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Contents

Federal Register

Vol. 54, No. 134

Friday, July 14, 1989

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.

Rules and Regulations

Federal Register
Vol. 54, No. 134
Friday, July 14, 1989

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 674]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 674 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 380,000 cartons during the period July 16 through July 22, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 674 (§ 910.974) is effective for the period July 16 through July 22, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

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

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

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

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

This regulation is consistent with the California-Arizona lemon marketing policy for 1988–89. The Committee met publicly on July 11, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, in a 9–2 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.974 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.974 Lemon Regulation 674.

The quantity of lemons grown in California and Arizona which may be handled during the period July 16, 1989, through July 22, 1989, is established at 380,000 cartons.

Dated: July 12, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–16694 Filed 7–13–89; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[Notice No. 686; Ref: Notice Nos. 658, 668, 676]

Label Disclosure for Brandy and Whisky Treated With Wood

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

ACTION: Extension of use-up period for ATF Ruling 87–5.

SUMMARY: In order to provide sufficient time for completion of the rulemaking proceeding involving label disclosure for brandy and whisky treated with wood, 27 CFR 5.39(c), ATF is extending the use-up period for compliance with ATF Rul. 87–3 from July 31, 1989 to July 31, 1990 or, until the date that the final Treasury decision becomes effective, whichever occurs first.

DATE: Existing certificates of label approval for brandies which do not meet the requirements of ATF Rul. 87–3 will expire at midnight July 31, 1990 or, upon the date that the final Treasury decision becomes effective, whichever occurs first. A document announcing the effective date will be published in the **Federal Register**.

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

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1988, ATF published Notice No. 658 in the **Federal Register** (53 FR 18574) proposing to amend the regulations in 27 CFR Part 5 concerning the wording, and placement, of the disclosure statement for brandy and whisky treated with wood.

The Bureau also solicited comments on a petition it received, filed jointly by the Federation des Exportateurs de Vins et Spiritueux (FEVS) and the National Association of Beverage Importers, Inc. (NABI), concerning the usage and label disclosure for brandy treated with an infusion of oak chips, i.e., the Boise method. This petition was supported by several U.S. brandy producers.

The comment period for Notice No. 658, initially scheduled to close on August 22, 1988, was extended until November 22, 1988 (Notice No. 668, August 16, 1988; 53 FR 30848). It was subsequently extended again until January 6, 1989, with the publication of Notice No. 676 (November 22, 1988; 53 FR 47224). Notice No. 668 also extended the use-up period for compliance with ATF Rul. 87–3, A.T.F. Q.B. 1987–3, 12 (and corresponding Industry Circular 87–6, dated September 4, 1987) from December 31, 1988 to July 31, 1989. This ruling clarified the applicability of current regulations regarding label disclosure for brandy treated with wood.

In response to Notice Nos. 658, 668, and 676, the Bureau received 20 comments. Subsequent to its analysis of the comments, the Bureau has contacted, among others, the petitioners and the French Government, requesting additional information regarding the Boise method. At this time, the Bureau has not received all of the requested information.

Consequently, so as not to place an undue burden on the industry, and in order to provide the Bureau with sufficient time to complete the rulemaking proceeding, ATF is extending the use-up period for compliance with ATF Rul. 87–3, and corresponding Industry Circular 87–6, from July 31, 1989 to July 31, 1990 or, until the date that the final Treasury decision becomes effective, whichever occurs first.

Drafting Information

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

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

Signed: July 10, 1989.

Stephen E. Higgins,

Director.

[FR Doc. 89–16535 Filed 7–13–89; 8:45 am]

BILLING CODE 4810–31–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Payment of Premiums, which was published on July 10, 1989 (54 FR 28944). Appendix B to the regulation contains a table setting forth the interest rates that are required by statute to be used in valuing a plan's vested benefits for purposes of determining the amount of the premium due to the PBGC. This amendment adds to that table the interest rate applicable to plan years beginning in July 1989.

EFFECTIVE DATE: July 14, 1989.

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 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 9331 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, amended section 4006 of the Employee Retirement Income Security Act of 1974 ("ERISA") to establish a two-part premium structure for single-employer plans, *i.e.*, a flat rate per capita assessment and a variable rate assessment based on a plan's unfunded vested benefits, effective for plan years beginning on or after January 1, 1988. Under amended ERISA section 4006(a)(3)(E)(iii)(II), the interest rate used in valuing a plan's vested benefits for purposes of determining the amount of the plan's unfunded vested benefits must equal 80% of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

The Pension Benefit Guaranty Corporation's (the "PBGC's") final regulation on Payment of Premiums (54 FR 28944 (July 10, 1989)) implements these new premium rules. Under § 2610.23(b)(1) of the regulation, the interest rate for valuing vested benefits is determined by reference to the annual yield for 30-year Treasury constant maturities as reported in Federal Reserve Statistical Release G.13 and H.15. The required interest rate for a given "premium payment year" (the plan year for which the premium is being paid) is 80% of this rate for the calendar month preceding the calendar month in which the premium payment year begins. As a convenience, the PBGC established an Appendix B to the regulation setting forth the required interest rates for premium payment years beginning in January 1988 and thereafter. This amendment to Appendix B adds the interest rate for premium payments years beginning in July 1989.

With the publication of the final premium regulation, the PBGC is changing the schedule for updating Appendix B. Hereafter, that appendix will be updated every three months, concurrently with Appendix A to the regulation (interest rates for late premium payments), which will be updated every quarter whether or not the interest rate changes. Thus, on October 13 (the last business day before October 15, which falls on a Sunday), the PBGC will publish the Appendix A interest rate applicable for the October-

December 1989 quarter and the Appendix B interest rates for premium payment years beginning in August, September and October 1989.

Appendix B to the regulation does not prescribe the required interest rates for valuing vested benefits. These rates are prescribed by section 4006(a)(3)(E)(iii)(II) of ERISA and § 2610.23(b)(1) of the regulation. The purpose of Appendix B is merely to collect and to republish these rates in a convenient place. Thus, the interest rates in Appendix B are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. See 5 U.S.C. 553(b). For these same reasons, the PBGC also finds that good cause exists for making these amendments effective immediately. See 5 U.S.C. 553(d)(3).

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2610

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Appendix B to Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100-203, 101 Stat. 1330.

2. Appendix B to Part 2610 is amended by adding to the table of interest rates therein a new entry for premium payment years beginning in July 1989 and by adding the entry for premium payment years beginning in June 1989 which was originally published on June 15, 1989 (54 FR 25447) and mistakenly omitted from the July 10, 1989, revision of Part 2610 to read as follows. The explanatory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2610—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted, vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
* * * * *	
June 1989	7.06
July 1989	6.62

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

Issued in Washington, DC, on this 11th day of July, 1989.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-16546 Filed 7-13-89; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning August 1, 1989. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after August 1, 1989, and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202-778-8824 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The recent amendments to Title IV made by the Pension Protection Act ("PPA"), a part of the Omnibus Budget Reconciliation Act of 1987, increase the amount of plan benefits for which an employer is responsible upon plan termination. These new termination rules apply to plan terminations with respect to which the 60-day advance notice to affected parties (the notice of intent to terminate) is issued after December 17, 1987. (For more detail, see the PBGC's Notice of Revised Termination Rules, 53 FR 1905 (January 22, 1988).) However, the PPA does not change the Title IV valuation rules.

Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Plans that terminate on or after January 1, 1986 (the effective date of the Single-Employer Pension Plan Amendments Act of 1986) and issued notices of intent to terminate prior to December 18, 1987, or against which the PBGC instituted involuntary termination proceedings before that date, shall continue to be responsible for benefit commitments under the plan and to value guaranteed benefits and/or benefit commitments.

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since June 1, 1989 (54 FR 20838 (May 15, 1989)). This amendment adds to Appendix B a new

set of interest rates and factors for valuing benefits in plans that terminate on or after August 1, 1989, which set reflects a decrease of ¼ percent in the immediate interest rate to 7½ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after August 1, 1989, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 is revised to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 9312–13, Pub. L. 100–203, 101 Stat. 1330.

Appendix B—[Amended]

2. Rate Set 78 of Appendix B is revised and Rate Set 79 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred Annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*	*	
78	6-1-89	8-1-89	7.75	1.0700	1.0575	1.0400	7	8
79	8-1-89		7.50	1.0075	1.0550	1.0400	7	8

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-16547 Filed 7-13-89; 8:45 am]
BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSMRE is announcing the approval of an amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment provides Pennsylvania's Department of Environmental Resources (DER) with the authority to regulate coal preparation plants and other related coal mining activities not previously covered by the Pennsylvania program. The amendment revises the State program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Third Floor, Suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of Amendment

By letter dated December 5, 1988 (Administrative Record No. PA 720), DER submitted a proposed amendment to modify the following rules of the Pennsylvania program, at Title 25 Pennsylvania Code: Sections 86.1, 86.12, 88.1, 88.381, and 89.5. The proposed changes will expand regulatory coverage to include coal preparation activities not previously regulated under the approved program. The changes are briefly described below:

(1) Amendments to 25 PA Code §§ 86.1, 88.1, and 89.5 add a definition for "coal preparation activity."

(2) Amendment to 25 PA Code § 86.1 revises the definition of "coal mining

activity" to include the term "coal preparation activities."

(3) Amendment to 25 PA Code § 86.12 adds provisions to allow for the continued operation of newly regulated coal preparation activities beyond the effective date of this amendment.

