assessment Document for Polychlorinated Dibenzo-p-Dioxins. Government publication EPA/600/8–84/014F. (Chapter 11.2, pp. 11–60 to 11–109).

(l) Hall, W. 1986. The Agent Orange Controversy After the Evatt Royal Commission. Med. J. Aust. 145:219–225.

(m) Hatch, M.C. and Stein, Z.A. 1986. Agent Orange and Risks to Reproduction: The limits of epidemiology. Teratogen. Carcinogen. Mutagen, 6:185–202.

(n) Kang, H.K., Weatherbee, L., Breslin, P.P., Lee, Y., and Shephard B. M. 1986. Soft tissue sarcomas and military service in Vietnam: A case comparison group analysis of hospital patients. J. Occup. Med. 28 (12): 1215–1218.

(o) MacMahon, B. 1986. Review of Hoar et al and related literature. Unpublished communication.

(p) Patterson, D.G., Hoffman, R.E., Needham, L.L., Roberts, D.W., Bagby, J.R., Pirkle, J.L., Falk, H., Sampson, E.J., and Houk, V.N. 1986. 2,3,7,8-Tetrachlorobenzo-p-dioxin levels in adipose tissue of exposed and control persons in Missouri. An interim report. JAMA. 256(19): 2683–2686.

(q) Pearn, J.H. 1985. Herbicides and congenital malformations: A review for the pediatrician. Aust. Paediatr. J. 21:237–242.

(r) Webb, K.B., Ayres, S.M., Mikes, J. and Evans, R.G. 1986. The diagnosis of dioxin-associated illness. Am. J. Prev. Med. 2(2):103–108.

(s) West, A.M. and Leon, C.A. 1986. Health needs of the Vietnam veteran exposed to Agency Orange. Nurse Pract. 11(11):33–40.

(t) Wolfe, W.W., Michale, J.E., Miner, J.C. and Peterson, M.R. 1986. An epidemiological investigation of health effects in Air Force personnel following exposure to herbicides: Mortality update 1986. U.S. Air Force Surgeon General. USAFSAM–TR–86–43.

(u) Woods, J.S., Polissar, L., Severson, R.K., Heuser, L.S. and Kulander, B.G. 1987. Soft tissue sarcoma and non-Hodgkin's lymphoma in relation to phenoxy herbicide and chlorinated phenol exposure in western Washington. JNCI. 78(5):899–910.

II. Note: When considering these reports and the conclusions therefrom, the variety of topics covered should be borne in mind:

(a) Actual, known exposures to Agent Orange. They are limited to the Air Force Ranch Hand health studies and may or may not be completely relevant to ground troops in Vietnam.

(b) Known or presumed exposure to phenoxy herbicides in a variety of circumstances, chiefly in agriculture or forestry, but under conditions different from those in Vietnam. They are related to conditions in Vietnam only insofar as the exposures correspond to those encountered by troops in that country.

(c) Exposure to 2,3,7,8-TCDD usually during the manufacture of various chemicals. Their relevance to field conditions in Vietnam rests on the assumption that troops there had a significant exposure to 2,3,7,8-TCDD through contact with Agent Orange.

(d) The "Vietnam experience" related to possible adverse health effects of service in that country during the conflict there. The results and conclusions of such research do not necessarily implicate any specific cause for adverse health effects and do not contribute directly to understanding a possible role of Agent Orange. They are relevant, however, to the VA's decisions as to a possible service connection of health defects.

Dated: October 3, 1988.

Thomas K. Turnage,

Administrator.

Evaluation of Studies Related to Agent Orange Meeting of November 17–18, 1986

(a) Anderson et al. *Wisconsin Vietnam Veterans Mortality study.* An epidemiological study using death records from Wisconsin's Center for Health Statistics included deaths of 110,820 white male veterans, 2,133 black male veterans, and 1,305 white female veterans. The first "phase" used proportionate mortality ratios (PMRs) to compare veterans with Wisconsin non-veterans. One or more veterans' groups had an elevated PMR for 24 causes of death and, as is inherent in PMR calculations, an offsetting reduced PMR for 13 causes. The results were consistent with a conclusion that there were significant differences between veterans and non-veterans as to the causes of death with evidence of the "healthy veteran" effect and of effects from tobacco and alcohol use by veterans. Violent deaths from external causes and psychiatric disturbances were also relatively more common among veterans. A second phase compared separately and combined the causes of death for 923 white male veterans with non-veterans. Again the PMRs demonstrated the "healthy veteran" effect and an excess of deaths from external violent causes. Soft tissue sarcomas showed no significantly elevated PMR for Vietnam veterans as compared to non-Vietnam veterans or to non-veterans. Both Vietnam and non-Vietnam veterans, however, had an elevated PMR for soft tissue sarcomas when compared to all other veterans; the number of deaths was small and limited the significance of the results. In the third "phase," discharge documents (DD214) identified 43,398 Vietnam veterans and 78,840 veterans who contemporaneously served elsewhere. It was possible to analyze 927 deaths of Vietnam veterans and 1,663 deaths in the comparison group. These were compared to the deaths for the entire Nation, all of the state, Wisconsin civilians, and all Wisconsin veterans using standardized mortality ratios (SMRs). Again, the "healthy veteran" effect was evident; cancer of "other lymphatic tissue" had an elevated SMR for male Vietnam veterans compared to all veterans; external causes had an elevated SMR for the Vietnam veterans as compared to their non-Vietnam contemporaries. Vietnam veterans had a higher SMR for suicide when compared to the Nation, Wisconsin civilians, all veterans, and non-Vietnam veterans.

Comment: The study was well planned and conducted but, in some respects, suffers from the relatively small number of deaths and the use of the DD214 to determine Vietnam service for which purpose it is not completely informative. It also assumes that service in Vietnam is the equivalent of exposure to Agent Orange and its dioxin contaminant which is, at best, a questionable assumption for research purpose. On balance the results do not support any health deficit associated with Agent Orange or service in Vietnam.

(b) Anon. *Health survey of Massachusetts Vietnam veterans.* Questionnaires were sent to 2,000 Massachusetts veterans who had filed claims for damages due to Agent Orange in a class-action suit; 1,500 responded. Some 300 additional questionnaires were sent to veterans who requested them. From the 1,800 returned, 1,500 questionnaires "were selected based on the criteria of completedness (sic) and actual service in Vietnam". Assistance in completing the questionnaires was provided by program staff and "trained volunteers." More than a quarter of the responses reported diagnoses of

malignant or benign tumors; 9 had Hodgkins's disease diagnosed. At least one birth defect was reported in 462 of 1,907 live births and 160 children had more than one defect. A large proportion of respondents reported such disturbances as decreased libido, fertility disorders, tiredness, headaches, memory loss or concentration difficulties and "nervous disorders." Over two-thirds claimed symptoms of peripheral neuropathy. The investigators concluded that the results "clearly indicate considerable disease and suffering among a relatively young group of people."

Comment: No meaningful conclusions can be drawn from this report on a self-selected group whose membership was modified using unspecified criteria for eliminating responses to a series of leading questions; a series of steps that led to a wide variety of multiple complaints. No control group was even attempted.

(c) Hoar et al. *Agricultural herbicide use and risk of lymphoma and soft tissue sarcoma.* A cancer registry search allowed data collection and interviews to be made for 133 histologically proved cases of soft-tissue sarcoma, 121 of Hodgkin's disease, and 170 of non-Hodgkin's lymphoma in Kansas. Random dialing collected 948 matched controls. Either patients or their next-of-kin and the controls were interviewed by telephone to elicit occupational details of exposure to herbicides and pesticides. Results were checked with chemical suppliers in 110 cases. No correlation of pesticide use and death was found overall for soft-tissue sarcomas or either type of lymphoma. Farmers exposed to 2,4-dichlorophenoxyacetic acid (2,4–D) for 20 days a year has a sixfold greater risk of non-Hodgkin's lymphoma, however, than non-farmers. Men who used or mixed the herbicide had an eightfold increased risk.

Comment: This well designed and conducted case-control study suffers from having to rely on memory for exposure data although its validity was confirmed in some instance by the reports of herbicide suppliers. The conclusion that there is an association between exposure to 2,4–D and non-Hodgkin's lymphoma is supported by some other studies but not by all. In any event, the exposure to 2,4–D appears to have been more repetitive over a longer period for the Kansas farmers than for ground troops in Vietnam and the present study itself suggests a dose-effect relationship.

(d) Hoffman et al. *Health effects of long-term exposure to 2,3,7,8-tetrachlorodibenzo-p-dioxin.* More than 10 years after a road was sprayed with oil contianing 2,3,7,8-TCDD, the area had 39 to 1,100 parts per billion of the material in composite soil samples and a single sample contained 2,200 ppb. From 207 households who had lived in the area for six months or longer after it was sprayed, 154 persons agreed to be examined. A control group of 155 volunteers from five uncontaminated neighborhoods of 515 households was matched to the exposed individuals, except that the controls were of socio-economically and educationally higher status. An extensive medical and social evaluation, including history, physical and psychological examinations, and clinical laboratory tests of each patient revealed no significant differences in health status, except that more often the exposed individuals has "other skin problems" and "other miscellaneous diseases." The exposed population had a higher incidence of some slightly abnormal liver function findings but slightly less frequent abnormal findings for others. Much attention was given to immunological evaluation, including skin tests, T-cell functional assessments and T-cell surface marker determinations. Only the calculated non-peripheral lymphocytes were considered to be more numerous in the exposed group. The anergy tests were rendered invalid because two of four readers proved unsatisfactory. In any event, immunological defects were not reflected in the health of participiants. No clincial conditions thought to be associated with exposure to TCDD were found although the authors believe that the flawed skin tests and the immunological examinations indicated reduced cellular immunity in the exposed individuals.

Comment: The findings in this study have been challenged on several grounds. The low participation rate and the improperly read skin tests cannot be overlooked and the specific immunological results do not correspond to those induced by 2,3,7,8–TCDD in animals. Some differences between exposed and control groups are expected when so many variables are measured. There is incomplete description of the test methodology and of the quality controls used. Further, the intensity of exposure to persistent TCDD in soil appears likely to have been much greater in the area studied than in Vietnam. The work provides no basis for the VA to alter its guidelines.

(e) Jones and Chelsky. *Further discussion concerning porphyria cutanea torda and TCDD esposure.* Porphyria cutanea tarda (PCT) is a skin disease associated with disturbed liver metabolism leading to urinary excretion of abnormal porphyrins. It has been diagnosed and attributed to 2,3,7,8–TCDD only in a small number of chemical workers in two plants. In each of these two plants, typical cases of chloracne were present. Some workers had both PCT or abnormal urinary porphyrins and chloracne. Others had only PCT or urine changes. Still others had only chloracne. Each of the two plants used processes that produced material containing 2,3,7,8–TCDD and a chemical, hexachlorobenzene, that is known to cause PCT and the associated urinary changes. The workers who developed PCT all had contact with hexachlorobenzene in at least the one plant for which information is available and the authors believe that contact with it, rather than with 2,3,7,8–TCDD, caused the condition. They challenge as well the use of "porphyria cutanea tarda" as a name for the condition in which the patient has only urinary changes and not the complete clinical condition.

Comment: No plant in which exposure to 2,3,7,8–TCDD has been demonstrated has encountered PCT among its employees other than the two plants discussed. This is true even when employees develop chloracne. Animals given 2,3,7,8–TCDD, however, develop chemical changes related to those found in PCT. It can be argued that human exposures to 2,3,7,8–TCDD are not intense enough to produce the disease, even though they cause the associated chemical changes. Even were this proved, it would not be relevant to veterans because the exposure levels required would be much greater than those suspected as being produced by spraying in Vietnam.

(f) Lynge. *A follow-up of cancer incidence among workers in manufacture of phenoxy herbicides in Denmark.* In a retrospective cohort study, information was reviewed regardiing 4,459 workers in Danish factories manufacturing phenoxy herbicides prior to 1982. Of this number only 940 were employed in manufacturing and packaging such phenoxy herbicides and probably fewer still were involved with 2,4,5–T, the herbicide containing 2,3,7,8–TCDD. The reported prevalence of cancers in the Danish population as a whole was compared to that among the chemical workers. The latter had no greater risk of developing all types of cancer than did the entire population. Likewise, there was no increased prevalence of malignant lymphoma. There were, however, 5 cases of soft tissue sarcomas of various types among the workers where 1.84 cases were expected. Of

these 5, only one worker was involved with manufacturing and shipping phenoxy herbicides; 3 of the 5 worked only for 3 months or less in the chemical plants.

Comments: While the study was well designed, executed, and reported, the unavoidably small numbers of persons involved make it difficult to draw definite conclusions. The results can be said to add marginally to the evidence for an association between phenoxy herbicide exposure and soft tissue sarcomas. With equal caution they tend to refute an association with malignant lymphoma.

(g) Stehr et al. *A pilot epidemiological study of possible health effects associated with 2,3,7,8-tetrachlorodibenzo-p-dioxin in Missouri.* A comparison was made of health indicators between two groups of people: those living or working continuously or frequently in areas where the soil was contaminated with 20 or more parts per billion of 2,3,7,8-TCDD and, as controls, those having no known contact with the chemical. Participants were selected from among individuals who responded to advertisements by completing a Health Effect Survey questionnaire or by attending a "dermatology screening clinic" for persons who feared exposure to 2,3,7,8-TCDD. Apparently non-random selection yielded a "high-risk" group of 68 and a "low-risk" group of 36, all of whom underwent detailed medical, clinical laboratory and immunological examinations. The groups were not well matched as to "regular exercise" but there were no statistically significant differences in the results of the extensive examinations.

Comments: The work, which was published twice before in 1984, is not well reported with many details essential for critical review left unstated. Since this was a pilot study, no definitive conclusions as to association between exposure and disease were expected and none were possible.

(h) Wiklund and Holm. *Soft tissue sarcoma risk in Swedish agriculture and forestry workers.* In a record-linkage study, 354,620 Swedish male agricultural and forestry workers were compared to 1,725,845 men otherwise employed in 1960. The former group was divided into 3 agriculture and 3 forestry subgroups whose use of herbicides was thought to differ by type of chemical and intensity of contact althought neither was quantitatively determinable. The occurrence of soft tissue sarcomas was obtained from the Swedish "Cancer-Environment Register". The results indicated that none of the 6 exposed subgroups nor the group as a whole had any increased risk of soft tissue sarcoma. Also there was no increasing risk during the increase in the use of herbicides and/or the possible latency period from 1960 to 1975.

Comments: While well planned, conducted, and reported, the study was limited by an unavoidable lack of detailed exposure data as to amount and duration of herbicide use by any of the groups. The large number of men involved probably compensates for most sources of error and, at the least, the study fails to support an association between herbicide exposure and soft tissue sarcoma, even in Sweden where the possible association was first reported.

Meeting of April 27–28, 1987

(i) Centers for Disease Control. *Post service mortality among Vietnam veterans.* The mortality experience of Army veterans was examined for the 12 to 19 years following military service in Vietnam. A sample of about 9,300 veterans had served in Vietnam and another 9,000 had been stationed elsewhere. The overall death rate was 17 percent higher for the Vietnam veterans but this excess mortality occurred mainly during the five years following discharge when motor vehicle accidents, suicides, homicides, and accidental poisonings accounted for most of the difference. The death rate during the ensuing years was similar in the two veterans groups except that the rate for drug-related deaths continued to be greater among Vietnam veterans. On the other hand, this group had a significantly lower death rate from cardiovascular diseases than did the non-Vietnam veterans and both groups had a lower mortality rate for, "natural causes" than did men in the general U.S. population. The excess death rate within a few years after discharge among veterans serving in combat areas has been found also for veterans for World War II and the Korean conflict.

Comment: The study was well designed and conducted but the relatively small samples do not allow detailed analysis of subdivisions by types of Vietnam service or experiences. Similarly, confounding factors cannot be considered. The results pertain only to the effect of experience as a whole in Vietnam and therefore shed no light specifically on the effects of exposure to Agent Orange.

(j) Constable and Hatch. *Reproductive effects of herbicide exposures in Vietnam.* Nine studies of the reproductive effects of exposure to Agent Orange were reported at a 1983 international symposium in Vietnam but remain unavailable in published form. The review of these reports shows numerous epidemiological defects including inadequate and unreliable data, lack of appropriate baseline data, selection biases, and confounding variables. Constable and Hatch concluded, however, that potential herbicide exposure of the father may be associated with an increase in various congenital defects and that exposure of the mother may be associated with hydatidiform mole.

Comment: The recognized defects in all these studies and the inaccessibility of the data make it impossible to give credence to them. The reported effects of the father's exposure are in direct contrast to the results of better performed studies in the United States and Australia. No credence can be given to the Vietnamese findings.

(k) Environmental Protection Agency. *Health Assessment Document for Polychlorinated Dibenzo-p-dioxins.* This 1985 review of various cases, reports and published epidemiological studies concentrated on the association of exposure to dioxins and substances containing them with such effects as soft-tissue sarcoma, porphyria cutanea tarda, metabolic disturbances, lymphomas, and stomach cancer. The authors concluded that there is "a strong suggestion that phenoxyacetic acid herbicides, chlorophenols, or their impurities are carcinogenic in humans" but "there is less evidence incriminating 2,4,5–T and/or 2,3,7,8–TCDD as the cause of malignant lymphoma and stomach cancer in humans."

Comment: The review is now outdated. The EPA has modified its beliefs in the carcinogicity of 2,3,7,8–TCDD and is now less certain of the association. The review has been criticized by experts for its "almost advocacy tone" and, in any event, it does not present data unreported elsewhere.

(l) Hall. *The Agent Orange controversy after the Evatt Royal Commission.* The Evatt Royal Commission of the Australian Parliament issued in 1985 its "Report on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam." The nine-volume report gives details of a two-year investigation into the "standard of proof" used in judging the effects of chemical agents; exposure data; toxicological results; general health effects; reproductive outcomes; cancer; and mental well-being, as well as mortality in a broad sense. The Commission concluded that Australian veterans were not exposed to toxic levels of chemicals, including Agent

Orange, in Vietnam and had no increased risk of fathering children with birth defects nor of developing cancer. Vietnam veterans had slightly increased rates of psychiatric disorders, heart disease, alcoholism and alcohol-related diseases but these effects were not attributed to exposure to chemicals in Vietnam.

Comment: This summary emphasizes the lack of evidence to support claims made by Vietnam veterans that their health has been impaired by exposure to Agent Orange and other chemicals in Vietnam. It does not contribute new data nor does it present in detail the evidence collected by the Royal Commission.

(m) Hatch and Stein. *Agent Orange and risks to reproduction.* The authors review critically the studies published regarding the effect of service in Vietnam on the likelihood of veterans fathering defective children or having other reproductive defects. The studies considered include those of the Australian Government, the Centers for Disease Control, and the Air Force. After examining the data with various analytical techniques to evaluate the "strength of association," specificity, consistency, and coherence as well as the results of animal investments, the authors conclude that for the majority of men exposed to Agent Orange there is no evidence of even a moderately increased risk of fathering a defective child. They believe that epidemiology cannot make further contributions to establishing or refuting a causal connection.

Comment: No previously reported data are presented in this review and its conclusions neither support nor refute claims for a causal relation or even an association between a veteran's exposure to Agent Orange and his risk of fathering a defective child.

(n) Kang et al. *Soft tissue sarcomas and military service in Vietnam.* The VA's Patient Treatment File contains information, including diagnoses, on all patients discharged from VA hospitals. All cases diagnosed as soft tissue sarcomas from 1969 through 1983 were identified and medical records were examined to verify the diagnoses. The 234 patients verified were compared to 13,496 randomly selected patients with other diagnoses; all had military service during the Vietnam era. The military records of the veterans were examined to determine service in Vietnam; 38 percent of the sarcoma patients and 41 percent of the control group had Vietnam service. Such service, therefore, had no increased association with the occurrence of soft tissue sarcomas. It was also noted that the relative incidence of the sarcomas was constant over the years in which the patients were discharged from the hospital. Exposure to Agent Orange or other specific hazards was not determined.

Comment: The authors recognize limitations of the study, especially the short time between discharge from service and hospitalization for the soft tissue sarcoma in many cases. Selecting the study cases exclusively from patients in VA hospitals may allow selection bias. At best the results allow only conclusions as to the lack of association between Vietnam service and soft tissue sarcomas without reference to Agent Orange exposure as a determining factor.

(o) MacMahon. *Review of Hoar et al. and related literature.* Brian MacMahon, M.D., Ph.D., at the request of the EPA critically reviewed the 1986 paper by Hoar, Blair, et al. (See c. above) and some related publications. The author described the study as "carefully and competently carried out" with a "strong and statistically significant risk of non-Hodgkin's lymphoma with increasing frequency of herbicide use" (predominantly uracil and phenoxyacetic acids) but weak association with the years of use. He ponted out several discrepancies in the results but concluded that taken alone the Kansas "study would stand as a good basis for the hypothesis that the risk of non-Hodgkin's lymphoma is increased by agricultural exposure to phenoxyacetic acids—principally 2,4–D—and perhaps other herbicides." The results, however, do not establish association between exposure and lymphomas. Other studies weaken even the basis for an hypothesis.

Comment: The expert review supports the conclusion that the paper by Hoar et al. does not establish an association between exposure to the ingredients, especially 2,4–D, of Agent Orange and non-Hodgkin's lymphoma. The Hoar study does provide the basis, rather than proof, of such an hypothesis.

(p) Patterson et al. *2,3,7,8-Tetrachlorodibenzo-p-dioxin levels in adipose tissue of exposed and control persons in Missouri.* Fat samples were obtained for 39 volunteers with a history of exposure to TCDD. They had lived for two years or longer in or near an area where soil levels of TCDD measured 20 to 100 parts per billion or for six months where the levels were greater than 100 ppb; had ridden or cared for horses at least every week in contaminated horse arenas; or had worked in hexachlorophene production or in areas sprayed with dioxin-containing wastes. The control group of 57 persons were patients undergoing elective surgery and with no known exposures to TCDD. Most control patients had 8 or less parts per trillion in their fat; their arithmetic mean was 7.4 ppt. of TCDD; none had more than 20 ppt. In contrast 19, or 49 percent, of exposed persons had levels exceeding 20 ppt. and one reached 750 ppt.; the arithmetic mean of the group was 90.8 ppt.

Comment: The results of this study agree with those of earlier investigations that TCDD can be detected in the fat of individuals who have had no known exposure to the chemical. Elevated levels of the chemical are found in individuals with known exposure even years after the contact and may serve as an indicator of exposure to TCDD. A quantitative relationship between the intensity of exposure is suggested by the fact that five of the six individuals with levels exceeding 100 ppt. had been involved in the manufacture of hexacholorphene which had contained TCDD. The complexity of the assay and the necessity for an operation to obtain the fat sample restrict the procedure to use as a research tool. No information is included in the report as to the health status of individuals with high TCDD levels.

(q) Pearn. *Herbicides and congenital malformations.* A review of the toxicology and teratogenicity in animals and man supports the opinion that 2,4–D and 2,4,5–T are of low toxicity and teratogenicity in primates. 2,3,7,8–TCDD is highly teratogenic in rodents and 2,4–D is less so. Epidemiological data, however, indicate only slight toxicity and no firm evidence of teratogenicity or other reproductive toxicity in humans for 2,3,7,8–TCDD or the phenoxyacetic herbicides.

Comment: The review presents no new data and no basis for recommending changes in VA policy.

(r) Webb. *The diagnosis of dioxin-associated illness.* A review of published material leads to the statement that acute exposure to 1,000 parts per billion of 2,3,7,8–TCDD may cause chloracne, abnormally increased urinary porphyrins, and porphyria cutanea tarda. Increased porphyrin excretion has been said to persist for several years after exposure. Less specific effects of abnormal liver function, peripheral neuropathy, hyperlipidemia, weakness, and depression have been reported for a few months after exposure. Long-term effects after exposure to small amounts of TCDD cannot be evaluated.

Comment: No new facts or interpretations are presented by the review. The reported acute effects occurred at exposure levels of TCDD

(1,000 ppb) far in excess of any suspected for ground troops in Vietnam. The review, therefore, provides no basis for changes in VA policy.

(s) West and Leon. *Health needs of the Vietnam veteran exposed to Agent Orange.* An uncritical review of a part of the information and some misinformation about the exposure of military personnel in Vietnam to Agent Orange and its supposed effects provides the basis for suggesting actions of nurse practitioners caring for Vietnam veterans. It urges the nurses to become familiar with "the signs and symptoms of toxic chemical exposure" and to learn the available facilities and testing procedures relevant to care of such veterans and their families.

Comments: No new data are given in the review and it presents no basis for change in VA policy or procedures.

(t) Wolfe et al. *An epidemiological investigation of health effects in Air Force personnel following exposure to herbicides.* The fourth annual mortality report of data for the Ranch Hand group and the comparison cohort are not extensively analyzed since only 4 of the former and 27 of the latter died during the year. Prior to 12/13/85, 4.7 percent of the Ranch Handers and 5.1 percent of the comparison cohort had died, a statistically insignificant difference between the groups. There was no evidence for an increased incidence of one or more causes of death suggestive of an effect from exposure of the Ranch Handers to Agent Orange.

Comment: Data from the study of Ranch Handers is the most relevant information available as to possible health effects of exposure to Agent Orange. This interim report on mortality provides no evidence of an adverse effect and no basis for changing VA policy.

(u) Woods et al. *Soft tissue sarcoma and non-Hodgkins lymphoma in relation to phenoxy herbicide and chlorinated phenol exposure in Western Washington.* Detailed occupational histories of 128 soft tissue sarcoma patients, 576 non-Hodgkins's lymphoma patients and 694 individuals without cancer provide the data for a population-based case-control study of casual factors for the two malignancies. The samples were composed of men, aged 20 to 79 diagnosed between 1981 and 1984 in western Washington, an area where agriculture and forestry are common occupations. Any past exposure to phenoxy herbicides was associated with a relative risk of 0.80 for soft tissue sarcoma and of 1.07 for non-Hodgkin's lymphoma. Exposure to chlorophenol gave relative risks of 0.99 for both malignancies. These represent no significant changes from the expected prevalence of non-Hodgkin's lymphoma nor was there an increased risk related to the duration or intensity of exposure and none to contact with a specific phenoxy herbicide. Farmers and forestry herbicide applicators, however, had relative risks of 1.33 and 4.80, respectively, of developing lymphoma. Men exposed to phenoxy herbicides for at least 15 years during a period 15 years before diagnosis had a relative risk of 1.71. These risks are significantly increased but so are those following exposure to other substances such as DDT and organic solvents. While the results indicate that prolonged exposure to phenoxy herbicides increases slightly the risk of developing non-Hodgkin's lymphoma, they provide no evidence of an association with soft tissue sarcoma.

Comment: This study was well designed and executed but it has the limitations inherent in epidemiological research. It does contribute evidence that there is no association between phenoxy herbicides and soft tissue sarcomas and provides evidence that a long continued exposure to phenoxy herbicides, which include the two principal ingredients of Agent Orange, slightly increases the risk of developing non-Hodgkin's lymphoma.

Summary Comments and Conclusions:

In arriving at conclusions regarding the risk of health defects attributable to exposure to Agent Orange, consideration has been given to the studies commented on by the mandated VA Advisory Committee on Environmental Hazards and listed above. Other research reported in the *Review of Literature on Herbicides, Including Phenoxy Herbicides and Associated Dioxins,* especially in volumes IX and X, has influenced the decisions as well. More recent research which will be reported in further reviews to be published by the Veterans Administration in the **Federal Register** provides information that influences current opinions. The Centers for Disease Control has developed data indicating that dioxin can be found at levels below 20 parts per trillion in the blood of a considerable proportion of people never exposed to Agent Orange and that the blood concentration correlates well with the concentrations found in fat. Dioxin persists in elevated concentrations in the blood of many Ranch Hand veterans; the blood of Vietnam veterans who served as ground troops has shown no evidence of concentrations higher than those of individuals who are known not to have been exposed to Agent Orange. These results are not in conflict with the dioxin content found in the fat of the two categories of Vietnam-era veterans. They strongly suggest that ground troops in Vietnam has little or no contact with Agent Orange, contact that would have resulted in an increased content of dioxin in their fat and blood.

At present, it is concluded that:

(1) The long interval since Vietnam service (in excess of 13 years at present) precludes the appearance today of acute effects from exposure to Agent Orange or its dioxin contaminant.

(2) Evidence to date has not supported the belief that service in Vietnam has significantly jeopardized the health or longevity of veterans except during the first five years after the conflict and in the occurrence of drug abuse.

(3) The long latency of various cancers could result in their increased incidence as delayed consequence of exposures in Vietnam. Evidence for association between exposures to phenoxy herbicides, including Agent Orange, or the contaminant 2,3,7,8-TCDD and malignancies remains conflicting or absent, however. Soft tissue sarcomas were postulated to be causally related to phenoxy herbicides but recent evidence has not supported the hypothesis. Association of herbicide exposure and non-Hodgkin's lymphoma was also postulated; recent evidence is conflcting and suggests that any causal effect is weak. At present, it does not warrant a change in the VA finding of no proved role for Agent Orange as a causal factor.

(4) Mounting evidence against significant exposure of ground troops to Agent Orange makes its role in the health of Vietnam veterans questionable.

[FR Doc. 88-23287 Filed 10-7-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 196
Tuesday, October 11, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, October 13, 1988, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. ATV Voluntary Standard

The staff will brief the Commission on the proposed voluntary standard for all-terrain vehicles developed under the provisions of the Consent Decrees in *United States v. American Honda Motor Co., Inc et al.*, Civil Action No. 87-3525.