(4) Amendment to 25 PA Code § 86.1 grants valid existing rights (VER) to those coal preparation facilities and their associated haul roads which were lawfully in existence on or before July 6, 1984 and were not previously regulated under the Pennsylvania program.

(5) Amendment to 25 PA Code § 88.381 references coal preparation activities in rules governing coal processsing facilities in the anthracite region.

OSMRE published a notice in the Federal Register on January 27, 1989, announcing receipt of the proposed program amendment and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy (54 FR 4046). The public comment period ended February 27, 1989. No public comments were received. There was no request for a public hearing and the hearing scheduled for February 21, 1989, was not held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Pennsylvania program. Revisions which are not discussed below contain language similar to the corresponding Federal rules, or concern nonsubstantive wording changes and do not adversely affect other aspects of the program.

(1) The term "coal preparation activity" is added and defined at §§ 86.1, 88.1 and 89.5 of the Pennsylvania Code. The new definition of coal preparation activity includes all operations where coal is subjected to chemical or physical processing or cleaning, concentrating or other processing or preparation. Other activities conducted in support of coal preparation activity are regulated as coal preparation activity. These activities include, but are not limited to, the following: Private roads appurtenant to coal preparation activity; loading facilities; storage and stockpile facilities; shops and other buildings; water treatment and storage facilities; settling basins; and equipment and material storage areas. The definition of coal preparation activity proposed by Pennsylvania is substantively the same as the Federal definitions for "coal preparation" and "coal preparation plant" found at 30 CFR 701.5 and is deemed no less effective than the Federal regulations.

(2) The term "coal mining activity" found at 25 PA Code § 86.1 is amended to include coal preparation activities. The substantive effect of adding the term coal preparation activities to the definition of coal mining activities is to cause coal preparation activities to be subject to the permitting and performace standards of the approved State program. In essence, the same coal preparation activities and facilities regulated under the Federal rules are regulated by Pennsylvania's proposed definition. Therefore, the Director finds the revised definition of coal mining activity is no less effective than the Federal counterparts at 30 CFR 701.5.

(3) The amendment will for the first time result in the regulation of facilities which physically process coal. These newly regulated coal preparation facilities must be authorized by a coal mining activity permit. Under proposed program revisions at 25 PA Code § 86.12, such facilities may continue to operate if the operator submits a timely and complete permit application on which the DER has not yet rendered a decision and the operation is operated in conformity with applicable performance standards. These criteria for continued operation are the same as those in 30 CFR 785.21(e). The Director, therefore finds the provisions at 25 PA Code § 86.12 no less effective than the Federal regulations.

(4) The term valid existing rights (VER) found at 25 PA Code § 86.1, which applies to all coal mining activity, is revised to set a limiting date of July 6, 1984, for previously unregulated coal preparation activities and their associated haul roads. Subparagraph (iii) of the definition states that VER applies to coal preparation activities and their associated haul roads, which were not subject to the requirements of Chapters 86–90 prior to the effective date of this subsection, were in existence on or before July 6, 1984, and were operating in compliance with applicable laws prior to that date. July 6, 1984, is the date on which the District Court ruled that facilities which in any way leach, chemically process, or physically process coal should be regulated as coal preparation plants even if they do not separate coal from its impurities *In Re: Permanent Surface Mining Regulation Litigation (II)*, Civil Action No. 79–1144 (D.D.C. 1984). The proposed amendment clarifies that the date of July 6, 1984, only pertains to coal preparation facilities and associated haul roads not previously covered under the approved program and that all other coal mining activities are subject to a limiting date of August 3, 1977. Furthermore, the July 6, 1984, date set forth in the proposed amendment is identical to the date upon which Federal rules at 30 CFR 827.13 subjected previously unregulated coal preparation plants to the permanent program regulations of SMCRA and is consistent with the timing of the District Court's decision. The Director, therefore finds that the revised definition of VER is no less effective than the Federal regulations.

(5) The general requirements for anthracite coal processing facilities found at 25 PA Code § 88.381 are revised to replace existing references to coal processing plants, facilities, and activities with the proposed term "coal preparation activity." The Director finds these proposed changes provide clarity and consistency in the types of activities regulated and are no less effective than 30 CFR Part 820.

IV. Disposition of Comments

Pursuant to Section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Pennsylvania program. Comments were also solicited from Pennsylvania's Historical and Museum Commission (PHMC). No substantial comments were received from the Federal agencies, but one comment was received from the PHMC.

The PHMC objected to the date for establishing VER for coal preparation facilities not previously regulated under the Pennsylvania program. Instead of the July 6, 1984, date proposed in the amendment, PHMC felt that August 3, 1977, the date when SMCRA was enacted, was more appropriate.

Federal rules at 30 CFR 785.21 governing such facilities set July 6, 1984, as the date for establishing VER. This date coincides with the District Court for the District of Columbia's July 6, 1984, ruling in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C. 1984). In the discussion of 30 CFR 785.21 rulemaking (52 FR 17728, May 11, 1987), the reasoning for selecting the date is discussed in detail. OSMRE stated that although it has jurisdiction to cover facilities operating prior to July 6, 1984, it would be inequitable to do so. Prior to the District Court's decision, operators of such facilities could have reasonably believed that the program did not apply to them during their period of operation and they could have made their business decisions upon reliance of

those beliefs. The Commission's comment is not accepted because the date in the proposed Pennsylvania amendment for establishing VER for previously unregulated coal preparation facilities is the same as the date established in the Federal rules.

V. Director's Decision

For the reasons discussed in the finding above, the Director is approving the amendment as submitted to OSMRE on December 5, 1988.

The Federal rules at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

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

Carl C. Close,

Assistant Director, Eastern Field Operations.

Date: July 6, 1989.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citations for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 938.10 the addresses and telephone numbers of the Office of Surface Mining are revised to read as follows:

§ 938.10 State regulatory program approval.

* * * * *

Office of Surface Mining Reclamation and Enforcement, Third Floor, Suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone: (717) 782–4036.

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 "L" Street, NW., Washington, DC 20240; Telephone: (202) 343–5492.

3. In § 938.15, paragraph (p) is added to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(p) The following amendment pertaining to the regulation of coal preparation plants submitted to OSMRE on December 5, 1988: is approved effective July 14, 1989. Title 25 of the Pennsylvania Code §§ 86.1, 86.12, 88.1, 88.381 and 89.5.

[FR Doc. 89–16521 Filed 7–13–89; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Parts 221, 222, 223, 224, 225, 226, 227, 228, 229

Revision of Committee Structure and Other Organizational Changes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule reflects the changed names and organizational structure of the top management committees of the Postal Service. It reflects the new name of the Associate Postmaster General (Systems) and the establishment of the new position of Associate Postmaster General (International). It also makes numerous other organizational and editorial changes.

EFFECTIVE DATE: July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Ellen A. Meredith, (202) 268–4188.

List of Subjects in 39 CFR Parts 221, 222, 223, 224, 225, 226, 227, 228, 229

Organization and functions (Government agencies), Authority delegations (Governmt agencies), Postal Service.

Accordingly, Title 39 CFR, is amended as follows:

PART 221—GENERAL PRINCIPLES OF ORGANIZATION

1. The authority citation for Part 221 is revised to read as follows:

Authority: 39 U.S.C. 201, 202, 203, 204, 401(2), 402, 403, 404.

2. Section 221.5 is revised to read as follows:

§ 221.5 Associate Postmasters General.

(a) The Associate Postmasters General are appointed and can be removed by the Postmaster General.

(b) The Associate Postmasters General are required to perform all tasks as assigned by the Postmaster General.

3. In § 221.6, the introductory text of paragraph (a), and paragraphs (c) and (d) are revised to read as follows:

§ 221.6 Groups and Departments.

(a) Postal Service Headquarters is divided into five major groups: Operations Support, Finance, Human Resources, Marketing and Communications, and Administrative Services. Each group is headed by a Senior Assistant Postmaster General (SAPMG). The SAPMG for Finance reports directly to the Postmaster General. The SAPMG for Operations Support reports directly to the Deputy Postmaster General. The SAPMGs for Human Resources, Marketing and Communications, and Administrative Services report directly to the Associate Postmaster General (Systems). The SAPMGs are responsible for the following activities within their assigned areas:

* * * * *

(c) Certain other Headquarters units report directly to the Postmaster General. These include the Inspection Service Department, headed by the Chief Postal Inspector; the Law

Department, headed by the General Counsel, and the Planning Department, headed by an Assistant Postmaster General. The Executive Assistant to the Postmaster General also reports to the Postmaster General.

(d)(1) The Senior Management Committee establishes Postal Service direction and policy, initiates and monitors key programs, prioritizes resource utilization, and serves as the review and approval body for all major plans, programs, and projects. It fosters cross-functional cooperation and develops the strategic plans for the Postal Service.

(2) The Senior Management Committee is made up of the following: The Postmaster General, the Deputy Postmaster General, Associate Postmasters General, the Senior Assistant Postmasters General, General Counsel, Chief Postal Inspector, Assistant Postmaster General, Planning (Secretariat), Assistant Postmaster General, Communications (Observer), Assistant Postmaster General, Government Relations (Observer), Executive Assistant to the Postmaster General (Observer), Secretary to the Board of Governors (Observer), Field Executive (Rotational Basis).