2. FY 89 Operating Plan

The staff will brief the Commission on issues related to the Operating Plan for fiscal year 1989

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

October 5, 1988.

[FR Doc. 88-23438 Filed 10-6-88; 12:20 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, October 4, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a recommendation regarding the Corporation's assistance agreement with an insured bank.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of (1) a recommendation regarding the Corporation's assistance agreement with an insured bank; and (2) a recommendation concerning certain delegations of authority with respect to a merger-type transaction.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(2), (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 5, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-23400 Filed 10-6-88; 10:58 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Committee on Employee Benefits

TIME AND DATE: 4:30 p.m., Thursday, October 13, 1988.

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. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific items include: (A) Budget review of the Office of Employee Benefits; and (B) issues regarding the operations review of the Office of Employee Benefits.

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.

Date: October 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-23401 Filed 10-6-88; 10:58 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., October 17, 1988.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of last meeting.
2. Thrift Savings Plan activities report by Executive Director.
3. Review of the loan program.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, or Catherine Ball, Deputy Director, Office of External Affairs, (202) 523-5660.

Date: October 5, 1988.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 88-23415 Filed 10-6-88; 10:20 am]

BILLING CODE 6760-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation; Public Hearing

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Board of Directors of the Overseas Private Investment Corporation (OPIC) on November 16, 1988. This hearing is required by the OPIC Amendments Act of 1985, and this notice is being

published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

DATE: The hearing will be held on November 16, 1988 and will begin promptly at 1:00 p.m. Prospective participants must submit to OPIC on or before October 31, 1988 notice of their intent to participate.

ADDRESS: The location of the hearing will be: Interstate Commerce Commission, Hearing Room A, 12th Street and Constitution Avenue, NW., Washington, DC.

Notices and prepared statements should be sent to James R. Offutt, Office of General Counsel, Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC. 20527.

(1) PROCEDURE

(a) Attendance; Participation. The hearing will be open to the public. However, a person wishing to present his or her views at the hearing must provide OPIC with advance notice on or before October 31, 1988. The notice must include the name, address and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) Prepared Statements. Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5:00 p.m. on November 7, 1988. Prepared statements must be typewritten, double spaced and may not exceed twenty-five (25) pages.

(c) Duration of Presentations. Oral presentations will in no event exceed twenty (20) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) Agenda. Upon receipt of the required notices, OPIC will draw up an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) Publication of Proceedings. A verabatim transcript of the hearing will be compiled and published. The transcript will be available to members of the public at the cost of reproduction.

(2) SUPPLEMENTARY INFORMATION:

OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries for projects which confer positive developmental benefits upon the project country while avoiding negative effects on the U.S. economy. OPIC's Board of Directors is required by section 231 A(b) of the Foreign Assistance Act of 1961, as amended ("the Act") to hold at least one public hearing each year.

Among other issues, OPIC's annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be "taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country (including any designated zone in that country)."

By prior agreement with Congress, OPIC complies with annual determinations made by the Executive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences (GSP). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognized worker rights is subject concurrently to the suspension of OPIC programs.

For non-GSP countries in which OPIC operates its programs, OPIC has agreed to provide a report to the Congress for any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the worker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (Pub. L. 99–204) with reference to the Trade Act of 1974, as amended, and be supported by factual information.

FOR FURTHER INFORMATION ABOUT THE PUBLIC HEARING CONTACT: James R. Offutt, Office of General Counsel, Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC 20527 (202) 457–7036.

Margaret A. Kole,

Corporate Secretary.

October 6, 1988.

[FR Doc. 88–23442 Filed 10–6–88; 12:42 pm]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [53 FR 38137 September 29, 1988].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC

DATE PREVIOUSLY ANNOUNCED: Monday, September 26, 1988.

CHANGE IN THE MEETING: Deletion.

The following item will not be considered at an open meeting on Friday, October 7, 1988, at 10:00 a.m.

Consideration of whether to publish for comment a release proposing alternative versions of new Rule 144A that would provide a safe harbor from the registration requirements of the Securities Act of 1933 for resale of securities to institutional investors. Additionally, the Commission will consider whether to publish for comment a proposal to amend Rules 144 and 145 under the securities Act, under which the holding period for restricted securities would commence at the time the securities are sold by the issuer or its affiliate. For further information, please contact Sara Hanks or Samuel Wolff at (202) 272–3246, or as to changes to Rules 144 and 145, Catherine Dixon at (202) 272–2573.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contract: Max Berueffy at (202) 272–2400.

Jonathan G. Katz,

Secretary.

October 5, 1988.

[FR Doc. 88–23439 Filed 10–6–88; 12:43 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 11, 1988.

Closed meetings will be held on Wednesday, October 12, 1988, at 2:30 p.m. and on Thursday, October 13, 1988, following the 1:30 p.m. open meeting.

Open meetings will be held on Thursday, October 13, 1988, at 1:30 p.m. and on Friday, October 14, 1988, at 9:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for

the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i), and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Wednesday, October 12, 1988, at 2:30 p.m., will be:

Institution of injunctive action.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matter regarding financial institution.
Report of investigation.
Opinion.

The subject matter of the closed meeting scheduled for Thursday, October 13, 1988, following the 1:30 p.m., open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Thursday, October 13, 1988, at 1:30 p.m., will be:

The Commission will hear oral argument on an appeal by Louis R. Trujillo from an administrative law judge's initial decision. For further information, please contact Daniel J. Savitsky at (202) 272-7400.

The subject matter of the open meeting scheduled for Friday, October 14, 1988, at 9:00 a.m., will be:

1. Consideration of whether to propose for public comment Rule 6c-10 under the Investment Company Act of 1940 ("Act") and amendments to Form N-1A under the Securities Act of 1933. Rule 6c-10 would provide a registered open-end management investment company, other than a registered insurance company separate account, ("fund") and certain related persons, with exemptions from several provisions of the Act to permit the fund to impose sales loads on a deferred basis. The amendments to Form N-1A, the registration statement for funds, would modify that form to accommodate the deferred sales loads that would be permitted if rule 6c-10 is adopted. For further information, please contact Rochelle G. Kauffman at (202) 272-2038.

2. Consideration of whether to publish for comment a release proposing alternative versions of new Rule 144A that would provide a safe harbor from the registration requirements of the Securities Act of 1933 for resale of securities to institutional investors. Additionally, the Commission will consider whether to publish for comment a proposal to amend Rules 144 and 145 under the Securities Act, under which the holding period for restricted securities would commence at the time the securities are sold by the issuer or its affiliate. For further information, please contact Sara Hanks or Samuel Wolff at (202) 272-3246, or as to changes to Rules 144 and 145, Catherine Dixon at (202) 272-2573.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Amy Kroll at (202) 272-2092.

Jonathan G. Katz,

Secretary.

October 5, 1988.

[FR Doc. 88-23440 Filed 10-6-88; 12:43 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 196
Tuesday, October 11, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 88-22583 beginning on page 38725 in the issue of Monday, October 3, 1988, make the following corrections:

On page 38726, in Table 1, in the third column, the third entry should read "708,520", and in the fourth column, the third entry should read "+473".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-940-08-4220-11; NM NM 012317]

Proposed Continuation of Withdrawal; New Mexico

Correction

In notice document 88-21616 beginning on page 36903 in the issue of Thursday, September 22, 1988, make the following corrections:

1. On page 36903, in the second column, under **ADDRESS**, in the third line, "97504-1449" should read "87504-1449".

2. On the same page, in the same column, under *Agua Piedra Winter Sports Area and Campground (formerly Agua Piedra Sports Area)*, in the second line, "Sec. 4" should read "Sec. 14".

3. On the same page, in the same column, under *Comales Campground (formerly Comales Forest Camp)*, in the third line, "NE¼NE¼N½SE¼NE¼," should read "NE¼NE¼,N½SE¼NE¼,".

4. On the same page, in the third column, under *Mallette Canyon Campground and Bitter Creek Summer Home Site (formerly Mallette Canyon Public Service Site)*, the fourth line should read "Sec. 25, NW¼NW¼NE¼, E½NW¼,".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums

Correction

In proposed rule document 88-22865 beginning on page 39200 in the issue of Wednesday, October 5, 1988, make the following corrections:

1. On page 39202, in the first column, in the first complete paragraph, in the ninth line, "purposes" should read "proposes".

2. On the same page, in the same column, in the third paragraph, in the 10th line, after "preceding" insert "plan".

3. On page 39204, in the third column, in the second paragraph, in the first line, "§ 2610.22(a)(3)(vi)" should read "§ 2610.22(a)(3)(iv)".

§ 2610.8 [Corrected]

4. On page 39208, in the second column, in § 2610.8(b)(1), in the eighth line, "had" should read "and".

5. On the same page, in the third column, in § 2610.8(b)(4)(iii), in the sixth line, after "applicable" insert a comma.

6. On the same page, in the same column, in § 2610.8(b)(5), in the fifth line, "to" should read "no".

§ 2610.23 [Corrected]

7. On page 39211, in the first column, in § 2610.23(c)(2), the equation should read:

$$VB_{adj} = VB_{sd(i)} \times .94^{(RIR - BIR)} + VB_{sd(ii)} \times .94^{(RIR - BIR)} \times [(100 + BIA)/(100 + RIR)]^{(ARA - 50)}; \text{ where —}$$

8. On the same page, in the third column, in § 2610.23(d)(1), in the seventh line, "41(b)(3)(B)" should read "412(b)(3)(B)" and "attributable" was misspelled.

§ 2610.25 [Corrected]

9. On page 39212, in the third column, in § 2610.25(f), in the 11th line, remove the first "as".

§ 2610.34 [Corrected]

10. On page 38214, in the first column, in § 2610.34(a)(6)(ii), in the fourth line, after "section" insert a comma.

11. On the same page, in the third column, in § 2610.34(a)(9)(iv)(a), in the fourth line, "eighth" was misspelled.

12. On page 39215, in the second column, in § 2610.34(e), in the seventh line, "(a)(3), or" should read "(a)(3) or".

Note: For a Pension Benefit Guaranty Corporation correction to this document see the Proposed Rules section of this issue.

BILLING CODE 1505-01-D

federal register

Tuesday
October 11, 1988

Part II

Environmental Protection Agency

40 CFR Part 264

Statistical Methods for Evaluating Ground-Water Monitoring From Hazardous Waste Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 264

[FRL-3356-2]

Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA regulations, promulgated under the Resource Conservation and Recovery Act (RCRA), require ground-water monitoring to detect contamination of ground water at permitted hazardous waste land disposal facilities (40 CFR § 264.90 et seq. Part 264 Subpart F). These regulations specify that a statistical method must be used to evaluate the presence or increase of contamination. Due to problems associated with the use of Cochran's Approximation to the Behrens–Fisher Student's t-test (CABF) as such as statistical method, EPA proposed amendments to the Part 264 Subpart F regulations on August 24, 1987 (52 FR 31948). These amendments, which EPA is today finalizing, specify five different statistical methods that are more appropriate to ground-water monitoring than the CABF method. The amendments finalized today also outline sampling procedures and performance standards that are designed to help minimize the event that a statistical method will indicate contamination when it is not present (Type I error), and fail to detect contamination when it is present (Type II error).

DATE: These final regulations become effective April 11, 1989, pursuant to RCRA section 3010(b).

ADDRESSES: The official docket for this rulemaking (Docket No. F–88–SGWF–FFFFF) is located in Room MLG100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. The public must make an appointment to review docket materials. Call (202) 475–9327 for appointments. The public may copy a maximum of 100 pages of docket materials at no cost. Additional copies cost $.15/page.

FOR FURTHER INFORMATION CONTACT: For general information contact: RCRA/Superfund Hotline, Office of Solid Waste (WH–563C), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (800) 424–9346 or (202) 382–3000. For technical information contact Jim Brown, (202) 382–4658.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are issued under the authority of sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act (SWDA), as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (42 USC 6905, 6912(a), 6924, and 6925).

II. Background

Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards established by EPA that are "necessary to protect human health and the environment." Section 3005 provides for implementation of these standards under permits issued to owners and operators by EPA or authorized States. Section 3005 also provides that owners and operators of existing facilities that apply for a permit and comply with applicable notice requirements may operate until a permit determination is made. These facilities are commonly known as "interim status" facilities. Owners and operators of interim status facilities also must comply with standards set under section 3004.

EPA promulgated ground-water monitoring and response standards for certain land-based interim status facilities in 1980 (45 FR 33232, May 19, 1980), codified in 40 CFR Part 265, Subpart F, and permitted facilities in 1982 (47 FR 32274, July 26, 1982), codified in 40 CFR Part 264, Subpart F. These standards establish programs for protecting ground water from releases of hazardous wastes from certain landfills, surface impoundments, and land treatment units, and, in the case of permitting standards, to waste piles as well. (See 40 CFR 264.90(a)(2) and 265.90(a)). Facility owners and operators are required to sample ground water at specified intervals and to use a statistical procedure to determine whether or not hazardous wastes or constituents from these units are contaminating ground water. As explained in more detail below, the Subpart F regulations regarding statistical methods used in evaluating ground-water monitoring data have generated criticism. EPA is today finalizing amendments to the Part 264 Subpart F regulations governing statistical methods for RCRA permitted facilities proposed August 24, 1987 (52 FR 31948) to respond to these concerns. Due to the fact that most interim status land disposal facilities are expected to receive RCRA permits by November 1988, EPA is not amending the Part 265 Subpart F regulations governing statistical methods at interim status facilities.

A. Concerns About Existing Standards

The current Part 264 regulations provide that the Cochran's Approximation to the Behrens Fisher Student's t-test (CABF) or an alternate statistical procedure approved by EPA be used to determine whether there is a statistically significant exceedance of background levels, or other allowable levels, of specified chemical parameters and hazardous waste constituents. Although the existing 40 CFR Part 264 regulations have always provided latitude for the use of an alternate statistical procedure, concerns have been raised that the CABF statistical procedure in the current regulations may not be appropriate to ground-water monitoring. It has been pointed out that: (1) The replicate sampling method required under the current Part 264 Subpart F regulations is not appropriate for the CABF procedure, (2) the CABF procedure does not adequately consider the number of comparisons that must be made under these regulations, and (3) the CABF does not control for seasonal variation. Specifically, the concerns are that the CABF procedure could result in "false positives" (Type I error), instances where contamination is falsely indicated at the site. False positives may require an owner or operator unnecessarily to collect additional ground-water samples, to

further characterize ground-water quality, and to apply for a permit modification to begin more comprehensive monitoring or corrective action. This permit modification is then subject to EPA review. In addition, there is concern that the CABF procedure may result in "false negatives" (Type II error), i.e., instances where actual contamination goes undetected. The CABF procedure may result in false negatives when the background data, which are often used as the basis of the statistical comparisons, are highly variable due to temporal, spatial, analytical, and sampling effects.