§ 221.7 [Amended]

4. In § 221.7(c)(1), remove "large independent post offices headed by postmasters,".

5. In § 221.7(c)(2), remove "operations" and insert in its place "activities"; remove "and regions"; and remove "independent post offices" and insert in its place "associate offices".

6. In § 221.7(c)(3), remove "operations" and insert in its place "activities"; and remove "regions" and insert in its place "field divisions".

7. In § 221.7(c)(4), remove "operations" and insert in its place "activities"; and remove "regions" and insert in its place "field divisions"

8. Remove § 221.7(c)(5).

PART 222—DELEGATIONS OF AUTHORITY

9. The authority citation for Part 222 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409.

10. The first sentence of § 222.1(e) is revised to read as follows:

§ 222.1 Authority for delegation.

* * * * *

(e) The Associate Postmasters General; the SAPMGs; the Chief Postal Inspector; the General Counsel; the Assistant Postmaster General, Planning; and the Executive Assistant to the Postmaster General, act for the Postmaster General on assigned matters.

* * *

§ 222.4 [Amended]

11. In § 222.4(a)(1), remove the word "departments" and insert in its place the word "functions".

12. In § 222.5, revise paragraphs (a)(2), (a)(3), and (a)(4), and paragraph (c) to read as follows:

§ 222.5 Authority to approve personnel actions and administer oaths of office for employment.

(a) * * *

* * * * *

(2) Chief Postal Inspector;

(3) Regional Chief Postal Inspectors;

(4) Postal Inspectors-in-Charge;

* * * * *

(c) *Transfers of accountability.* In addition to other personnel authorized under this section, associate office coordinators at field divisions and management sectional centers may administer oaths of office for employment at any post office in conjunction with transfers of accountability of postmasters.

§ 222.5 [Amended]

13. In § 222.5(a)(7), remove the word "placement" and insert in its place the word "replacements".

§ 222.6 [Amended]

14. In § 222.6, revise paragraph (c)(3) to read as follows:

* * * * *

(c) * * *

(3) *Recruitments for Job Training Programs.* Oaths of office to prospective Job Training Programs enrollees.

§ 222.7 [Amended]

15. In § 222.7(a)(1), remove "*The Chief Inspector*" and insert in its place "*The Chief Postal Inspector*".

16. In § 222.7(a)(3), remove "and Planning".

17. In § 222.7(c)(1), in the introductory text, remove "Signature Card" and insert in its place "Signature/Designation Card"; and remove "disbursing".

18. In § 222.7(c)(1)(i), remove "he will sign vouchers" and insert in its place "vouchers will be signed".

19. In § 222.7(c)(2), remove "and Planning".

20. In § 222.7(c)(3), remove "The Chief Inspector" and insert in its place "The Chief Postal Inspector"; and remove "and Planning".

§ 222.8 [Amended]

21. In § 222.8(a)(1), remove "The Chief Inspector" and insert in its place "The Chief Postal Inspector".

22. In § 222.8(a)(3), remove "and Planning, or designee, or his designee" and insert in its place ", or designee".

23. Revise the heading and introductory text of § 222.8(c)(1) to read as follows:

* * * * *

(c) *Designating certifying officers.*—(1) *Regional Chief Postal Inspectors and Postal Inspectors-in-Charge.* Regional Chief Postal Inspectors and Postal Inspectors-in-Charge are designated certifying officers, as limited by the Chief Postal Inspector. They are authorized to designate certifying officers for obligations incurred by the Postal Inspection Service. They will complete SF 210 in duplicate to show:

* * * * *

24. In § 222.8(c)(1)(i), remove "Inspection Service" and insert in its place "Postal Inspection Service".

25. In § 222.8(c)(1)(iv), remove "Regional Chief Inspectors" and insert in its place "Regional Chief Postal Inspectors"; and remove "Inspectors-in-Charge" and insert in its place "Postal Inspectors-in-Charge".

26. In § 222.8(c)(3), remove "Regional Chief Inspector" and insert in its place "Regional Chief Postal Inspector"; and remove "Inspectors-in-Charge" and insert in its place "Postal Inspectors-in-Charge".

§ 222.9 [Amended]

27. In the heading of § 222.9 and in the introductory text of § 222.9(a), remove "and Planning".

28. In § 222.9(b), remove "and Planning".

PART 223—RELATIONSHIPS AND CHANNELS OF COMMUNICATION

29. The authority citation for Part 223 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404.

§ 223.1 [Amended]

30. Paragraphs (a) and (c) of § 223.1 are revised to read as follows:

(a) *Between Headquarters and Regions.* Each Headquarters group, department, and office shall provide guidance and policy interpretation to regional officials in its area of responsibility.

* * * * *

(c) *Between Field Divisions and MSCs.* Field division general managers/postmasters and staffs shall provide

guidance and direction to their respective MSC managers/postmasters.

* * * * *

§ 223.2 [Amended]

31. In § 223.2, the heading of paragraph (b) and paragraphs (b)(1) and (b)(2), and paragraphs (c)(1) and (c)(3) are revised to read as follows:

* * * * *

(b) *Regional Offices and Field Installations.* * * *

(1) Associate office postmasters, to and from their MSC Manager/Postmaster.

(2) MSC Managers/Postmasters, to and from their Field Division General Manager/Postmaster.

* * * * *

(c) * * *

(1) The Information Resource Management Department provides the necessary directives to the PDCs. The Law Department shall maintain direct contact on matters relating to professional and policy guidance on claims.

* * * * *

(3) Other postal installations and PDCs may communicate directly on routine accounting matters.

PART 224—ORGANIZATIONS REPORTING DIRECTLY TO THE POSTMASTER GENERAL

32. The heading of Part 224 is revised to read as set forth above.

33. The authority citation for Part 224 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409.

34. Section 224.1 is removed; § 224.2 is redesignated § 224.1; paragraph (b) of redesignated § 224.1 is removed; paragraph (c) of redesignated § 224.1 is redesignated paragraph (b); paragraph (d) of redesignated § 224.1 is redesignated paragraph (c); redesignated paragraph (c)(6) is revised; new paragraphs (d) and (f) are added; and the heading and paragraph (a) of redesignated § 224.1 are revised to read as follows:

§ 224.1 Finance Group.

(a) *General.* The Finance Group is headed by a Senior Assistant Postmaster General (SAPMG). The group consists of three departments, each headed by an Assistant Postmaster General, and the Office of the Treasurer and the USPS Records Officer. The SAPMG, Finance, participates in the planning and budget process, and reviews and evaluates the budget requests of each region for the areas under control of the Finance Group.

(b) [Redesignated from (c)]

(c) [Redesignated from (d)]

* * * * *

(6) Directing the formulation and presentation of a national budget to the Senior Management Committee, Board of Governors, Office of Management and Budget, and Congress.

(d) *Special Projects Department.* The Special Projects Department is responsible for:

(1) Assisting senior management in formulating policy and direction on complex issues.

(2) Directing special studies identified by senior management for use in senior management deliberations.

(3) Monitoring specifically designed issues on behalf of senior management and providing staff analysis of these issues as they change over time.

(4) Providing leadership responsibility on behalf of senior management for special projects and organizational initiatives.

(5) Participating in senior management meetings as appropriate.

* * * * *

(f) *Records Officer.* The Records Officer has responsibility for the retention, security, and privacy of Postal Service records; authorizes their preservation and disclosure; and orders their disposal by destruction or transfer.

35. New § 224.5 is added to read as follows:

§ 224.5 Planning Department

The Planning Department is responsible for:

(a) Forecasting trends and developments, both external and internal, which may have an impact on the Postal Service environment.

(b) Assisting departments in developing plans in accordance with goals and objectives set by the Postmaster General and the Board of Governors.

(c) Establishing and maintaining the planning calendar.

(d) Coordinating the strategic planning process.

(e) Assisting in the development of comprehensive and effective plans.

(f) Identifying and evaluating economic, political, social, technical, and market trends and events.

(g) Developing a projection of long-range business targets as a basis for setting goals and objectives.

(h) Formulating alternative business strategies.

(i) Conducting special economic studies.

PART 225—ORGANIZATIONS REPORTING DIRECTLY TO THE DEPUTY POSTMASTER GENERAL

36. The heading of Part 225 is revised to read as set forth above.

37. The authority citation for Part 225 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409.

38. Section 225.1 is removed; § 225.2 is redesignated § 225.1 and revised to read as follows:

§ 225.1 Operations Support Group.

The Operations Support Group is headed by an SAPMG. The group consists of three departments, each reporting to the SAPMG.

(a) *Delivery, Distribution, and Transportation Department.* The Delivery, Distribution, and Transportation Department is responsible for:

(1) Developing and implementing national policies, procedures, and short- and long-range operational plans for the collection, distribution, transportation, and delivery of all classes of domestic, international, and military mail.

(2) Developing and implementing national policies, procedures, and short- and long-range operational plans for field retail operations.

(3) Establishing and controlling national (inter-regional) distribution and transportation networks.

(4) Establishing requirements and managing the acquisition and deployment of mail transport equipment.

(5) Developing procurement policies for the transportation of mail.

(6) Managing the development of policies and procedures to ensure the optimum use and benefits of automated equipment.

(b) *Operations Systems and Performance Department.* The Operations Systems and Performance Department is responsible for:

(1) Defining, operating, and maintaining the major operating performance management systems.