B. Suggested Changes Published in NPRM

As a result of these concerns, EPA is amending both the statistical method and the sampling procedures of the regulations, by requiring (if necessary) that owners or operators more accurately characterize the hydrogeology and potential contaminants at the facility, and by including in the regulations performance standards which all the statistical methods and sampling procedures must meet. Statistical methods and sampling procedures meeting these performance standards should have a low probability of indicating contamination when it is not present and of failing to detect contamination that actually is present.

III. Public Comments on the NPRM

A. Comments Solicited by EPA

In a notice of proposed rulemaking (NPRM) issued on August 24, 1987 (52 FR 31948), EPA solicited comments on alternative statistical methods to the CABF method as well as general information that would help evaluate approaches to determining if a facility is contaminating the ground water.

1. Power of a Statistical Test

EPA first invited comments on the issue of whether the power of a statistical test should be specified numerically. In the NPRM, however, EPA stated that it was its view that a set of specific numerical performance standards that would achieve the proper balance between false positives and false negatives is not possible because it would involve specifying every possible minimum magnitude of difference for each contaminant at each site. This requires specifying concentration level changes at each site to which the statistical test must be sensitive. This is not possible due to the current state of knowledge about ground-water contamination.

A consensus of the commenters acknowledged this difficulty. Once commenter offered an excellent summary of the problems associated with setting a numerical performance standard: "The power of a statistical test is not a value, but a function involving sample sizes, sampling plans, the statistical models on which the test is based, the Type I error level, the inherent variability and correlation structure of the measurements, and the amount of increase in the level of the constituent at which the power is evaluated."

However difficult to quantify, the Agency agrees with the consensus of the respondents that the power of a statistical test can be improved by a variety of methods, such as adequately characterizing the hydrogeology and the fate and transport characteristics of potential contaminants at the site, properly locating monitoring wells, increasing sample sizes, and reducing measurement variability by using proper analytical, quality control, and quality assurance procedures. Therefore, rather than endorsing a set of specific numeric standards that specify the power of a statistical test, EPA is encouraging a systems approach to ground-water monitoring as reflected in the performance standards (§ 264.97(i)) and other components of today's final rule.

2. Methods to Analyze Below Detection Limit Data

EPA also invited public comment on the methods available for analyzing data where the background level of a constituent is either below the detection limit of the analytical method used or is recorded as a trace level of the constituent. This problem is often encountered with (although not limited to) synthetic organic compounds (e.g., volatile and semivolatile organic compounds). Many of these compounds do not occur naturally in ground water, and therefore are not detected during background sampling. This makes comparing downgradient (compliance well) concentrations with background levels of these compounds especially dificult.

Several commenters requested EPA to consider establishing national baseline values for compounds that do not occur naturally in ground water, and as a result are frequently recorded as below the limit of analytical detection in background monitoring wells. Specifically, the commenters suggested that EPA conduct a round-robin study involving several different certified chemical laboratories to establish national baseline values for these compounds.

The Appendix IX rule (52 FR 25942, July 9, 1987) listed practical quantification limits (pql's) that were established from "Test Methods for Evaluating Solid Waste" (SW–846). SW–846 is the general RCRA analytical methods manual, currently in its third edition. The pql's listed were EPA's best estimate of the practical sensitivity of the applicable method for RCRA ground-water monitoring purposes. However, some of the pql's may be unattainable because they are based on general estimates for the specific substance. Furthermore, due to site-specific factors, these limits may not be reached. For these reasons the Agency feels that the pql's listed in Appendix IX are not appropriate for establishing a national baseline value for each constituent for determining whether a release to ground water has occurred. Instead, the pql's are viewed as target levels that chemical laboratories should try to achieve in their analyses of ground water. In the event that a laboratory cannot achieve the suggested pql, the owner or operator may submit a justification stating the reasons why these values cannot be achieved (e.g., specific instrument limitations). After reviewing this justification, the Regional Administrator may choose to establish facility-specific pql's based on the technical limitations of the contracting laboratory.

Thus EPA is today clarifying § 264.97(h) to allow owners or operators to propose facility-specific pql's. These pql's may be used with the statistical methods listed in § 264.97(h) (e.g., nonparametric ANOVA), to comply with § 264.97(i)(5) upon approval of the Regional Administrator. In addition, EPA is also adding language to § 264.97(i)(5) to state that any pql approved by the Regional Administrator must be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

EPA believes it to be necessary that the owner or operator utilize a statistical method to account for data below the detection limit of the analytical method used. Although several commenters submitted methods which could be specified in the regulations, EPA believes that no single method is appropriate at all facilities. Accordingly, EPA believes it is necessary to evaluate the appropriateness of each method on a case-by-case basis. The fifth performance standard of today's final rule, found at § 264.97(i)(5), reflects this belief by requiring that the statistical

method chosen include procedures to evaluate data that is below the limit of analytical detection. Statistical methods that are commonly applied use tests of proportions, prediction and tolerance intervals, and procedures which characterize censored data distributions. Examples of these methods will be provided in a guidance document which will be available later this year.

3. Establishing Background Concentrations With Downgradient Wells

EPA also sought comments on the utility of allowing the use of samples from downgradient wells to establish background concentrations at newer units that have had no opportunity to contaminate the ground water and that are located in areas with little potential to be influenced by external sources unrelated to the unit. Four commenters addressed this issue and supported the Agency's proposal to use downgradient wells to establish background concentrations of constituents in selected circumstances.

EPA realizes that this option is not a new feature of the Part 264 Subpart F regulations (see previous § 264.97(g)(3)). EPA believes that discussion of this option in this rulemaking is appropriate because of the emphasis in today's regulations on choosing statistical methods and sampling procedures appropriate for individual facilites. Using downgradient wells to establish background concentrations reduces some of the components of spatial variability for any statistical method employed. In addition, unlike the CABF method, the control chart statistical method specified in today's amendments can accommodate intra-well comparisons. An intra-well comparison is a method that establishes background concentrations from an individual well, and compares future monitoring data obtained from the well to its own background concentration. An intra-well comparison method is necessary if downgradient wells are to be used to establish background concentrations.

B. Other Issues

Other comments on the NPRM were received from the public on a wide variety of issues raised by the proposal, some of which are discussed below. These comments and the Agency's formal responses are available through the official docket for this rulemaking.

1. Guidance Document

Many commenters addressed the fact that the Agency did not make available its planned guidance document on statistical methods during the comment period on the NPRM. The respondents stated that more details on the proposed statistical methods and procedures for handling censored data, correlations, and seasonal variation were needed before complete comments could be given. However, EPA requested comments on the regulation and not on specific protocols of the statistical methods. Therefore, a guidance document detailing the statistical methods should not have been necessary to review the NPRM. However, a draft guidance document addressing these concerns will be issued after finalization of this rule.

2. Data Distribution Assumptions

Commenters also addressed the assumptions made in the first performance standard, or § 264.97(i)(1) of the proposed rule, concerning the distribution of data. As written, this proposed performance standard assumed that the data obtained through ground-water monitoring are normally distributed at all sites. Proposed § 264.97(i)(1) required that a goodness of fit test be conducted to demonstrate that the normal distribution assumption is not appropriate to the data. Some respondents suggested that owners and operators be required to justify the normal distribution of their data, just as they are required to justify a different data distribution (e.g., lognormal, non-normal, etc.) under the proposed performance standard. Others commented that it would be more reasonable to assume a lognormal distribution. Still others suggested that EPA should replace the assumption of normality with a requirement that the statistical method, including any preliminary transformations, be appropriate for the background data or data expected on the basis literature.

EPA is retaining the assumption of normality in the data distribution in today's final rule (§ 264.97(i)(1)) because many of the statistical procedures cited in the regulation are robust for data that, while not normally distributed, do not significantly violate the normal distribution assumption. Thus EPA believes it is reasonable to assume normality of data and to only require demonstrations where the owner or operator wishes to use a distribution-free theory test. The statistical test will be appropriate for most data under this assumption and the owner or operator will not in all cases be required to go through the extra step of determining the distribution of ground-water data. The regulation's first performance standard provides that the owner or operator may use a distribution-free theory test or a transformation, provided he or she demonstrates that the data are inappropriate for a normal theory test. EPA requires this showing to prevent increases in the Type II error rate, a possible result of using distribution-free theory tests or transformations in inappropriate circumstances. When the Type II error rate increases, environmentally significant contamination may go undetected. A demonstration of a data distribution may include both graphics and literature as well as the conventionally used statistical methods.

3. Obligation of Owner/Operator to Propose Statistical Methods and Sampling Procedures

Some commenters opposed a provision in the proposed rule stating that the Regional Administrator is responsible for specifying the sampling procedures and frequencies, and the statistical methods that are required under § 264.97 (General Ground-Water Monitoring Requirements). The commenters stated that the regulated party, not the Regional Administrator, should be responsible for designing and proposing the statistical methods and sampling procedures. EPA agrees that it would be more effective to ask the owner or operator to undertake initial design of methods and procedures. Therefore, EPA has changed the language of §§ 264.97 (g) and (h) to require the owner or operator to propose a respective sampling procedure and statistical method which must then be approved by the Regional Administrator.

4. Data Variability and Sampling Procedures

Commenters also addressed the need for specific methods to handle correlated data (see autocorrelation in glossary) and the problems caused by temporal and spatial variation. EPA recognizes the possibility of the correlation of errors, and temporal and spatial variation affecting the data sets and believes that certain provisions in today's final rule enable owners and operators to reduce these sources of errors and control for data variability. Choosing an appropriate sampling interval that spans a sufficient amount of time to allow one to obtain an independent ground-water sample will help reduce the effects of autocorrelation. Under § 264.98(d) and § 264.99(f), owners and operators have the latitude to choose such an interval, provided that four samples are taken from each well at least semiannually.

Also, sampling both background and compliance wells at the same-point-in-time should reduce temporal effects. One-point-in-time comparison sampling is also allowed under § 264.98(d) and § 264.99(f), which require that all wells, background and compliance, be sampled during the specified sampling interval. The current regulations prevented owners and operators from performing one-point-in-time comparisons by requiring that background concentrations be established prior to the monitoring of compliance wells in detection and compliance monitoring. (See § 264.97(g).) To better characterize spatial variability, an owner or operator may wish to install and sample from multiple background and compliance wells. Additionally, if sufficient data are available, statistical procedures such as moving averages, in which a background value is established by continually updating the data, and trend analysis may be used to reduce seasonal and temporal effects.

5. Procedures at Interim Status Facilities

Some respondents requested that the same regulatory changes should be made in the Part 265 ground-water monitoring regulations for interim status facilities as were made for permitted facilities. They added that all the reasons for replacing the Student's t-test at a permitted facility apply with equal force at an interim status facility.

As discussed above this rule is expected to be finalized by September 1988, and to become effective six months after the date of promulgation, or March 1989. By November 1988, the majority of interim status land disposal facilities are expected to be either permitted or closed. In the event that a significant number of facilities are still operating after this date, EPA will assess the need to amend 40 CFR 265 as appropriate. The Agency recognizes that some facilities may be subject to interim status due to new listings of RCRA hazardous wastes. EPA intends to move expeditiously to permit these facilities so that they may take advantage of today's amendments to the statistical procedures at permitted facilities under Part 264.

6. Determining Background Concentrations

Determining the background concentration of constituents was another topic addressed by commenters. These commenters argued that the current regulation, which limits background determinations to data collected during a single year, is too restrictive. Section 264.97(g)(1) of the current regulations states that background ground-water quality for a monitoring parameter or constituent in detection monitoring must be based on data from quarterly sampling of background (or, in certain circumstances, compliance wells) for one year. EPA agrees with this position. As discussed above, EPA is therefore requiring that monitoring under § 264.98(d) and § 264.99(f) be performed at all wells, including background and compliance wells. Thus the background determination will not be limited to data collected during a single year prior to monitoring compliance wells as is currently set forth in § 264.98(g)(2). This will allow the mean concentration of a constituent to be used in one-point-in-time comparisons between background and compliance wells, or to be used to establish a "moving average" in the background well data base for comparison to the compliance well values at a frequency required in the facility permit.

EPA encourages owners and operators to determine the concentrations of a constituent in these samples through the use of one-point-in-time comparisons between background and compliance wells. Some facility owners or operators may want to use the concentrations to establish a "moving average" in the background well data base for comparison to the compliance well values at the frequency required in the facility permit. While using several background values to establish a "moving average" is an acceptable method of analysis, it increases the number of degrees of freedom, making this method more sensitive to changes in constituent concentrations. Further, this method does not account for seasonal variation as effectively as one-point-in-time comparison procedures. Therefore, most owners or operators should find one-point-in-time comparisons to be a preferred method of analysis. This approach will help reduce the components of seasonal variation by providing for simultaneous comparisons between background well and compliance well monitoring data.

7. Sampling Required by Proposed § 264.98(g)(2)

Many commenters were opposed to the provisions in proposed § 264.98(g)(2) for detection monitoring which required the owner or operator to, upon obtaining statistically significant evidence of contamination," sample the ground water in all monitoring wells at the waste management area of concern and determine if there is a statistically significant difference between the compliance and background levels for concentration of all constituents identified in Appendix IX of Part 264." The respondent's primary point of concern was that this provision would require extensive sampling and statistical analysis to determine background concentrations for all of the Appendix IX compounds prior to obtaining statistically significant evidence of contamination at a facility. Under the current regulation an owner or operator is required only to determine whether any Part 264 Appendix IX constituent is present, and at what concentration (§ 264.98(h)(2)). EPA has reviewed this requirement and has found it to be one of technical oversight. Therefore, acting in accordance with the comments received on this matter, EPA is replacing the proposed sections with the previously existing language of § 264.98(h)(2); that is "immediately sample the ground water in all monitoring wells and determine whether constituents identified in the list in Appendix IX of Part 264 are present and, if so, at what concentration."

8. Type I Experimentwise Error Rate

Many commenters addressed the second performance standard finalized in today's rule as § 264.97(i)(2). For individual well comparisons in which a compliance well is compared with background, § 264.97(i)(2) specified that the Type I error level shall be no less than 0.01 for each testing period. In other words, the probability of the test resulting in a false positive is no less than 1 in 100. EPA believes that this significance level will sufficiently limit the false positive rate and has retained this provision of the second performance standard in today's rule. Section 264.97(i)(2) also accounted for those owners and operators of facilities that have an extensive network of ground-water monitoring wells who find it more convenient to use a multiple well comparisons procedure. Multiple comparisons procedures control the experimentwise error rate for comparisons involving multiple background and compliance wells. Under today's final version of the second performance standard, if this method is used, the Type I experiment-wise error rate for each constituent shall be no less than 0.05 for each testing period. Here, the probability of the test resulting in a false positive is no less than 5 in 100. Again, EPA is limiting the Type I error rate for the purpose of controlling the Type II error rate. In the multiple well comparisons procedure, if the overall test is shown to be significant, then individual well contrasts are performed to identify

which differences are statistically significant. In conducting a multiple well comparisons procedure, if the owner or operator chooses to use a t-statistic rather than an F–statistic, the individual well Type I error level of no less than 0.01 must be maintained. This provision should be considered if a facility owner or operator wishes to use a procedure that distributes the risk of a false positive evenly among all monitoring wells and monitoring parameters at the facility. This is reflected in the second performance standard which requires that if a multiple comparisons procedure is used, the Type I error of no less than 0.01 for individual well comparisons must be maintained.