(2) Setting goals, analyzing trends, and assessing performance in key operations areas.

(3) Identifying and resolving operating problems.

(4) Developing operating management systems, computer models, and new methods for distribution and delivery.

(5) Directing the acquisition, deployment, maintenance, and disposal of postal vehicles.

(6) Directing the maintenance and improvement of address information and related systems.

(c) *Engineering and Technical Support Department.* The Engineering and Technical Support Department is responsible for:

(1) Planning and approving all operating requirements and standards for mechanized and automated facilities.

(2) Establishing national policy and programs for the maintenance of facilities and mail processing, customer services, and delivery services related mechanization.

(3) Maintaining a technical and field support capacity for new and modified equipment and providing for the overhaul of major mail processing equipment.

(d) The Regional Postmasters General report to the Deputy Postmaster General.

PART 226—GROUPS AND DEPARTMENTS REPORTING TO THE ASSOCIATE POSTMASTERS GENERAL

39. The heading of Part 226 is revised to read as set forth above.

40. The authority citation for Part 226 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409.

41. Section 226.1 is revised to read as follows:

§ 226.1 The Associate Postmaster General (Systems).

The Associate Postmaster General (Systems) is responsible for managing groups, headed by an SAPMG, and departments which make up the support functions of the Postal Service.

42. Section § 226.2(d) is redesignated § 226.2(e); § 226.4(b) is redesignated § 226.2(d); and § 226.2(a) is revised to read as follows:

§ 226.2 Administrative Services Group.

(a) *General.* The Administrative Services Group consists of three departments headed by an Assistant Postmaster General and one department headed by the Judicial Officer.

(b) * * *

(c) * * *

(d) [Redesignated from § 226.4(b)]

(e) [Redesignated from § 226.2(d)]

43. Section 226.3(a) is revised, and § 226.3(c)(4) is added to read as follows:

§ 226.3 Human Resources Group.

(a) *General.* The Human Resources Group consists of three departments, each reporting to the SAPMG.

* * * * *

(c) * * *

(4) Administering programs to improve the quality of working life in the Postal Service.

* * * * *

44. Section 226.4 is removed; § 226.5 is redesignated § 226.4; paragraph (d) of redesignated § 226.4 is removed; paragraph (e) of redesignated § 226.4 is designated paragraph (d) and revised; paragraphs (e) and (f) are added; and paragraph (a) of redesignated § 226.4 is revised to read as follows:

§ 226.4 Marketing and Communications Group.

(a) *General.* The Marketing and Communications Group is headed by an SAPMG. The group consists of three departments, each reporting to the SAPMG.

* * * * *

(d) *Philatelic and Retail Services Department.* The Philatelic and Retail Services Department is responsible for:

(1) Designing, manufacturing, and distributing postage stamps and stationery items.

(2) Establishing and implementing philatelic marketing programs.

(3) Managing mail order services for philatelic products.

(4) Managing special programs to promote philately and philatelic products and services.

(5) Establishing policy, business strategy, and procedures for the retail sale of postal services, products, and postage and the acceptance of mail at retail outlets.

(e) *Technology Resource Department.* The Technology Resource Department is headed by the Consumer Advocate who reports to the Associate Postmaster General, and is responsible for:

(1) Developing long-term technology development plans to meet changing technological trends and developments.

(2) Managing research and development directed to the application of new concepts to Postal Service functions.

(3) Monitoring the technological interaction between the Postal Service and the outside environment. Responding to customer inquiries and complaints regarding postal products and services.

(f) *Consumer Affairs Department.* The Consumer Affairs Department is headed by the Consumer Advocate who reports to the Associate Postmaster General (Systems), and is responsible for:

(1) Responding to customer inquiries and complaints regarding postal products and services.

(2) Developing, with the Communications Department, programs to inform the public on mailing programs, procedures, and policies.

(3) Tracking service problems and identifying trends to resolve operating programs.

45. Section 226.5 is added to read as follows:

§ 226.5 Associate Postmaster General (International).

(a) *General.* The Associate Postmaster General (International) is responsible for directing activities designed to increase international postal business, and for the relationship with foreign postal administrations.

(b) *International Postal Affairs Department.* The International Postal Affairs Department reports to the Associate Postmaster General (International) and is responsible for:

(1) Representing the United States in the Universal Postal Union (UPU) and the Postal Union of the Americas and Spain (PUAS).

(2) Providing liaison with all foreign postal administrations.

(3) Negotiating bilateral and multilateral postal treaties and agreements with foreign governments.

(4) Providing policy guidance on all aspects of international postal affairs.

PART 227—HEADQUARTERS RELATED FIELD UNITS

46. The heading of Part 227 is revised to read as set forth above.

47. The authority citation for Part 227 continues to read as follows:

Authority: 39 U.S.C. 401, 402, 403, 404.

§ 227.1 [Amended]

48. In § 227.1, remove "Administrative Support Facilities" and insert in its place "Headquarters Related Field Units".

§ 227.2 [Amended]

49. In § 227.2(a), remove the second sentence.

50. Sections 227.3, 227.4, 227.5 and 227.6 are revised, and new §§ 227.7, 227.8, 227.9, 227.10 and 227.11 are added to read as follows:

§ 227.3 Procurement and Supply Department.

(a) *Materiel Distribution Centers.* There are two materiel distribution centers, one at Somerville, New Jersey, and one at Topeka, Kansas. Materiel Distribution Centers are responsible for:

(1) Procuring, storing, and issuing basic supplies for use in all postal facilities.

(2) Arranging for the transportation of supplies to facilities.

(b) *Mail Equipment Shop.* The Mail Equipment Shop, located in Washington, DC, is responsible for:

(1) Manufacturing mail bags, sacks, and pouches.

(2) Manufacturing locks and keys.

(3) Manufacturing hardware items used for mail security and for customer service lobby equipment.

§ 227.4 Engineering and Technical Support Department.

(a) *Maintenance Technical Support Center (MTSC).* The Maintenance Technical Support Center, located in Norman, OK, is responsible for:

(1) Developing policies, programs, methods, and standards for the maintenance of mail processing equipment.

(2) Issuing guidelines to field managers on building systems and mail processing equipment maintenance procedures.

(b) *Engineering and Development Center.* The Engineering and Development Center, located in Merrifield, Virginia, is responsible for:

(1) Providing engineering and near-term development support for letter mail equipment, packaged mail equipment, delivery and retail equipment, and associated systems and software.

(2) Directing near-term development and modifications to equipment and components to increase efficiency, reliability, and to improve safety.

(3) Conducting tests to evaluate new equipment for Postal service use; performing failure analyses on equipment and components.

(4) Providing applied engineering to customize commercial technology and equipment for postal use.

§ 227.5 Employee Relations Department.

National Test Administration Center (NTAC). The National Test Administration Center, located in Alexandria, VA, is responsible for:

(a) Receipt and processing of requests to give examinations.

(b) Preparing and distributing registers of eligible applicants and notices of ratings.

§ 227.6 Training and Development Department.

(a) *Technical Training Center.* The Technical Training Center, located in Norman, OK, is responsible for:

(1) Developing training materials for craft employees in maintenance and related crafts.

(2) Performing training for technical employees.

(b) *William F. Bolger Management Academy.* The William F. Bolger Management Academy, located in Potomac, MD, is responsible for:

(1) Developing training materials for supervisors, postmasters, and other managerial employees.

(2) Performing training for managerial employees.

§ 226.7 Information Resource Management Department.

(a) *National Information Systems Support Center.* The National Information Systems Support Center, located in Raleigh, NC, is responsible for:

(1) Designing new large-scale automated systems and writing the supporting program code.

(2) Managing the nationwide voice and data communications system.

(b) *Postal Data Centers.* The Postal Data Centers, located in Minneapolis, MN, New York, NY, St. Louis, MO, San Mateo, CA, and Wilkes-Barre, PA, are responsible for:

(1) Systems analysis, computer programming, and other systems development activities.

(2) Accounting, accounts payable, payroll, money order disbursing, claims and loss settlement, and other financial services.

(3) Data processing and related computer services.

§ 227.8 Operations Systems and Performance Department.

Address Information Center. The Address Information Center, located in Memphis, TN, is responsible for:

(a) Developing policies for and providing technical guidance and computer support to field address Information Systems units and field Computerized Forwarding System units.

(b) Providing nationwide service and technical guidance for postal customers requiring support related to address information systems.

§ 227.9 General Counsel.

Regional Counsels. The Regional Counsels are responsible for providing legal representation services within a regional geographic area, including representation before the Board of Contract Appeals, liaison with U.S. Attorneys on contract, real estate, and tort litigation, as well as personnel related matters, such as labor/management relations, Equal Employment Opportunity, Merit Systems Protection Board, National Labor Relations Board, and district court actions.

§ 227.10 Controller Department.

International Accounts Center. The International Accounts Center, located in New York, NY, is responsible for reviewing, approving, settling, and auditing international mail handling and transportation accounts for contracts and agreements entered into by the Postal service.

§ 227.11 Philatelic and Retail Services Department.

(a) *Philatelic Units.* The Philatelic Sales Division, located in Merrifield, VA, is a large mail and telephone order sales operation for stamps and other philatelic products; it is supported by an order fulfillment unit in Kansas City, MO, which is responsible for the filling and shipping of domestic and international mail orders for philatelic products.

(b) *Stamped Envelope Unit.* The Stamped Envelope Unit, located in Williamsburg, PA, processes, distributes, and certifies billing or postmaster accountability for direct orders of all stamped envelope products marketed by the Postal service.

PART 228—SERVICE CENTERS

51. The authority citation for Part 228 continues to read as follows:

Authority: 39 U.S.C. 401, 402, 403, 404.

52. Sections 228.2 through 228.5 are revised, and new §§ 228.6 and 228.7 are added to read as follows:

§ 228.2 Engineering and Technical Support Department—Maintenance Overhaul and Technical Service Centers (MOTSC).

Maintenance Overhaul and Technical Service Centers are responsible for:

(a) Refurbishing mail processing equipment such as letter sorting machines, facer cancellers, and related equipment.

(b) Providing technical advice and guidance to field maintenance employees on procedures and practices to follow.

§ 228.3 Delivery, Distribution, and Transportation Department—Transportation Management Service Centers (TMSC).

Transportation Management Service Centers are responsible for:

(a) Procuring mail transportation services between mail processing centers.

(b) Controlling the inventory of empty mail equipment.

(c) Coordinating the movement of mail between mail processing centers, bulk mail centers (BMCs), management sectional centers (MSCs), and field divisions.

§ 228.4 Facilities Department—Facilities Service Centers.

Facilities Service Centers are responsible for:

(a) Developing functional design specifications for new or altered facilities.

(b) Investigating and evaluating sites for proposed postal facilities.

(c) Purchasing, leasing, disposing of, and managing real estate and facilities.

(d) Contracting for the design and construction of facilities.

§ 228.5 Procurement and Supply Department—Procurement and Materiel Management Service Centers.

Procurement and Materiel Management Service Centers are responsible for:

(a) Contracting for supplies, services, and equipment.

(b) Maintaining systems for inventorying equipment and supplies.

§ 228.6 Rates and Classification Department.

Rates and Classification Service Centers are responsible for:

(a) Managing, for a geographic area, the rates and classification activities related to rates schedules, mail classification, and statistical systems, including guiding and monitoring bulk mail acceptance, mailing requirements, data collection programs in divisions, and providing classification rulings.

(b) Providing decisions on authorizations and rulings that enable customers to exercise mailing privileges for various classes of mail and service.

§ 228.7 Human Resources Group.

Human Resources Service Centers are responsible for:

(a) Processing personnel actions and maintaining personnel records for the regional office and the service centers.

(b) Implementing the Human Resources Information System (HRIS) in the field and training all users.

(c) Providing administrative support, technical guidance, and case processing for Equal Employment Opportunity (EEO), Merit Systems Protection Board (MSPB), and nonbargaining appeals.

(d) Overseeing all safety and health programs and issues, and responding to incidents or inquiries involving industrial hygiene.

(e) Coordinating the scheduling of all arbitration cases with arbitrators, union representatives, and field employees.

PART 229—FIELD ORGANIZATIONS

53. The heading of Part 229 is revised to read as set forth above.

54. The authority citation for Part 229 continues to read as follows:

Authority: 39 U.S.C. 401, 402, 403, 404.

§ 229.1 [Amended]

55. In § 229.1(a), the heading is removed and "*General*" is inserted in its place.

56. In § 229.1(b), the heading is removed and *"Functional Units"* is inserted in its place.

57. In § 229.2, remove the heading and insert "Field Divisions" in its place; remove paragraph (b); redesignate paragraph (c) as paragraph (b); remove the heading of redesignated paragraph (b) and insert *"Functional Units"* in its place; remove "and compliance" in redesignated paragraph (b)(1) and insert "compliance, and statistical programs" in its place; remove "plant and equipment engineering; and bulk mail center operations" in redesignated paragraph (b)(2) and insert "and plant and equipment engineering" in its place; in redesignated paragraph (b)(3), remove "primarily" and "data collection,"; also in redesignated paragraph (b)(3), remove "delivery and retail programs" and insert "delivery services programs" in its place; remove "technical sales support" in redesignated paragraph (b)(4) and insert "technical sales support, retail marketing" in its place; in redesignated paragraph (b)(5), remove "recruitment" and "benefits" and insert "development" and "staffing", respectively, in their places; and revise paragraph (a) and redesignated paragraph (b)(7) to read as follows:

§ 229.2 Field Divisions.

(a) *General.* The field divisions are responsible for the day-to-day management of all operations and facilities within a geographic area. Each field division is headed by a Field Division General Manager/Postmaster who reports to the Regional Postmaster General.

(b) [Redesignated and amended]

* * * * *

(7) Field Operations is responsible for the management and evaluation of grade 24 and below associate offices that report to the host division. This includes the development of operating budgets and disbursement of funds; investigation and correction of operational, service, budget, productivity and efficiency problems; and providing technical assistance.

58. Sections 229.3 and 229.4 are revised to read as follows:

§ 229.3 Management Sectional Centers (MSCs).

(a) *General.* Each Management Sectional Center is headed by an MSC Manager/Postmaster who reports to a Field Division General Manager/Postmaster.

(b) *Functional Units.* Each Management Sectional Center is organized into six functions: Finance, City Operations, Operations Services, Marketing, Human Resources, and Field Operations, as follows:

(1) Finance is responsible for the operation of all management information systems, accounting and budget, timekeeping, financial analysis, statistical programs, procurement and office services, auditing, and compliance.

(2) City Operations is responsible for all mail processing within the MSC facility including stations and branches and air mail operations; plant and equipment engineering; fleet operations; vehicle operations and maintenance.

(3) Operations Services is responsible for providing staff support to the operations function. The primary functions in operations services include quality control, logistics, address information systems, delivery services, and industrial engineering.

(4) Marketing plans and implements Postal Service marketing strategies, account management, technical sales support, retail marketing, merchandising and sales information systems. It provides marketing data to operations and other functional areas on customer demand, and recommends locations of retail facilities, hours of operation, collection boxes, and similar retail and delivery programs.

(5) Human Resources is responsible for labor relations, EEO complaint processing, employment and development, training, compensation and staffing, affirmative action, and safety and health.

(6) Field Operations is responsible for the management and evaluation of associate offices that report to the Management Sectional Center. This includes the development of operating budgets and disbursement of funds; investigation and correction of operational, service, budget, productivity and efficiency problems; and providing technical assistance. Larger associate offices report to the MSC Manager/Postmaster as follows:

(i) MSC V—Associate Office, level 22 and above.

(ii) MSC IV—Associate Office, level 21 and above.

(iii) MSC III—Associate Office, level 20 and above.

§ 229.4 Other Field Organizations.

(a) *Bulk Mail Centers (BMCs).* Bulk Mail Centers serve a specific geographic area and are headed by a manager who reports to the Field Division General Manager/Postmaster. BMCs are responsible for processing certain types of second- and third-class mail in bulk form and parcel post mail, normally in bulk or piece form.

(b) *Associate Offices.* Associate offices are headed by a postmaster who

reports to a Director, Field Operations, in an MSC or a field division. Associate offices are responsible for the receipt, delivery, and dispatch of all classes of mail for geographic areas normally encompassing the boundaries of a city or town.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89–16481 Filed 7–13–89; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–3615–5]

Ocean Dumping: Designation of Site—Gulf of Mexico, Mississippi River Gulf Outlet Canal, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates an existing dredged material disposal site located in the Gulf of Mexico near the Mississippi River Gulf Outlet (MRGO) Canal for the continued disposal of dredged material removed from the MRGO. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This final site designation is for an indefinite period of time and is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective on August 14, 1989.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this designation is available for public inspection at the following locations:

1445 Ross Avenue, 9th Floor, Dallas, Texas 75202.

Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas, 214/655–2260 or FTS/255–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the MRGO site for the disposal of material dredged from the MRGO. In January 1980, the interim status of the MRGO site was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA"), requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA and the New Orleans District Corps of Engineers (COE) jointly prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Mississippi River Gulf Outlet Ocean Dredged Material Disposal Site Designation." On January 19, 1989, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register.** The public comment period on the Draft EIS closed on March 6, 1989. Three comment letters were received on the Draft EIS. EPA and the COE responded to these comments in the Final EIS. On May 26, 1989, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register.** The public comment period on the Final EIS closed on June 26, 1989. No comment letters were received on the Final EIS.

The action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR Part 227 by providing EPA a letter containing all the necessary information.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in the Draft and Final EISs based on information from the COE. A land disposal area does exist about 25 miles west of the disposal site. However, use of this upland site for material which has traditionally been dumped at sea would quickly decrease the lifetime of the site. Additionally, because of the distance involved, the cost would increase considerably. Accordingly, this alternative was not considered feasible. Marsh creation and beach nourishment with MRGO material were also evaluated. Because of increased transportation costs, these alternatives were also determined not practicable.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transportation costs without any corresponding environmental benefits; (2) the removal of sediments from the nearshore environment making them unavailable for movement and deposition by longshore currents; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located immediately north of the existing site was also evaluated. However, no environmental benefits would be gained by its selection.

In accordance with the requirements of the Endangered Species Act, EPA and the COE have completed a biological assessment. The COE has coordinated a no adverse effect determination with the National Marine Fisheries Service (NMFS) and NMFS has concurred with this determination. EPA has also coordinated with the State of Louisiana concerning the Coastal Zone Management Act. The State of Louisiana has concurred with EPA's determination that final designation of the MRGO disposal site is consistent, to the maximum extent practicable, with the Louisiana Coastal Resources Program.