Several commenters expressed concern that in prescribing a Type I error rate of no less than 0.01 (0.05 for multiple well comparisons) this second performance standard would lead to high false positive rates. Owners and operators should note, however, changes in the language of § 264.97(i)(2) of today's final rule which specifies that this Type I error level applies per single testing period, not for the entire operating life of the facility. Multiple-unit facility owners and operators may generate a large number of comparisons due to the large number of wells at their facilities, and may potentially face a large number of false positives in their data evaluation. These owners and operators are encouraged to implement a unit-specific data evaluation approach if they wish to keep the overall false positive rate down to a lower level.

EPA realizes, however, that there still may be situations where facilities will generate large false positive rates, especially those that monitor for a large number of constituents over several monitoring wells. Here, if the owner or operator suspects that a detection is a false positive, he or she may wish to make a demonstration under § 264.98(g)(6) or § 264.99(i) of today's final rule.

In these cases, a determination of whether a leak has occurred may in many cases be based on the Regional Administrator's evaluation of the hydrogeology, geochemistry, climatic factors, and the relative magnitude of the concentration of the constituents along with the results of the statistical test. In evaluating the relative magnitude of the concentration of the constituents, for example, if the exceedance is based on an observed compliance well value that has the same relative magnitude as the practical quantification limits (pql) or the background level, the exceedance is more likely a false positive and further sampling and testing may be appropriate. If, however, the background or an action level is exceeded by an order of magnitude in any sample, then the exceedance may indicate a release from the facility.

Many commenters stated that it was hard to understand how to apply this second performance standard (especially the Type I error level of 0.01 for individual well comparisons) to control charts, tolerance intervals, and prediction intervals. Several commenters suggested that, in setting a Type I error level for control charts, EPA should be consistent with the research projects that were conducted by the Agency's laboratories. Specifically, the commenters requested that EPA utilize a combined Shewhart-CUSUM control chart scheme to evaluate ground-water monitoring data.

EPA agrees that § 264.97(i)(2), or the second performance standard, is not directly applicable to control charts, tolerance intervals and prediction intervals. Accordingly, the Agency is specifying in § 264.97(i)(2) that this performance standard does not apply to these three statistical methods. EPA would nevertheless like to retain these statistical methods and has therefore attempted to specify, in today's final rule, when their use is appropriate as well as applicable performance standards.

Control charts have been employed by industry for many quality control applications. Because of their widespread use, EPA is generally allowing their use as a statistical method for ground-water monitoring under § 264.97(h)(4), so long as they comply with the performance standard specified in § 264.97(i)(3). There are a variety of control charts available for applications to ground-water monitoring. Each procedure has different parameters that need to be specified based on various features of the data such as the mean, variance, sample size, decision interval value (h), reference value (k), and control limits. EPA does not believe it to be appropriate to specify numerical values for these parameters in a performance standard in today's final rule, because they are dependent on site-specific factors such as the constituents being monitored for and the facility's hydrogeology. Therefore, the Agency is requiring the owner or operator to propose values for these parameters that are appropriate for the type of control chart used. If the Regional Administrator finds the type of control chart and the associated parameters to be appropriate for the facility that proposed them and protective of human health and the environment, then he or she will approve and include them in the facility's operating permit. This is reflected in the third performance standard of today's final rule.

In evaluating the control chart, the owner or operator should also consider ther average run lengths, in and out of control, before a decision regarding a suspected release is made. Guidance addressing control charts will be issued after finalization of this rule.

Tolerance intervals and prediction intervals have not been widely used by the Agency to evaluate ground-water monitoring data. However, the Agency is aware of recent publications that have employed these statistical methods to evaluate ground-water monitoring data, especially in evaluating certain classes of chemical compounds (e.g., volatile organic compounds). Several commenters suggested that the Agency incorporate this research into today's final rule, noting that these procedures may be the best way to evaluate data that is below the limit of analytical detection.

While EPA does not believe it appropriate to specify the confidence levels for prediction and tolerance intervals (or in the case of tolerance intervals the percentage of the population that the interval must contain) in today's final rule, the Agency is nevertheless adding a performance standard relating to the use of these procedures in today's final rule. Because the parameters of confidence levels and population percentages may vary due to site-specific factors, § 264.97(i)(4) states that the facility owner or operator must submit parameters that are protective of human health and the environment to the Regional Administrator for approval. In evaluating these parameters, the Regional Administrator may consider the number of samples in the background data base and the range of the concentration values for each constituent of concern.

9. Time Intervals for Ground-Water Sampling

There was some confusion expressed in the comments regarding the time intervals within which ground-water samples are to be collected (i.e., sampling procedures). EPA proposed in § 264.97(g) that a sequence of samples be taken at either daily, weekly, or monthly intervals. Providing the owner or operator with a flexible sampling schedule will allow him or her to choose a sampling procedure that will reflect site-specific concerns. The intent was to set a sampling frequency that allows

sufficient time to pass between sampling events to assure, to the greatest extent technically feasible, that an independent sample is taken from each well. In this final rule, the language of § 264.97(g) (1)–(4) has been consolidated into one provision, § 264.97(g), which specifes that the owner or operator shall obtain a sequence of at least four samples from each well, based on an interval that is determined after evaluating the aquifer's effective porosity, hydraulic conductivity and hydraulic gradient (which govern rates of flow), and the fate and transport characteristics of the potential contaminants.

The minimum number of samples that are to be collected each testing period is four. This minimum number was selected by the Agency to maintain consistency with the prior requirements that specified that the owner or operator collect one sample from each well and divide it into four replicate samples for laboratory analysis. Therefore, requiring the owner or operator to collect four samples from each well for laboratory analysis should not impose an increase in the number of analyses. There may, however, be an increase in field sampling efforts associated with this sampling procedure. However, the quality of the ground-water monitoring data will be significantly improved.

In order to maintain a complete annual record of ground-water data, the facility owner or operator may find it desirable to obtain a sample each month of the year. This will help identify seasonal trends in the data and permit evaluation of the effects of autocorrelation and seasonal variation if present in the samples.

Several commenters noted that the number and kinds of samples collected to establish background should be appropriate to the form of statistical test employed, following generally accepted statistical principles. EPA agrees. Thus, for example, the use of control charts presumes a well defined background of perhaps 16 to 30 samples. By contrast, ANOVA alternatives might require only 4 to 6 samples. A performance standard stating that the number and kinds of samples collected to establish background be appropriate for the form of statistical test employed was incorporated into § 264.97(g) of today's final rule. In addition, a guidance document under development includes scenarios for which each sampling procedure would be most appropriate.

IV. Implementation

In addition to changes made in this final rule pursuant to public comments, the Agency is also promulgating a series of changes to clarify the implementation of these regulations. The Agency recognizes that some discussion of the implementation of these changes may be beneficial prior to the issuance of the guidance document. However, additional information concerning implementation will be addressed in the guidance document.

Because today's amendments to the statistical methods and sampling procedures require that an owner or operator institute methods that conform to the unit's site-specific characteristics and eliminate the CABF method as the default method, compliance with today's regulations requires detailed knowledge of the site. Thus, an important implementation issue concerns the source of this site-specific information. Such information should be available to owners or operators at a sufficient level of specificity to allow these regulations to easily be implemented at all regulated units subject to these regulations. For new units, or units operating under interim status, the gathering of the applicable site-specific data is a requirement of Part B of a RCRA permit application under § 270.14(c)(2). Under this provision, owners and operators of hazardous waste surface impoundments, waste piles, land treatment units, and landfills must identify the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including ground-water flow direction and rate, and the basis for that identification. Units currently operating with a RCRA permit should also have site-specific data, obtained either from on-going ground-water monitoring or to fulfill the § 270.14(c)(2) requirement for the Part B permit application.

The second major implementation issue concerns when and how the sampling frequency and statistical method will be specified in the facility's RCRA permit. Under § 270.14(c)(7)(vi), owners and operators must submit a description of their proposed sampling, analysis and statistical comparison procedures to be used in evaluating ground-water monitoring data as a requirement of their Part B permit application. While most new units or units operating under interim status should have the data necessary to propose a sampling frequency, they may not have sufficient data to propose a statistical comparison procedure. The Agency does not believe this will pose an implementation problem, however. Where this is the case, the owner or operator shall propose a contingency plan under § 270.14(c)(7)(vi) in which several statistical methods and the conditions under which the method would be appropriate at the site is specified. The Agency notes that the ANOVA statistical method specified in § 264.97(h)(1) can be performed with six months of ground-water monitoring data, and thus owners and operators with this amount of data would not need to propose a contingency plan under § 270.14(c)(7)(vi), but could propose use of the ANOVA statistical method. Should an owner or operator who incorporates a contingency plan into his or her permit wish to use a statistical method not specified in the contingency plan at a later date, he or she may propose a permit modification to incorporate this method in their RCRA permit under § 270.1(a)(3). Owners and operators currently operating under a RCRA permit and employing the CABF method or another statistical method or sampling procedure not appropriate at their unit may of course also apply for a permit modification under § 270.41(a)(3) to institute an appropriate sampling procedure and statistical method.

V. Miscellaneous

A. Deletion of Proposed § 264.97(i)(3)

The third performance standard that appeared in § 264.97(i)(3) of the proposed rule required that the monitoring well system be in accordance with the natural features of the site. Although this requirement is a very important component of a ground-water monitoring system, it was out of place as a performance standard in that it does not describe requirements that are directly related to the statistical methods or sampling procedures. Further, it is redundant with § 264.97(a) of the regulations. For these reasons it does not appear as a performance standard in today's final rule.

B. Demonstrations of Error Caused by Data Variability

Section 264.97(k) of the proposed regulations included a provision allowing the Regional Administrator to specify statistical tests of trend, seasonal variation and autocorrelation should the owner or operator suspect that the contamination detected by any of the statistical tests was caused by some feature of the data other than contamination. The Agency is retaining the substance of this provision in the final rule. However, because § 264.98(i) and § 264.99(j) of the regulation currently provide for demonstrations of error by owners and operators pursuant to a detection of contamination suspected to be caused by some other feature, this final rule amends these sections to incorporate the substance of the proposed § 264.97(k). Thus, under today's final rule, as part of a

demonstration that the detection of contamination at a unit during detection monitoring (§ 264.98(g)(6)) or during compliance monitoring (§ 264.99(i)) was an error or caused by another source, the owner or operator may perform statistical tests to evaluate trends, seasonal variation, or autocorrelation.

VI. General Description of Statistical Methods

A. Analysis-of-Variance

The analysis-of-variance (ANOVA) is a statistical method for analyzing data from ground-water monitoring wells. It is a special case of a more general procedure referred to as a general linear model (GLM) and as such is a very flexible analysis system.

Analysis-of-variance is a method for partitioning the total variation in a set of data into the different sources of variation that are present. It results in a summary table that provides a convenient form for summarizing and presenting information contained in a set of data. Analysis-of-variance models are used to analyze the effects of the independent variable or variables under study on the dependent variable. In the context of ground-water monitoring, wells or groups of wells represent the independent variables. The concentration of hazardous constituents is the dependent variable. The analysis-of-variance would determine whether different wells (or groups of wells) had significantly different concentrations of the hazardous constituents.

Contrasts are used to investigate where any differences occur. In this case the contrasts of interest are the pairwise contrasts between the background wells and the compliance wells. In a parametric analysis-of-variance, the contrasts of interest is the comparison between the mean concentration of the background wells and the mean concentration of each compliance well.

In ground-water monitoring, the analysis of variance is generally appropriate in situations where a background concentration for a particular constituent can be established. If there are data from several wells for one or more time periods for a water quality parameter that are not normally distributed, and not transformable to normality, then an analysis-of-variance based upon ranks (nonparametric ANOVA) may be appropriate.

B. Tolerance Intervals

Tolerance intervals define, with a specified probability, a range of values that contain a discrete percentage of the population. Tolerance intervals are simple to construct, requiring a calculator and a table of tolerance factors. Because of their simple construction, tolerance intervals are easy to understand and apply to a ground-water monitoring scenario.

Tolerance intervals can be used in a detection monitoring program when individual compliance wells are compared to a group of background wells in order to detect ground-water contamination. Tolerance intervals can be constructed from the background well concentrations and expressed as an interval centered at the mean background well concentration. Compliance well hazardous constituent concentrations found to fall outside of the tolerance interval limits signal possible ground-water contamination.

Tolerance intervals may also be applied to a hazardous waste site in a compliance montoring program. Tolerance intervals can be constructed from the compliance well hazardous constituent concentrations, starting when the facility entered the compliance monitoring program. The objective of this procedure is to construct a tolerance interval based on the background well constituent concentrations, testing each compliance well concentration to determine if it lies within the tolerance interval. If the present concentration of a compliance well hazardous constituent is greater than the historical tolerance interval limits, it indicates that the ground-water quality has deteriorated to such a point that further action may be warranted.

C. Prediction Intervals

A prediction interval is an interval in which one is confident at a specified percentage that the next observation will lie within the interval. Like tolerance intervals, prediction intervals are simple to construct, requiring only a calculator and a table of prediction factors.

Parametric prediction intervals can be constructed for constituents that follow a normal distribution. In some cases, prediction intervals can be constructed for constituents that have non-normal distributions (e.g., Poisson or binomial distributions). It should be noted, however, that most other distribution-free prediction intervals cannot be constructed with a specified probability, and therefore their use is not recommended.

Prediction intervals are used in a detection monitoring program when individual compliance well concentrations are compared to one or more background wells. The mean concentration and standard deviation are estimated from the background well sample, and prediction intervals are constructed on the basis of the number of previous observations, the number of new measurements, and the levels of confidence that one wishes to obtain. Future compliance well hazardous constituent concentrations found to fall outside of the prediction limit(s) signal possible ground-water contamination.

In a compliance monitoring program, prediction intervals are constructed from compliance well concentrations, starting when the facility entered the compliance monitoring program. Each future compliance well observation is tested to determine if it lies within the prediction interval. If the present concentration of a compliance well hazardous constituent is greater than the historical prediction limits, it indicates that the ground-water quality has deteriorated to such a point that further action may be warranted.