The EIS evaluated the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being

conducted in accordance with the Act, the Ocean Dumping Regulations and other applicable Federal environmental legislation. This final rulemaking notice serves the same purpose as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On February 17, 1989 (54 FR 7211), EPA proposed designation of the MRGO disposal site for the continuing disposal of dredged materials from the MRGO. The public comment period on this proposed action closed on April 3, 1989. One comment letter from the Department of the Interior (DOI) was received. DOI indicated that the disposal site is located on portions of at least five oil and gas leases and that special care should be exercised during dumping operations to insure that no adverse effects on existing oil and gas facilities result. DOI also stated that oil barging operations are conducted nearby and shoaling associated with disposal of dredged material could result in accidental groundings and oil spills. Based on past experience, EPA and the COE do not anticipate that dredged material disposal will unduly interfere with mineral development activities. However, contractors will be notified of the existing oil and gas facilities. Also, in order to avoid barge groundings, the material will be spread as evenly as possible so that bottom elevations are not increased by more than 0.5 feet.

The southern side of the existing site is located about twelve miles north of the Plaquemines Parish mainland. The northwest end of the site is about 2.2 miles from the Breton Islands to the northwest and 2.3 miles from the Grand Gossier Islands to the northeast. The site extends approximately sixteen miles offshore. Water depths at the site range from 20 to 40 feet. The coordinates of the site are as follows: 29°32' 35" N., 89°12'38" W.; 29°29'21" N., 89°08'00" W.; 29°24'51" N., 88°59'23" W.; 29°24'28" N., 88°59'39" W.; 29°28'59" N., 89°08'19" W.; 29°32'15" N., 89°12'57" W.; thence to the point of beginning.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Draft and Final EISs that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the proposed site are reviewed below in terms of the eleven specific factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1).)

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography gently slopes to the southeast (8.0 feet per mile).

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2).)

The northern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. Migration of fish and shellfish through the area is heaviest during spring and fall. The MRGO ocean disposal site represents a small area of the total range of the fisheries resource.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3).)

The MRGO ocean disposal site is about 2.2 miles from the nearest beaches on the barrier islands. These beaches are sparsely used because they are small and accessible only by boat. The turbidity plume would be diluted to ambient levels well before reaching these beaches.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4).)

The dredged material to be disposed is from the adjacent area of the MRGO and consists of various mixtures of sand, silt and clay. Sediment grain size generally increases in the offshore direction, with sands being predominant throughout the disposal site. Approximately three million cubic yards of material are disposed of in the site annually. The material is removed with a hopper dredge and released in the disposal site. The material is not packaged in anyway. The Corps of Engineers would likely be the only user of the site.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5).)

Surveillance is possible by shore-based radar, aircraft, or day-use boats. No surveillance is currently performed by the U.S. Coast Guard. Monitoring would be facilitated by the fact that the disposal site is near shore, in shallow waters, and has baseline data available. The primary purpose of monitoring is to determine whether disposal at the site is significantly affecting areas outside the disposal area and to detect any unacceptable adverse effects occurring in or around the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6).)

Mixing processes, current characteristics, and sediment transport in the nearshore region off Breton Islands are influenced by tidal currents, winds, and storms. Chemical and physical parameters generally indicate a fairly homogenous water column in the area. Density stratification can occur seasonally with fresher water from the Mississippi River on the surface. In the summer, bottom waters on the Louisiana shelf are occasionally oxygen depleted, which causes mass mortalities of benthic organisms. During a site study in December 1980 and June 1981, waters were supersaturated with oxygen at all depths. During June 1981, waters were nearly saturated or supersaturated with oxygen down to about twenty-one feet. Velocities of 3 to 4 knots may occur during storm events. It appears that the predominant current near the west side of the barrier islands in Breton Sound is toward the north. Data on currents along the Gulf side are lacking.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7).)

Dredged materials from the construction and maintenance of the MRGO have been disposed of at the site since 1958, and no significant adverse impacts have resulted. Previous disposals have caused minor effects, such as temporary increases in suspended sediment concentrations, temporary turbidity, sediment mounding, smothering of some benthic organisms, release of nutrients, possible minor releases of trace metals, and a temporary change in sediment grain size.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).)

In the vicinity of the disposal site the majority of shipping traffic is confined to the MRGO. Dredging facilitates shipping; periodic use of the disposal site has some potential for interfering with ship movement in the MRGO during dredging and disposal operations.

Nearshore areas contain a productive "high-use" fishing ground for a number of commercial and recreational species. The MRGO site represents a very small portion of the total nearshore fishing grounds in the Deltaic Plain. Adverse impacts from disposal would be temporary and minor. Interferences with fishing may occur if any shoals are created by dredged material disposal, since this could cause groundings of shrimp boats within disposal site boundaries. If the material is spread evenly, it will raise bottom elevations within the site by 0.5 feet, which should not result in vessel groundings.

The nearest oyster lease is in the Jack Bay estuarine area about 15 miles southwest of the site. Designation of the disposal site would not impact this or any other lease areas. Desalination areas do not occur in the vicinity of the disposal site. The site is located within the Breton National Wildlife Refuge, which is a major wintering area for redhead ducks. There has been no apparent impact to the refuge from use of the disposal site.

Petroleum and mineral-extracting activities occur offshore within 3.5 miles of the site and are not impacted by use of the site. Also there are pipelines that occur throughout the area that have not been impacted by the deposition of dredged material. Intermittent dumping does not interfere with the exploration or production phases of resource development, or with other legitimate uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).)

Water column concentrations of trace metals and chlorinated hydrocarbons (CHC) were below EPA's water quality criteria during the 1980–1981 study. Concentrations in sediment were strongly related to grain size, with highest levels in silts and clays within Breton Sound. Concentrations of heavy metals and CHC's were comparable inside and outside the disposal site for similar sediment types.

Nutrient concentrations, turbidity, and suspended solids, are controlled in large part by Mississippi River discharge, and are generally low in the summer/fall and increase in the winter/spring.

The benthos at the site was found to exhibit a patchy distribution, spatially and temporally and was dominated by polychaete worms, lancelet worms, and the little surf clam. Several of the dominant organisms, inside and outside the site, were well adapted to the transitional area between Breton Sound and the shallow shelf east of the islands. There was a high variance between dominant species inside and outside of the site. No effects of previous dredged material disposal on benthic organisms could be identified at the disposal site and the macrofauna were characteristic of shallow areas offshore from the eastern Mississippi delta. Although there was a minor accumulation of mercury in oysters exposed to disposal site sediment, oysters do not occur in the disposal area.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10).)

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6 (a)(11).)

There are no known features of historical or cultural significance on the barrier islands to either side of the site. No known shipwrecks are located within site boundaries.

E. Action

Based on the completed EIS process and available data, EPA concludes that the Mississippi River Gulf Outlet ocean dredged material disposal site may appropriately be designated for use. The existing site is compatible with the general criteria and specific factors used for site evaluation. The designation of the MRGO site as an approved ocean dumping site is being published as final rulemaking.

While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: June 30, 1989.

Joseph D. Winkle,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Mississippi River Gulf Outlet, Louisiana-Breton Sound and Bar Channel and

adding paragraph (b)(75) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(75) Mississippi River Gulf Outlet, Louisiana—Region 6 Location: 29°32'35" N., 89°12'38" W.; 29°29'21" N., 89°08'00" W.; 29°24'32" N., 88°59'23" W.; 29°24'28" N., 88°59'39" W.; 29°28'59" N., 89°08'19" W.; 29° 32'15" N., 89°12'57" W.; thence to the point of beginning.

Size: 6.03 square nautical miles.
Depth: Ranges from 20–40 feet.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the vicinity of Mississippi River Gulf Outlet.

[FR Doc. 89–16538 Filed 7–13–89; 8:45 am]
BILLING CODE 6560–50–M

[OPTS—46020; FRL–3616–1]

40 CFR Parts 796 and 797

Toxic Substances Control Act Test Guidelines; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is issuing this technical amendment to correct three of the test guidelines promulgated under the Toxic Substances Control Act (TSCA). Because these guidelines are not enforceable until they are imposed as a test standard in a specific test rule, these amendments are made without public comment. EPA is correcting the concentrations of dimethyl formamide or acetone carriers that should not be exceeded during the test and the test temperature for bluegill, fathead minnows and rainbow trout in § 797.1400. In § 796.2750 EPA is correcting the solid/solution ratio for a test chemical in sediment or soil. In § 796.3400 EPA is adding the number "10" which was inadvertently omitted at the time the test guidelines were promulgated.

DATES: These technical amendments are effective July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office, Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street SW., Washington, DC 20460. Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 27, 1985 (50 FR 39252), EPA issued as a final regulation test guidelines that were previously available through the National Technical Information Service (NTIS). These guidelines are used in the testing of chemicals under section 4 of TSCA. The guidelines, which are codified at 40 CFR Parts 796 and 797, were amended in the **Federal Register** of May 20, 1987 (52 FR 19056).

This document is correcting § 796.2750(b)(1)(vii)(A), sediment and soil adsorption isotherm, to change the phrase "solid/solution ratio not exceeding $\frac{1}{10}$", so that the phrase reads "solid/solution ratio equal to or greater than $\frac{1}{10}$".

Section 796.3400, inherent biodegradability is being corrected by revising paragraph (b)(2)(i)(B)(*3*)(*ii*) to add the number "10" prior to the phrase "percent cation exchange capacity", which was inadvertently omitted at the time the test guidelines were promulgated in the **Federal Register.**

In § 797.1400, the fish acute toxicity test, paragraph (d)(2)(vi)(B) is being corrected to change the concentration of dimethyl formamide or acetone carriers from "5/o mg/l" to "5.0 mg/l".

In § 797.1400, the fish acute toxicity test, paragraph (d)(3)(iii) is being corrected to change the sentence "The test temperature shall be 22 °C for rainbow trout.", so that the sentence reads "The test temperature shall be 22 °C for bluegill and fathead minnows and l2 °C for rainbow trout." Since these amendments revise §§ 796.2750(b)(1)(vii)(A), 796.3400(b)(2)(i)(B) (*3*)(*ii*), 797.1400(d)(2)(vii)(B), and 797.1400(d)(3)(iii), the amended paragraphs are shown in their entirety in this document. This is done solely for the convenience of the user. There are no additional changes being made to these guidelines.

Lists of Subjects in 40 CFR Parts 796 and 797

Chemical fate, Chemicals, Environmental protection, Environmental effects, Hazardous substances, Laboratories, Testing.

Dated: June 29, 1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Parts 796 and 797 are amended as set forth below:

PART 796—[AMENDED]

1. In Part 796:

a. The authority citation for Part 796 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. In § 796.2750 by revising paragraph (b)(1)(vii)(A) to read as follows:

§ 796.2750 Sediment and soil adsorption isotherm.

* * * * *

(b) * * *

(1) * * *

(vii) * * *

(A) Equilibrate one solution containing a known concentration of the test chemical with the sediment or soil in a solid/solution ratio equal to or greater than $\frac{1}{10}$ and preferably equal to or greater than $\frac{1}{5}$. It is important that the concentration of the test chemical in the equilibrating solution (*1*) does not exceed one-half of its solubility and (*2*) should be 10 ppm or less at the end of the equilibration period.

* * * * *

c. In § 796.3400 by revising paragraph (b)(2)(i)(B)(*3*)(*ii*) to read as follows:

§ 796.3400 Inherent biodegradability in soil.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) * * *

(*3*) * * *

(*ii*) Spodosol: pH between 4.0 and 5.0 organic C content between 1.5 and 3.5 percent clay content $<$ 10 percent cation exchange capacity $<$ 10 mval.

* * * * *

PART 797—[AMENDED]

2. In Part 797

a. The authority citation for Part 797 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. In § 797.1400 by revising paragraphs (d)(2)(vii)(B) and (d)(3)(iii) to read as follows:

§ 797.1400 Fish acute toxicity test.

* * * * *

(d) * * *

(2) * * *

(vii) * * *

(B) Triethylene glycol and dimethyl formamide are the prefered carriers, but acetone may also be used. The concentration of triethylene glycol in the test solution should not exceed 80 mg/l. The concentration of dimethyl formamide or acetone in the test solution should not exceed 5.0 mg/l.

(3) * * *

(iii) *Temperature.* The test temperature shall be 22 °C for bluegill and fathead minnow and 12 °C for rainbow trout. Excursions from the test temperature shall be no greater than ±2

°C. The temperature shall be measured at least hourly in one test chamber.

* * * * *

[FR Doc. 89-16537 Filed 7-13-89; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302-1

"Last Move Home" for Senior Executive Service (SES) Career Appointees Upon Separation From Federal Service for Retirement

AGENCY: Federal Supply Service, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim regulation implements legislation authorizing limited relocation allowances for a "last move home" under certain conditions for eligible Senior Executive Service (SES) career appointees to the place where they will reside upon separation for retirement.

DATES: Effective date: September 22, 1988.

Applicability date: The provisions of this regulation apply to eligible SES career appointees who are separated from Federal service on or after September 22, 1988, for purposes of retirement.

Expiration date: This regulation expires April 1, 1991, unless sooner canceled or superseded.

Comments or recommendations concerning this regulation are due on or before August 28, 1989.

ADDRESSES: Comments may be mailed to the General Services Administration, Federal Supply Service, Travel and Transportation Regulations Staff (FBR), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Raymond F. Price, Jr. or Bonnie Seybold, Travel and Transportation Regulations Staff (FBR), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: The provisions of this regulation are authorized by section 629 of the Treasury, Postal Service and General Government Appropriations Act, fiscal year 1989, Pub. L. 100-440 (102 Stat. 1758), September 22, 1988, as amended by section 3 of the Federal Employees Leave Sharing Act of 1988, Pub. L. 100-566 (102 Stat. 2845), October 31, 1988. This legislation amended 5 U.S.C. 5724(a) to allow, under certain specified conditions, reimbursement of travel, transportation, and household goods moving expenses for eligible SES career appointees upon separation from Government service to the place where the individual will reside upon retirement. The place of retirement may be located in the United States or its territories and possessions, the Commonwealth of Puerto Rico, or the former Canal Zone area.

Section 629 of Pub. L. 100-440 states that these amendments shall be carried out by agencies by the use of funds appropriated or otherwise available for the administrative expenses of each of such respective agencies. The amendments do not authorize the appropriation of funds in amounts exceeding the sums otherwise authorized to be appropriated for such agencies.

The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 302-1

Government employees, Travel, Travel allowances, Travel and transportation expenses, Transfers, Relocation allowances and entitlements.

For the reasons set out in the preamble, Title 41, Chapter 302 of the Code of Federal Regulations, is amended as set forth below.

PART 302-1—[AMENDED]

1. The authority citation for Part 302-1 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

2. Part 302-1 is amended by designating the existing §§ 302-1.1 through 302-1.14 as Subpart A and adding a new Subpart B to consist of §§ 302-1.100 through 302-1.107 to read as follows:

Subpart A—New Appointees and Transferred Employees

* * * * *

Subpart B—SES Career Appointees Upon Separation for Retirement

Sec.

Subpart B—SES Career Appointees Upon Separation for Retirement

§ 302-1.100 Applicability.

(a) *Individuals covered.* This regulation is applicable to career appointees in Senior Executive Service positions, defined as follows.

(1) "Career appointee" as defined in 5 U.S.C. 3132(a)(4) means an individual in a Senior Executive Service (SES) position whose appointment to the position or previous appointment to another SES position was based on approval by the Office of Personnel Management (OPM) of the executive qualifications of such individual.

(2) "Senior Executive Service position" as defined in 5 U.S.C. 3132(a)(2) means any position in an executive agency, except a Government corporation and the General Accounting Office (see other exclusions in 5 U.S.C. 3132(a) (1) and (2)), which is in GS-16, 17, or 18 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position that is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and is a position which includes one or more of the duties listed in 5 U.S.C. 3132(a)(2).

(b) *Exclusions.* The provisions of this regulation are not applicable to individuals whose appointment in the SES is a limited term, limited emergency, or noncareer appointment. (See 5 U.S.C. 3132(a) (5), (6), and (7) for definitions of excluded types of appointment.)

§ 302-1.101 Eligibility criteria.

An SES career appointee, as defined in § 302-1.100, is eligible, upon separation from Federal service, for those travel and transportation allowances specified in § 302-1.103 of this regulation, if such individual meets the following criteria:

(a) Has been transferred or reassigned geographically in the interest of the Government and at Government expense from one official station to another for permanent duty as a career appointee in the SES at any time during or after the 5-year period immediately

preceding the date of eligibility to receive an annuity for optional retirement under section 8336 (a), (b), (c), (e), (f) and (j) of subchapter III (Civil Service Retirement System (CSRS)) of chapter 83 or under section 8412 of subchapter II of chapter 84 (Federal Employees Retirement System (FERS)) of title 5, U.S.C.;

(b) Is separated from Federal service on or after September 22, 1988;

(c) Is eligible to receive an annuity upon such separation under the provisions of subchapter III (CSRS) of chapter 83 or chapter 84 (FERS) of title 5, U.S.C.; and

(d) Has not previously received or been authorized "last move home" benefits upon separation from Federal service for retirement.

§ 302–1.102 Agency authorization or approval.

A career appointee who is eligible for moving expenses under this regulation shall submit a request to the designated agency official for authorization or approval of the moving expenses stating tentative moving dates and origin and destination locations of the planned move. Such requests shall be submitted in a format and timeframe as prescribed by agency policy and procedures. Eligible career appointees who have already moved to their retirement residence by the date of this regulation may submit such requests for agency approval after the fact.

§ 302–1.103 Allowable expenses.

When the head of the agency concerned, or his/her designee, authorizes or approves, the travel and transportation expenses specified in this paragraph shall be paid for those individuals who are eligible for such expenses under § 302–1.101 of this regulation. The specified expenses may be paid or reimbursed to the same extent as provided in the applicable provisions of the Federal Travel Regulation (FTR) referenced below. Allowable expenses and provisions of the FTR which apply are as follows:

(a) Travel expenses including per diem under 41 CFR 302–2.1 for the individual.

(b) Transportation expenses under 41 CFR 302–2.2(a), but not per diem, for the individual's immediate family.

(c) Mileage allowance under 41 CFR 302–2.3, to the extent travel is performed by privately owned automobile.

(d) Transportation and temporary storage of household goods under 41 CFR Part 302–8 not to exceed 18,000 pounds net weight.

§ 302–1.104 Expenses not allowable.