D. Control Charts

Control charts are widely used as a statistical tool in industry as well as reasearch and development laboratories. From the population distribution of a given variable, such as concentrations of a given constituent, repeated random samples are taken at intervals over time. Statistics, for example the mean of replicate values at a point in time, are computed and plotted together with upper and/or lower predetermined limits on a chart, where the X-axis represents time. If a result falls outside these boundaries, then the process is declared to be "out of control"; otherwise, the process is declared to be "in control." The widespread use of control charts is due to their ease of construction and the fact that they can provide a quick visual evaluation of a situation.

In the context of ground-water monitoring, control charts can be used to monitor the inherent statistical variation of the data collected and to flag anomalous results. Further investigation of data points lying outside the established boundaries will be necessary before any direct action is taken.

Control charts, when applied to the properly adjusted and/or transformed data, can be used to evaluate ground-water monitoring data. A control chart can be constructed for each consitituent in each well to monitor the concentration of a constituent in a well over time. A new sample for a given well can be compared to the historical data from that well, and conclusions can be drawn on whether the well is in control. This specific use of control charts should be encouraged regardless

of the objectives of more refined data analysis. It provides a quick and easy means of checking the data for possible outliners, quality control problems, or data entry errors.

VII. Glossary

Autocorrelation

A measure of the relationship among members of a series of observations typically ordered in time or across space.

F-Statistic

A statistic calculated on the basis of the F-distribution. The F-statistic is used in an analysis-of-variance to determine if there is a relationship between factors of interest. The F-distribution is also used to check the equality of variance assumption in certain statistical tests.

Frequency Distribution

Used to described a set of measurements and often expressed in a graphical or tabular form. Several arbitrary non-overlapping intervals are established, the number of intervals is based on the range and units of measure of the data, and the number of measurements falling within each interval are recorded or plotted in sequence. The resulting plot or table describes the frequency distribution.

Lognormal Distribution

If the logarithms (to any base) of a set of measurements are distributed according to the normal distribution, the original measurements, prior to the logarithmic transformation, are said to follow a lognormal distribution. A lognormal frequency distribution typically has a long narrow tail and is often used to describe sets of environmental data such as ground-water concentration measurements.

Mean

The most common mean is the arithmetic mean, which refers to the center or average of a set of measurements. The arithmetic mean is defined as equal to the sum of all the observations divided by the number of observations.

Non-Normal Distribution

A non-normal distribution refers to any of the many distributions other than the normal distribution. The lognormal and exponential are examples of non-normal distributions. Many parametric statistical procedures require that the data be selected from a population following a normal distribution.

Nonparametric

Refers to statistical procedures which do not necessitate the use of as many assumptions, for example, that the data be selected from a specific distribution, as an equivalent parametric statistical procedure. Nonparametric tests are often called distribution-free tests.

Normal Distribution

A widely used, continuous frequency distribution that approximates a symmetrical bell-shaped curve in appearance. Parametric statistical procedures often require that data approximate a normal distribution.

Parametric

The mean and variance of an normal distribution are examples of parameters. Parametric statistical procedures rely on estimates of the mean and variance and often assume that the data were selected from a population which follows a normal distribution.

Power

The power of the statistical procedures used in detection and compliance monitoring is the probability that contamination will be detected (rejection of the null hypothesis of no contamination) by the statistical procedure when contamination is really present. For a given sampling protocol, the power is greatest when the downgradient concentrations are much larger than background and the power is least when downgradient concentrations are only slightly larger than background. The concept of power does not apply when downgradient concentrations are less than or equal to background concentrations.

Practical Quantification Limits (pql's)

The lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions.

Robust

A testing procedure is robust in the sense that small or moderate departures from the assumptions required for a test, such as normality or constant variance, do not markedly affect its performance.

Seasonal Variation

A series of ground-water measurements collected over time exhibit seasonal variation when the measurements vary across sampling events in a periodic or cyclical fashion that can be explained by seasonal effects such as the annual cycle of ground-water recharge.

Spatial Variation

The variation among a group of measurements from samples obtained at the same time from different horizontal or vertical locations.

Standard Deviation

A measure of the dispersion, spread or deviation of a set of observations around the mean. It is the positive square root to the variance and is expressed in the same units of measure as the original observations.

t-Statistic

A statistic calculated on the basis of the t-distribution. The shape of the curve for a t-distribution changes with the number of observations in the sample that are used to estimate the sample populations. As the number of observations in the sample approach infinity, the t-distribution becomes identical to the normal distribution.

Temporal Variation

The variation among a series of measurements from samples obtained at the same location but over time.

Variance

A measure of the dispersion, spread, deviation or variability of a set of observations around the mean. The sum of the squared deviations of the observations from the arithmetic mean divided by one less than the total number of observations.

VIII. Regulatory Analysis

A. State Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their State hazardous waste management programs in lieu of EPA operating the Federal program in those States. Authorization, either interim or final, may be granted to State programs that regulate the identification, generation, transportation, or operation of facilities that treat, store, or dispose of hazardous waste. Upon authorization of the State program, EPA suspends operation within the States of those parts of the ground-water monitoring requirements for land-based hazardous waste management facilities applying for and operating under permits. Since the ground-water monitoring requirements are not imposed under any of the amendments made by the Hazardous and Solid Waste Amendments of 1984, final rules modifying the statistical procedures would not take effect directly in all States under section 3006(g). States that have been granted

final authorization will have to revise their programs to cover the additional requirements in today's announcement. Generally, these authorized State programs must be revised within one year of the date of promulgation of such standards, or within two years if the State must amend or enact a statute in order to make the required revision (see 40 CFR 271.21). However, States may always impose requirements which are more stringent or have greater coverage than EPA's programs.

Regulations which are broader in scope, however, may not be enforced as part of the federally-authorized RCRA program.

B. Regulatory Impact Analysis

Executive Order 12291 (46 FR 13191, February 9, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation that is likely to result in:

1. An annual effect on the economy of $100 million or more;
2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has determined that today's regulation is not a major rule because it does not meet the above criteria. Today's action should produce a net decrease in the cost of ground-water monitoring at each facility. This final rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with Executive Order 12291. OMB has concurred with this final rule.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (e.g., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. As stated above, this final rule will have no adverse impacts on businesses of any size. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This final rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 264

Hazardous material, Reporting and recordkeeping requirements, Waste treatment and disposal, Ground water, Environmental monitoring.

Date: September 28, 1988.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Chapter I is amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

2. In § 264.91 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 264.91 Required programs.

(a) * * *

(1) Whenever hazardous constituents under § 264.93 from a regulated unit are detected at a compliance point under § 264.95, the owner or operator must institute a compliance monitoring program under § 264.99. Detected is defined as statistically significant evidence of contamination as described in § 264.98(f);

(2) Whenever the ground-water protection standard under § 264.92 is exceeded, the owner or operator must institute a corrective action program under § 264.100. Exceeded is defined as statistically significant evidence of increased contamination as described in § 264.99(d);

* * * * *

3. Section 264.92 is revised to read as follows:

§ 264.92 Ground-water protection standard.

The owner or operator must comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under § 264.93 detected in the ground water from a regulated unit do not exceed the concentration limits under § 264.94 in the uppermost aquifer underlying the waste management area beyond the point of compliance under § 264.95 during the compliance period under § 264.96. The Regional Administrator will establish this ground-water protection standard in the facility permit when hazardous constituents have been detected in the ground water.

4. In § 264.97 by removing the word "and" from the end of (a)(1), redesignating and revising (g)(3) as (a)(1)(i), adding (a)(3), revising paragraphs (g) and (h), and adding (i) and (j), to read as follows:

§ 264.97 General ground-water monitoring requirements.

(a) * * *

(1) * * *

(i) A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(A) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

(B) Sampling at other wells will provide an indication of background ground-water quality that is representative or more representative than that provided by the upgradient wells; and

* * * * *

(3) Allow for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

* * * * *

(g) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance point(s). The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that a contaminant release to ground water from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which shall be specified in the unit permit upon approval by the Regional Administrator. This sampling procedure shall be:

(1) A sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport

characteristics of the potential contaminants, or

(2) an alternate sampling procedure proposed by the owner or operator and approved by the Regional Administrator.

(h) The owner or operator will specify one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent which, upon approval by the Regional Administrator, will be specified in the unit permit. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits (pql's) are used in any of the following statistical procedures to comply with § 264.97(i)(5), the pql must be proposed by the owner or operator and approved by the Regional Administrator. Use of any of the following statistical methods must be protective of human health and the environment and must comply with the performance standards outlined in paragraph (i) of this section.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method submitted by the owner or operator and approved by the Regional Administrator.

(i) Any statistical method chosen under § 264.97(h) for specification in the unit permit shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals or control charts.

(3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and approved by the Regional Administrator if he or she finds it to be protective of human health and the environment.

(4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be proposed by the owner or operator and approved by the Regional Administrator if he or she finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit (pql) approved by the Regional Administrator under § 264.97(h) that is used in the statistical method shall be the lowest concentration level tha can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(j) Ground-water monitoring data collected in accordance with paragraph (g) of this section including actual levels of constituents must be maintained in the facility operating record. The Regional Administrator will specify in the permit when the data must be submitted for review.

5. In § 264.98 by removing paragraphs (i), (j) and (k), and by revising paragraphs (c), (d), (f), (g), and (h) to read as follows:

§ 264.98 Detection monitoring program.

* * * * *

(c) The owner or operator must conduct a ground-water monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to paragraph (a) of this section in accordance with § 264.97(g). The owner or operator must maintain a record of ground-water analytical data as measured and in a form necessary for the determination of statistical significance under § 264.97(h).

(d) The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (a) of this section in accordance with § 264.97(g). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during detection monitoring.

* * * * *

(f) The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter of hazardous constituent specified in the permit pursuant to paragraph (a) of this section at a frequency specified under paragraph (d) of this section.

(1) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the method(s) specified in the permit under § 264.97(h). These method(s) must compare data collected at the compliance point(s) to the background ground-water quality data.

(2) The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well as the compliance point within a reasonable period of time after completion of sampling. The Regional Administrator will specify in the facility permit what period of time is reasonable, after considering the

complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground-water samples.

(g) If the owner or operator determines pursuant to paragraph (f) of this section that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to paragraph (a) of this section at any monitoring well at the compliance point, he or she must:

(1) Notify the Regional Administrator of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(2) Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of Appendix IX of Part 264 are present, and if so, in what concentration.

(3) For any Appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to paragraph (g)(2) of this section, the hazardous constituents found during this initial Appendix IX analysis will form the basis for compliance monitoring.

(4) Within 90 days, submit to the Regional Administrator an application for a permit modification to establish a compliance monitoring program meeting the requirements of § 264.99. The application must include the following information:

(i) An identification of the concentration or any Appendix IX constituent detected in the ground water at each monitoring well at the compliance point;

(ii) Any proposed changes to the ground-water monitoring system at the facility necessary to meet the requirements of § 264.99;

(iii) Any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of § 264.99;

(iv) For each hazardous constituent detected at the compliance point, a proposed concentration limit under § 264.94(a) (1) or (2), or a notice of intent to seek an alternate concentration limit under § 264.94(b); and

(5) Within 180 days, submit to the Regional Administrator:

(i) All data necessary to justify an alternate concentration limit sought under § 264.94(b); and

(ii) An engineering feasibility plan for a corrective action program necessary to meet the requirement of § 264.100, unless:

(A) All hazardous constituents identified under paragraph (g)(2) of this section are listed in Table 1 of § 264.94 and their concentrations do not exceed the respective values given in that Table; or

(B) The owner or operator has sought an alternate concentration limit under § 264.94(b) for every hazardous constituent identified under paragraph (g)(2) of this section.

(6) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to paragraph (a) of this section at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the ground water. The owner operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under paragraph (g)(4) of this section; however, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in paragraph (g)(4) of this section unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(i) Notify the Regional Administrator in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) Within 90 days, submit a report to the Regional Administrator which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(iii) Within 90 days, submit to the Regional Administrator an application for a permit modification to make any appropriate changes to the detection monitoring program facility; and

(iv) Continue to monitor in accordance with the detection monitoring program established under this section.

(h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he or she must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

6. In § 264.99 by revising paragraph (c), revising paragraphs (d), (f), and (g), removing paragraph (h), redesignating paragraph (i) as (h), (j) as (i) and (k) as (j), revising the redesignated paragraphs (h) introductory text and (i) introductory text, and removing paragraph (l) to read as follows:

§ 264.99 Compliance monitoring program.

* * * * *

(c) The Regional Administrator will specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with § 264.97 (g) and (h).

(1) The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with § 264.97(g).

(2) The owner or operator must record ground-water analytical data as measured and in form necessary for the determination of statistical significance under § 264.97(h) for the compliance period of the facility.

(d) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to paragraph (a) of this section, at a frequency specified under paragraph (f) under this section.

(1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the method(s) specified in the permit under § 264.97(h). The methods(s) must compare data collected at the compliance point(s) to a concentration limit developed in accordance with § 264.94.

(2) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The Regional Administrator will specify that time period in the facility permit, after considering the

complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground-water samples.

* * * * *

(f) The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with § 264.97(g). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during the compliance period of the facility.

(g) The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix IX of Part 264 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). If the owner or operator finds Appendix IX constituents in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the intiial analysis and add them to the monitoring list.

(h) If the owner or operator determines pursuant to paragraph (d) of this section that any concentration limits under § 264.94 are being exceeded at any monitoring well at the point of compliance he or she must:

* * * * *

(i) If the owner or operator determines, pursuant to paragraph (d) of this section, that the ground-water concentration limits under this section are being exceeded at any monitoring well at the point of compliance, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the ground water. In making a demonstration under this paragraph, the owner or operator must:

* * * * *

[FR Doc. 88-22913 Filed 10-7-88; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
October 11, 1988

Part III

Department of Commerce

Patent and Trademark Office and Office of the Undersecretary for Economic Affairs

37 CFR Parts 100 and 501

Government Employee Inventions; Rights Determinations and Policy; Final Rules

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 100

[Docket No. 80995-8195]

Rights Determinations in Government Employee Inventions

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: Executive order 10096 as amended by Executive Order 10930 sets forth the policies and procedures for determining the rights of Government employees and the Government in inventions made by the employees. The Delegation of Authority from the Secretary of Commerce, dated September 15, 1988, transferred administration of these provisions from the Commissioner of Patents and Trademarks to the Under Secretary for Economic Affairs in the Department of Commerce. This final rule removes 37 CFR Part 100 in its entirety.

EFFECTIVE DATE: This rule is effective November 1, 1988..

FOR FURTHER INFORMATION CONTACT: John H. Raubitschek by telephone at [703] 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Executive Order 10096, as amended by Executive Order 10930, sets forth the policies and procedures for determining the rights of Government employees and the Government in inventions made by the employees. The function of reviewing agency rights determinations assigned to the Secretary of Commerce was delegated by the Secretary to the Commissioner of Patents and Trademarks. On September 15, 1988, the Secretary changed the delegation to the Under Secretary for Economic Affairs, who is republishing Part 100 as new Part 501 in 37 CFR.

All rights determinations and appeals relating thereto, which are pending before the Commissioner at the time 37 CFR Part 501 becomes effective, will be acted upon by the Commissioner under the procedures in 37 CFR Part 100.

The Patent and Trademark Office has determined that this notice is not a rule within the meaning of section 1(a) of Executive Order 12291. Therefore, no Regulatory Impact Analysis has to or will be prepared. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, no initial or final Regulatory Flexibility Analysis has to or will be prepared for the purposes of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)).

This final rule does not contain a policy with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. Nor does this rule contain a collection of information for purposes of the Paperwork Reduction Act of 1980.

For reasons set forth in the preamble, 37 CFR Part 100 is amended as follows:

PART 100—[REMOVED AND RESERVED]

1. Part 100 is removed and reserved.

Date: October 4, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-23238 Filed 10-7-88; 8:45 am]

BILLING CODE 3510-16-M

37 CFR Part 501

[Docket No. 80627-8127]

Uniform Patent Policy for Domestic Rights in Inventions Made by Government Employees

AGENCY: Under Secretary for Economic Affairs, Department of Commerce.

ACTION: Final rule.

SUMMARY: Executive Order 10096, as amended by Executive Order 10930, sets forth the policies and procedures for determining the rights in Federal employee inventions with respect to the Federal employee and the Government employer. The Delegation of Authority from the Secretary of Commerce dated, September 15, 1988 and effective November 1, 1988, transferred administration of the provisions of Executive Order 10096 as amended by Executive Order 10930 from the Commission of Patents and Trademarks to the Under Secretary for Economic Affairs in the Department of Commerce. This final rule establishes 37 CFR Part 501 which sets forth this delegation of authority to the Under Secretary. In addition, each Government agency is authorized to determine whether the results of research, development, or other activity within the agency constitute an invention with the purview of Executive Order 10096, as amended by Executive Order 10930 and to determine initially the rights therein in accordance with the provisions of section 501.6 and 501.7 herein. By separate notice in today's **Federal Register** the Patent and Trademark Office is deleting 37 CFR Part 100.

EFFECTIVE DATE: November 1, 1988. However, all rights, determinations, and appeals submitted to the Commissioner prior to the effective date, will be reviewed by the Commissioner under the procedures of 37 CFR Part 100.

ADDRESS: Comments may be sent to Mr. Joseph P. Allen, Acting Director, Federal Technology Management Division, Office of the Under Secretary for Economic Affairs, United States Department of Commerce, Room 4839, Herbert C. Hoover Building, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Allen, by telephone at (202) 377-8100 or Robert B. Ellert by telephone at (202) 377-5394.

SUPPLEMENTARY INFORMATION: Executive Order 10096, as amended by Executive Order 10930, sets forth the policies and procedures for determining the rights in Federal employee inventions with respect to the Federal employee and the Government employer. The Under Secretary for Economic Affairs of the Department of Commerce was delegated responsibility for oversight of the Executive Order on September 15, 1988. Functions required by the Executive Order were previously performed by the Commissioner of Patents and Trademarks. This final rule is substantially the same as the rule set out in 37 CFR Part 100, except, the Sercretary of Commerce is substituted for the Commissioner of Patent and Trademarks, and advance approval is given to agency heads to make final determinations relating to determinations of rights decisions of Government employee inventions, subject to employee appeal to the Secretary.

President Reagan in Executive Order 12591, on April 10, 1987 directed all Government agencies to facilitate the transfer of technology developed at federal laboratories to the private sector and to promote its commercialization. To accomplish the goals of E.O. 12591 it is necessary that rights to inventions made by government employees be determined as expeditiously as possible. Accordingly, the Secretary has reviewed the existing procedures and policies under 37 CFR Part 100 and concluded that administration of the functions thereunder could be performed on a

more efficient basis by confining the role of the Department of Commerce to appeals by employees from disputed agency determinations. Accordingly, under 37 CFR Part 501 each Government agency is given the authority to determine whether the results of research, development of other activities within the agency constitute an invention by an employee, and to determine initially the rights relating to ownership within the provisions of Executive Order 10096 as amended by Executive Order 10930. If no appeal is taken to the Secretary by an employee under section 501.8, the initial determination of the agency will be final.

Notwithstanding the fact that this is a final rule, comments are requested.

Because this rule concerns agency management and personnel, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of the Order. Accordingly, no preliminary or final regulatory impact analysis has to be or will be prepared.

Because a notice of proposed rulemaking and an opportunity for public comments are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, no regulatory flexibility analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)).

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. This rule does not contain collections of information for purposes of the Paperwork Reduction Act.

The changes in the process of determining employee rights to inventions made by this rule do not have takings implications sufficient to require preparation of a Takings Implications Assessment under Executive Order 12630.

List of Subjects in 37 CFR Part 501

Uniform patent policy, Domestic Rights in inventions, Inventions made by Government employees.

Date: October 3, 1988.

Robert Ortner,

Under Secretary for Economic Affairs.

For the reasons set forth in the preamble 37 CFR is amended by adding Chapter V, consisting of Part 501, to read as follows:

CHAPTER V—UNDER SECRETARY FOR ECONOMIC AFFAIRS, DEPARTMENT OF COMMERCE

PART 501—UNIFORM PATENT POLICY FOR DOMESTIC RIGHTS IN INVENTIONS MADE BY GOVERNMENT EMPLOYEES

Sec.

Authority: Sec. 4, E.O. 10096, 3 CFR 1949–1953 Comp., p. 292, as amended by E.O. 10930, 3 CFR 1959–1963 Comp., p. 456; and Delegation of Authority by the Secretary of Commerce, September 15, 1988, DOO 10–9.

§ 501.1 Purpose.

The purpose of this part is to provide for the administration of a uniform patent policy for the Government with respect to the domestic rights in inventions made by Government employees and to prescribe rules and regulations for implementing and effectuating such policy.

§ 501.2 Scope.

This part applies to any invention made by a Government employee and to any action taken with respect thereto.

§ 501.3 Definitions.

(a) The term "Secretary" as used in this part, means the Under Secretary of Commerce for Economic Affairs.

(b) The term "Government agency," as used in this part, means any Executive department or independent establishment of the Executive branch of the Government (including any independent regulatory commission or board, any corporation wholly owned by the United States, and the Smithsonian Institution), but does not include the Department of Energy for inventions made or conceived under the provisions of 42 U.S.C. 2182.

(c) The term "Government employee," as used in this part, means any officer or employee, civilian or military, of any Government agency, including any part-time consultant or part-time employee except as may otherwise be provided for by agency regulation approved by the Secretary.

(d) The term "invention," as used in this part, means any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States.

§ 501.4 Determination of Inventions and rights therein.

Each Government agency has the approval of the Secretary to determine whether the results of research, development, or other activity in the agency constitute an invention within the purview of E.O. 10096, as amended by E.O. 10930 and to determine the rights therein in accordance with the provisions of § 501.6 and 501.7 herein.

§ 501.5 Agency Liaison Officer.

Each Government agency shall designate a liaison officer to represent the agency before the Secretary; Provided, however, that the Departments of the Army, the Navy, and the Air Force may each designate a liaison officer.

§ 501.6 Criteria for the Determination of Rights In and To Inventions.

(a) The following rules shall be applied in determining the respective rights of the Government and of the inventor in and to any invention that is subject to the provisions of this part:

(1) The Government shall obtain, except as herein otherwise provided, the entire domestic right, title and interest in and to any invention made by any Government employee:

(i) During working hours, or

(ii) With a contribution by the Government of facilities, equipment, materials, funds or information, or of time or services of other Government employees on official duty, or

(iii) Which bears a direct relation to or is made in consequence of the official duties of the inventor.

Foreign patent rights are governed by the provisions of 37 CFR Part 101.

(2) In any case where the contribution of the Government, as measured by any one or more of the criteria set forth in paragraph (a)(1) of this section, to the invention is insufficient equitably to justify a requirement of assignment to the Government of the entire domestic right, title, and interest in and to such invention, or in any case where the Government has insufficient interest in an invention to obtain the entire domestic right, title, and interest therein (although the Government could obtain same under paragraph (a)(1) of this section), the Government agency concerned shall leave title to such invention in the employee, subject however, to the reservation to the government of a nonexclusive,

irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, such reservation, in the terms therof, to appear, where practicable, in any patent, domestic or foreign, which may issue on such invention. Reference is made to section 15 of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710d) which requires a Government agency to allow the inventor to retain title to any covered invention when the agency does not intend to file a patent application or otherwise promote commercialization.

(3) In applying the provisions of paragraphs (a)(1) and (2) of this section to the facts and circumstances relating to the making of a particular invention, it shall be presumed that an invention made by an employee who is employed or assigned:

(i) To invent or improve or perfect any art, machine, design, manufacture, or composition of matter,

(ii) To conduct or perform research, development work, or both,

(iii) To supervise, direct, coordinate, or review Government financed or conducted research, development work, or both, or

(iv) To act in a liaison capacity among governmental or non-governmental agencies or individuals engaged in such research or development work,

falls within the provisions of paragraph (a)(1) of this section, and it shall be presumed that any invention made by any other employee falls within the provisions of paragraph (a)(2) of this section. Either presumption may be rebutted by a showing of the facts and circumstances in the case and shall not preclude a determination that these facts and circumstances justify leaving the entire right, title and interest in and to the invention in the Government employee, subject to law.

(4) In any case wherein the Government neither:

(i) Obtains the entire domestic right, title and interest in and to an invention pursuant to the provisions of paragraph (a)(1) of this section nor

(ii) Reserves a nonexclusive, irrevocable, royalty-free license in the invention, with power to grant licenses for all governmental purposes, pursuant to the provisions of paragraph (a)(2) of this section,

the Government shall leave the entire right, title and interest in and to the invention in the Government employee, subject to law.

§ 501.7 Agency determination.

(a) If the agency determines that the Government is entitled to obtain title pursuant to § 501.6(a)(1) and the employee does not appeal, no further review is required.

(b) In the event that a Government agency determines, pursuant to paragraph (a)(2) or (a)(4) of § 501.6, that title to an invention will be left with the employee, the agency shall notify the employee of this determination.

(c) In the case of a determination under either paragraph (a) or (b) of this section, the agency shall promptly prepare, and preserve in appropriate files, accessible to the Secretary, a written, signed, and dated statement concerning the invention including the following:

(1) A description of the invention in sufficient detail to identify the invention and show its relationship to the employee's duties and work assignments;

(2) The name of the employee and employment status, including a detailed statement of official duties and responsibilities at the time the invention was made; and

(3) An explanation of the agency determination and reasons therefor. The agency shall, subject to considerations of national security, or public health, safety, or welfare, submit to the Secretary, if an appeal is taken, a copy of this written statement.

§ 501.8 Appeals by employees.

(a) Any Government employee who is aggrieved by a Government agency determination pursuant to § 501.6(a)(1) or (a)(2), may obtain a review of any agency determination by filing, within 30 days (or such longer period as the Secretary may, for good cause shown in writing, fix in any case) after receiving notice of such determination, two copies of an appeal with the Secretary. The Secretary then shall forward one copy of the appeal to the Government agency.

(b) On receipt of a copy of an appeal filed pursuant to paragraph (a) of this section, the agency official who made the agency determination being appealed shall, subject to considerations of national security, or public health, safety, or welfare, promptly furnish both the Secretary and the inventor with a copy of a report containing the following information about the invention involved in the appeal:

(1) A copy of a statement by the agency containing the information specified in § 501.7, and

(2) A detailed statement of the points of dispute or controversy, together with copies of any statements or written arguments filed with the agency, and of any other relevant evidence that the agency considered in making its determination of Government interest. Within 25 days (or such longer period as the Secretary may, for good cause shown, fix in any case) after the transmission of a copy of the agency report to the employee, the employee may file a reply thereto with the Secretary and file one copy thereof with the appropriate agency decision maker.

(c) After the time for the inventor's reply to the Government agency's report has expired and if the inventor has so requested in his or her appeal, a date will be set for hearing of oral arguments before the Secretary, by the employee (or by an attorney whom he or she designates by written power of attorney filed before, or at the hearing) and a representative of the Government agency involved. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to thirty minutes for each side. The employee need not retain an attorney or request an oral hearing to secure full consideration of the facts and his or her arguments. The employee may expedite such consideration by notifying the Secretary when he or she does not intend to file a reply to the agency report.

(d) After a hearing on the appeal, if a hearing was requested, or after expiration of the period for the inventor's reply to the agency report if no hearing is set, the Secretary shall issue a decision on the matter within 120 days, which decision shall be final after a thirty day period for requesting reconsideration expires or on the date that a decision on a petition for reconsideration is finally disposed of. Any request for reconsideration or modification of the decision must be filed within 30 days from the date of the original decision (or within such an extension thereof as may be set by the Secretary before the original period expires). The decision of the Secretary shall be made after consideration of the statements of fact in the employee's appeal, the agency's report, and the employee's reply, but the Secretary at his or her discretion and with due respect to the rights and convenience of the inventor and the Government agency, may call for further statements on specific questions of fact or may request additional evidence in the form of affidavits or depositions on specific facts in dispute.

§ 501.9 Patent protection.

(a) A Government agency, upon determining that an invention coming within the scope of § 501.6(a)(1) or (a)(2) has been made, shall thereupon determine whether patent protection will be sought in the United States by

the agency for such invention. A controversy over the respective rights of the Government and of the employee in any case shall not delay the taking of the actions provided for in this section. In cases coming within the scope of § 501.6(a)(2), agency action looking toward such patent protection shall be contingent upon the consent of the employee.

(b) Where there is an appealed dispute as to whether § 501.6(a)(1) or (a)(2) applies in determining the respective rights of the Government and of an employee in and to any invention, the agency will determine whether patent protection will be sought in the United States pending the Secretary's decision on the dispute and, if it decides that an application for patent should be filed, will take such rights as are specified in § 501.6(a)(2), but this shall be without prejudice to acquiring the rights specified in paragraph (a)(1) of that section should the Secretary so decide.

(c) Where an agency has determined to leave title to an invention with an employee under § 501.6(a)(2), the agency will, upon the filing of an application for patent take the rights specified in that paragraph without prejudice to the subsequent acquisition by the Government of the rights specified in paragraph (a)(1) of that section should the Secretary so decide.

§ 501.10 Dissemination of this part and of implementing regulations.

Each Government agency shall disseminate to its employees the provisions of this part, and any appropriate implementing agency regulations and delegations. Copies of any such regulations shall be sent to the Secretary. If the Secretary identifies an inconsistency between this part and the agency regulations or delegations, the agency, upon being informed by the Secretary of the inconsistency, shall take prompt action to correct it.

[FR Doc. 88-23239 Filed 10-7-88; 8:45 am]

BILLING CODE 3510-EA-M

Reader Aids

Federal Register

Vol. 53, No. 196

Tuesday, October 11, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

305.....39585

3 CFR

Administrative Orders:

Presidential Determinations:

No. 88-24 of September 13, 1988.....39583

Proclamations:

5867.....38687
5868.....38689
5869.....38691
5870.....38693
5871.....38695
5872.....38697
5873.....38699
5874.....38705
5875.....39071
5876.....39073
5877.....39075
5878.....39077

Executive Orders:

11183 (Amended by EO 12653).....38703
12653.....38703

Administrative Orders:

Memorandums:

Sept. 29, 1988.....38701

5 CFR

Proposed Rules:

430.....38954
432.....38954

7 CFR

271.....39433
272.....39433
273.....39433
275.....39433
277.....39433
401.....38707
910.....38707, 39444
987.....39225
1126.....39444
1137.....39446
1610.....39014
1736.....39226
1951.....39014

Proposed Rules:

966.....39305
984.....39306
1001.....38963
1002.....38727, 38963
1004.....38963
1007.....38730
1098.....38730
1124.....39581
1125.....39581
1772.....38965

9 CFR

94.....39447

Proposed Rules:

318.....39307
319.....39307
381.....39307

10 CFR

600.....38939
1035.....38939

Proposed Rules:

15.....39480
430.....39403

12 CFR

611.....39079
614.....32609
615.....39229
618.....39229
620.....39609
621.....39609

Proposed Rules:

615.....39099

13 CFR

105.....38941

Proposed Rules:

108.....38737

14 CFR

13.....39404
21.....39448
23.....39448
39.....39250, 39449, 39450
71.....39252-39254, 39451
73.....39254
97.....39452

Proposed Rules:

Ch. I.....39611
71.....39312-39314
157.....39062

15 CFR

379.....38835
399.....38835
801.....39452

Proposed Rules:

303.....39486, 39612

16 CFR

13.....38941
304.....38942

Proposed Rules:

419.....39103

17 CFR

240.....38967

Proposed Rules:

15.....39103

18 CFR

1307.....39081

20 CFR

205.....39255
404.....38943, 39014
416.....39014

Proposed Rules:

Ch. V.....39403
235.....39315
404.....39487
416.....39487

21 CFR

173.....39455
177.....39083
510.....39256
524.....39084, 39256
558.....38708, 39257
886.....38946

22 CFR

7.....39588
20.....39456
204.....39015

24 CFR

Proposed Rules:

201.....39613
203.....38844
213.....38844
220.....38844
221.....38844
222.....38844
226.....38844
233.....38844
234.....38844
235.....38844

26 CFR

1.....38708, 39015, 39589
602.....38708, 39015, 39589

29 CFR

2610.....39258
2622.....39258

Proposed Rules:

1910.....38738, 39581
1915.....38738, 39581
1917.....38738, 39581
1918.....38738, 39581
1926.....38738, 39581
2610.....39200, 39613, 39718

30 CFR

206.....39459
773.....38868
916.....39085, 39467
917.....39259, 39470
934.....39261

Proposed Rules:

256.....38739
281.....38739
282.....38739
906.....39105
938.....39316, 39489

31 CFR

321.....39581
330.....39404

32 CFR

199.....38947
276.....39262
277.....39262
1285.....38716

33 CFR

100.....38716, 39273, 39274
117.....38717
165.....38718, 39604

34 CFR

219.....39018
222.....39018
500.....39218
501.....39218
524.....39218
525.....39218
526.....39218
548.....39218
561.....39218
562.....39218
573.....39218
574.....39218
581.....39218

Proposed Rules:

668.....39317
682.....39317
785.....39406
786.....39406
787.....39406

36 CFR

1150.....39473

37 CFR

Proposed Rules:

1.....39420
10.....38740, 38948
100.....39734
501.....39734

38 CFR

Proposed Rules:

21.....39490

39 CFR

232.....39087

40 CFR

52.....38719, 38722, 39087
60.....38892, 39412
81.....38724
147.....39088
180.....39090
264.....39720
272.....38950
372.....39472
799.....38952

Proposed Rules:

61.....39058
145.....38741
180.....39106-39109
763.....38868

42 CFR

405.....38835
412.....38835
413.....38835
489.....38835

43 CFR

3450.....39015
3590.....39459

Public Land Orders:

6687.....39274

Proposed Rules:

2810.....39403
5450.....39491
9230.....39403

44 CFR

62.....39091

Proposed Rules:

67.....38741

45 CFR

Proposed Rules:

302.....39110
303.....39110
304.....39110
305.....39110

46 CFR

Proposed Rules:

580.....38742, 38969
586.....39317

47 CFR

0.....39092
36.....39095
73.....39095, 39605
94.....38725
300.....39095

Proposed Rules:

73.....38743, 38747, 39614-39617
90.....39114

48 CFR

519.....39096

Proposed Rules:

222.....38749
247.....38753
252.....38753

49 CFR

383.....39044
390.....39044
391.....39044
392.....39044
531.....39275
1185.....39096

Proposed Rules:

177.....39114
531.....39115
1207.....39119
1249.....39119

50 CFR

601.....39303
611.....39475
625.....39475
640.....39581
642.....39097
663.....39606
675.....38725, 39097, 39479, 39718

Proposed Rules:

17.....38969, 39617-39626
23.....38755
651.....39627

LIST OF PUBLIC LAWS

Last List October 7, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641.

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. 1223/Pub. L. 100-472

Indian Self-Determination and Education Assistance Act Amendments of 1988. (Oct. 5, 1988; 102 Stat. 2285; 14 pages) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1988
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
1200-End, 6 (6 Reserved)	11.00	Jan. 1, 1988
7 Parts:		
0-26	15.00	Jan. 1, 1988
27-45	11.00	Jan. 1, 1988
46-51	16.00	Jan. 1, 1988
52	23.00	Jan. 1, 1988
53-209	18.00	Jan. 1, 1988
210-299	22.00	Jan. 1, 1988
300-399	11.00	Jan. 1, 1988
400-699	17.00	Jan. 1, 1988
700-899	22.00	Jan. 1, 1988
900-999	26.00	Jan. 1, 1988
1000-1059	15.00	Jan. 1, 1988
1060-1119	12.00	Jan. 1, 1988
1120-1199	11.00	Jan. 1, 1988
1200-1499	17.00	Jan. 1, 1988
1500-1899	9.50	Jan. 1, 1988
1900-1939	11.00	Jan. 1, 1988
1940-1949	21.00	Jan. 1, 1988
1950-1999	18.00	Jan. 1, 1988
2000-End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
1-199	19.00	Jan. 1, 1988
200-End	17.00	Jan. 1, 1988
10 Parts:		
0-50	18.00	Jan. 1, 1988
51-199	14.00	Jan. 1, 1988
200-399	13.00	[2] Jan. 1, 1987
400-499	13.00	Jan. 1, 1988
500-End	24.00	Jan. 1, 1988
11	10.00	July 1, 1988
12 Parts:		
1-199	11.00	Jan. 1, 1988
200-219	10.00	Jan. 1, 1988
220-299	14.00	Jan. 1, 1988
300-499	13.00	Jan. 1, 1988
500-599	18.00	Jan. 1, 1988
600-End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
14 Parts:		
1-59	21.00	Jan. 1, 1988
60-139	19.00	Jan. 1, 1988
140-199	9.50	Jan. 1, 1988
200-1199	20.00	Jan. 1, 1988
1200-End	12.00	Jan. 1, 1988
15 Parts:		
0-299	10.00	Jan. 1, 1988
300-399	20.00	Jan. 1, 1988
400-End	14.00	Jan. 1, 1988
16 Parts:		
0-149	12.00	Jan. 1, 1988
150-999	13.00	Jan. 1, 1988
1000-End	19.00	Jan. 1, 1988
17 Parts:		
1-199	14.00	Apr. 1, 1988
200-239	14.00	Apr. 1, 1988
240-End	21.00	Apr. 1, 1988
18 Parts:		
1-149	15.00	Apr. 1, 1988
150-279	12.00	Apr. 1, 1988
280-399	13.00	Apr. 1, 1988
400-End	9.00	Apr. 1, 1988
19 Parts:		
1-199	27.00	Apr. 1, 1988
200-End	5.50	Apr. 1, 1988
20 Parts:		
1-399	12.00	Apr. 1, 1988
400-499	23.00	Apr. 1, 1988
500-End	25.00	Apr. 1, 1988
21 Parts:		
1-99	12.00	Apr. 1, 1988
100-169	14.00	Apr. 1, 1988
170-199	16.00	Apr. 1, 1988
200-299	5.00	Apr. 1, 1988
300-499	26.00	Apr. 1, 1988
500-599	20.00	Apr. 1, 1988
600-799	7.50	Apr. 1, 1988
800-1299	16.00	Apr. 1, 1988
1300-End	6.00	Apr. 1, 1988
22 Parts:		
1-299	20.00	Apr. 1, 1988
300-End	13.00	Apr. 1, 1988
23	16.00	Apr. 1, 1988
24 Parts:		
0-199	15.00	Apr. 1, 1988
200-499	26.00	Apr. 1, 1988
500-699	9.50	Apr. 1, 1988
700-1699	19.00	Apr. 1, 1988
1700-End	15.00	Apr. 1, 1988
25	24.00	Apr. 1, 1988
26 Parts:		
§§ 1.0-1-1.60	13.00	Apr. 1, 1988
§§ 1.61-1.169	23.00	Apr. 1, 1988
§§ 1.170-1.300	17.00	Apr. 1, 1988
§§ 1.301-1.400	14.00	Apr. 1, 1988
§§ 1.401-1.500	24.00	Apr. 1, 1988
§§ 1.501-1.640	15.00	Apr. 1, 1988
§§ 1.641-1.850	17.00	Apr. 1, 1988
§§ 1.851-1.1000	28.00	Apr. 1, 1988
§§ 1.1001-1.1400	16.00	Apr. 1, 1988
§§ 1.1401-End	21.00	Apr. 1, 1988
2-29	19.00	Apr. 1, 1988
30-39	14.00	Apr. 1, 1988
40-49	13.00	Apr. 1, 1988
50-299	15.00	Apr. 1, 1988
300-499	15.00	Apr. 1, 1988
500-599	8.00	[3] Apr. 1, 1980
600-End	6.00	Apr. 1, 1988
27 Parts:		
1-199	23.00	Apr. 1, 1988
200-End	13.00	Apr. 1, 1988
28	23.00	July 1, 1987

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1987
900–1899	11.00	July 1, 1988
1900–1910	28.00	July 1, 1987
1911–1925	8.50	July 1, 1988
1926	10.00	July 1, 1987
1927–End	23.00	July 1, 1987
30 Parts:		
0–199	20.00	July 1, 1988
200–699	8.50	July 1, 1987
700–End	18.00	July 1, 1987
31 Parts:		
0–199	12.00	July 1, 1987
200–End	16.00	July 1, 1987
32 Parts:		
1–39, Vol. I	15.00	[4] July 1, 1984
1–39, Vol. II	19.00	[4] July 1, 1984
1–39, Vol. III	18.00	[4] July 1, 1984
1–189	20.00	July 1, 1987
190–399	23.00	July 1, 1987
400–629	21.00	July 1, 1987
630–699	13.00	[5] July 1, 1986
700–799	15.00	July 1, 1988
800–End	16.00	July 1, 1987
33 Parts:		
1–199	27.00	July 1, 1987
200–End	19.00	July 1, 1987
34 Parts:		
1–299	20.00	July 1, 1987
300–399	11.00	July 1, 1987
400–End	23.00	July 1, 1987
35	9.00	July 1, 1987
36 Parts:		
1–199	12.00	July 1, 1988
200–End	20.00	July 1, 1988
37	13.00	July 1, 1988
38 Parts:		
0–17	21.00	July 1, 1987
18–End	16.00	July 1, 1987
39	13.00	July 1, 1988
40 Parts:		
1–51	21.00	July 1, 1987
52	26.00	July 1, 1987
53–60	24.00	July 1, 1987
61–80	12.00	July 1, 1988
81–99	25.00	July 1, 1987
100–149	23.00	July 1, 1987
150–189	18.00	July 1, 1987
190–399	29.00	July 1, 1987
400–424	22.00	July 1, 1987
425–699	21.00	July 1, 1987
700–End	27.00	July 1, 1987
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	10.00	July 1, 1988
101	23.00	July 1, 1987
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1987

Title	Price	Revision Date
42 Parts:		
1–60	15.00	Oct. 1, 1987
61–399	5.50	Oct. 1, 1987
400–429	21.00	Oct. 1, 1987
430–End	14.00	Oct. 1, 1987
43 Parts:		
1–999	15.00	Oct. 1, 1987
1000–3999	24.00	Oct. 1, 1987
4000–End	11.00	Oct. 1, 1987
44	18.00	Oct. 1, 1987
45 Parts:		
1–199	14.00	Oct. 1, 1987
200–499	9.00	Oct. 1, 1987
500–1199	18.00	Oct. 1, 1987
1200–End	14.00	Oct. 1, 1987
46 Parts:		
1–40	13.00	Oct. 1, 1987
41–69	13.00	Oct. 1, 1987
70–89	7.00	Oct. 1, 1987
90–139	12.00	Oct. 1, 1987
140–155	12.00	Oct. 1, 1987
156–165	14.00	Oct. 1, 1987
166–199	13.00	Oct. 1, 1987
200–499	19.00	Oct. 1, 1987
500–End	10.00	Oct. 1, 1987
47 Parts:		
0–19	17.00	Oct. 1, 1987
20–39	21.00	Oct. 1, 1987
40–69	10.00	Oct. 1, 1987
70–79	17.00	Oct. 1, 1987
80–End	20.00	Oct. 1, 1987
48 Chapters:		
1 (Parts 1–51)	26.00	Oct. 1, 1987
1 (Parts 52–99)	16.00	Oct. 1, 1987
2 (Parts 201–251)	17.00	Oct. 1, 1987
2 (Parts 252–299)	15.00	Oct. 1, 1987
3–6	17.00	Oct. 1, 1987
7–14	24.00	Oct. 1, 1987
15–End	23.00	Oct. 1, 1987
49 Parts:		
1–99	10.00	Oct. 1, 1987
100–177	25.00	Oct. 1, 1987
178–199	19.00	Oct. 1, 1987
200–399	17.00	Oct. 1, 1987
400–999	22.00	Oct. 1, 1987
1000–1199	17.00	Oct. 1, 1987
1200–End	18.00	Oct. 1, 1987
50 Parts:		
1–199	16.00	Oct. 1, 1987
200–599	12.00	Oct. 1, 1987
600–End	14.00	Oct. 1, 1987
CFR Index and Findings Aids	28.00	Jan. 1, 1988
Complete 1988 CFR set	595.00	1988
Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Individual copies	3.75	1988

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.