Items of expense not listed in § 302–1.103 which generally are authorized for reimbursement in the case of transferred employees; (e.g., per diem for family, cost of househunting trip, subsistence while occupying temporary quarters, miscellaneous expense allowance, residence sale and purchase expenses, leasebreaking expenses, and relocation services) are not authorized for separated SES career appointees upon retirement.

§ 302–1.105 Origin and destination.

(a) The expenses listed in § 302–1.103 may be paid from the official station where separation of the career appointee occurs to the place where the individual has elected to reside within the United States or its territories or possessions, the Commonwealth of Puerto Rico, or the former Canal Zone area (i.e., areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements, as described in section 3(a) of the Panama Canal Act of 1979); or, if the individual dies before the travel, transportation and moving is completed, expenses may be paid to the place within the areas listed above where the immediate family elects to reside even if different than the place elected by the separated career appointee.

(b) Travel and transportation expenses may be paid from an alternate origin or more than one origin provided the cost does not exceed the cost that the Government would have paid if all travel and transportation had originated at the official station from which the individual was separated to the place where the individual, or the immediate family, will reside.

(c) Expenses authorized by this regulation may not be paid for a move within the same general or metropolitan area in which the official station or residence was located at the time of the career appointee's separation. These provisions contemplate a move to a different geographical area.

§ 302–1.106 Time limits for beginning travel and transportation.

All travel, including that for the separated career appointee, and transportation, including that for household goods, allowed under this regulation, shall be accomplished within 6 months of the date of separation, or other reasonable period of time as determined by the agency concerned, but in no case later than 2 years from the effective date of the career appointee's separation from service.

§ 302–1.107 Use of funds.

Transportation expenses should be paid through the use of U.S. Government Transportation Requests and U.S. Government Bills of Lading to the maximum extent possible to minimize travel and transportation costs and the need for individuals to use personal funds. However, individuals who have been authorized or approved to make their own moving arrangements may be reimbursed for their actual transportation expenses not to exceed applicable coach air fares for transportation of the individual and immediate family, or the applicable allowances under the commuted rate schedule for moving and storage of the household goods.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–16402 Filed 7–13–89; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 442, 447, 483, 488, 489, and 498

[BPD–642–F]

RIN 0938–AE33

Medicare and Medicaid Programs; Requirements for Long-Term Care Facilities: Delay in Effective Date of Regulations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; notice of delay in effective date.

SUMMARY: This rule changes the effective date of regulations issued in the **Federal Register** on February 2, 1989 that contain new and revised requirements for long-term care facilities (skilled nursing facilities, intermediate care facilities, and, effective October 1, 1990, nursing facilities) that participate in the Medicare and Medicaid programs. The effective date of August 1, 1989 is changed to January 1, 1990.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel W. Kidder, (301) 966–4620.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1989, we published in the **Federal Register** (54 FR 5316) final regulations with a comment period which specified new and revised requirements that long-term care

facilities (skilled nursing facilities (SNFs) under Medicare, and SNFs, intermediate care facilities (ICFs), and, effective October 1, 1990, nursing facilities (NFs) under Medicaid) must meet in order to receive Federal funds for the care of residents who are Medicare beneficiaries or Medicaid recipients. We issued the regulations following a notice of proposed rulemaking (NPRM) to refocus the requirements for participation in both programs to actual facility performance in meeting residents' needs in a safe and healthful environment. The previous set of requirements had focused on the capacity of the facility to provide appropriate care. In addition, we needed to simplify Federal enforcement procedures by using a single set of requirements that apply to all activities common to SNFs, ICFs, and NFs.

Many of the requirements in the February 2 regulations included detailed, self-implementing provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100–203). OBRA '87 was enacted after we issued the NPRM for the final regulations. An effective date of August 1, 1989 was specified for the regulations, except for those requirements that could not be justified under current statutory authority or the notice and comment process that we undertook. As to these requirements, they are to be effective on October 1, 1990, as specified in OBRA '87.

The revision of the nursing home regulations was the most extensive set of Federal regulatory changes in this area of the health care industry in 15 years. Because of these major revisions, we have had to significantly rewrite the survey guidelines for conducting inspections of nursing homes, and we have had to conduct extensive training of individuals who will conduct the inspections to determine facility compliance with Federal requirements. We have worked extensively with consumers, nursing home industry representatives, and State survey agencies to develop the survey guidelines and procedures for enforcing these requirements. Federal survey and certification staff have already conducted training sessions with State survey staff on the new requirements. We believe that the State surveyors are prepared to begin initial surveys as of the August 1 effective date. However, HCFA, along with the States, consumer group advocates, and nursing home industry representatives, are concerned that the timeframe between publication of the requirements (February 2) and the effective date (August 1) has not proven to be sufficient to allow the surveyors to absorb and fully comprehend such indepth information to make the critical compliance decisions. Our major concern is for effective implementation of the requirements in view of the breadth of the new requirements and the number of facilities affected. Currently, there are approximately 4,000 surveyors who inspect over 50,000 health care facilities in the country, 15,000 of which are long-term care facilities that may be certified or recertified under the new requirements. We want to ensure that the new requirements are applied as consistently and uniformly as possible among the facilities. We believe that implementation of the requirements without additional training of surveyors beyond the training we have already provided may give rise to problems of inconsistent application of the requirements.

Delay in Effective Date of Regulations

We believe it would be beneficial to all affected parties, including beneficiaries and recipients, to delay the effective date of the regulations until January 1, 1990. This delay will allow opportunity for further improvement of the survey skills and allow facilities additional lead time to become more familiar with these requirements and to make needed changes. In the long run, we believe the delay will enhance the quality of care provided to residents of the facilities and our ability to accurately measure that quality uniformly among participating facilities.

Therefore, we are changing the effective date of the February 2 regulations to January 1, 1990. Those parts of the regulations that are to be effective on October 1, 1990, are unaffected by this change.

We received and are continuing to evaluate more than 800 public comments received as a result of the February 2 regulations. We intend to respond to these comments and make any necessary changes to the regulations in a separate document as part of a process which includes preparing the regulations for the provisions of OBRA '87 relating to long-term care facilities that were not self-implementing. In the interim, the February 2 requirements will be in effect, as of January 1, 1990.

Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for a final rule 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.

Since this final regulation only delays the effective date of the regulations published on February 2, 1989 from August 1, 1989 to January 1, 1990, there is no effect other than a delay in implementing the new requirements that long-term care facilities will have to meet in order to participate in the Medicare and Medicaid programs. Except for this delay in the effective date, the impact of the requirements of participation for long-term care facilities is expected to be the same as that which was discussed in the regulatory impact statement of the February 2 rule. Therefore, this final regulation is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required.

In addition, 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 final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all long-term nursing facilities are treated as small entities.

This final regulation will only delay the effective date of those regulations that were published February 2, 1989. While this delay may be viewed as having a significant effect on a substantial number of small entities, we believe it would be unreasonable to conclude that this regulation would produce any other effect than to postpone the effective date for those regulations. The overall effect on long-term care facilities is still expected to remain the same as that which was discussed in the regulatory impact statement of the February 2 rule. For this reason, we have determined, and the Secretary certifies that this regulation will not have a significant impact on a substantial number of small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule 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.

We are not preparing a rural impact statement because we have determined, and the Secretary certifies that this final regulation will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare practitioners, providers and suppliers.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; and Program No. 13.774, Medical Assistance Program)

Dated: June 30, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: July 10, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-16636 Filed 7-12-89; 11:06 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-30; RM-6115]

Radio Broadcasting Services; Pueblo, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C2 for Channel 296A at Pueblo, Colorado, and modifies the Class A license of Rainbow Communications of Pueblo, Inc. for Station KCSJ-FM, as requested, to specify operation on the higher class channel, thereby providing that community with an additional wide coverage area FM service. See 53 FR 5284, February 23, 1988. Coordinates used for Channel 296C2 at Pueblo are 38-16-22 and 104-40-48. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 24, 1989.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-30, adopted June 21, 1989, and released July 10, 1989. 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. Section 73.202(b), the Table of FM Allotments for Colorado, is amended by amending the entry for Pueblo, by deleting Channel 296A and adding Channel 296C2.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-16473 Filed 7-13-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-545; RM-6458]

Radio Broadcasting Services; Elko, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Elko Broadcasting, Inc., substitutes Channel 229C2 for Channel 228A at Elko, Nevada, and modifies its license for Station KLKO accordingly. Channel 229C2 can be allotted to Elko in compliance with the Commission's minimum distance separation requirements and can be used at Station KLKO's present transmitter site. The coordinates for this allotment are North Latitude 40-50-37 and West Longitude 115-44-58. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 24, 1989.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-545, adopted June 21, 1989, and released July 10, 1989. 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.

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. Section 73.202(b), the FM Table of Allotments is amended by amending the entry for Elko, Nevada, by removing Channel 228A and adding Channel 229C2.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-16474 Filed 7-13-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-418; RM-6402]

Radio Broadcasting Services; Hawley, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jerry C. Paparelli, allots Channel 287A to Hawley, Pennsylvania, as the community's first local FM service. Channel 287A can be allotted to Hawley in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.0 kilometers (2.5 miles) north to avoid a short-spacing to the pending application of Station WDAS-FM, Channel 287B1, Philadelphia, Pennsylvania. Canadian concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective August 24, 1989. The window period for filing applications will open on August 25, 1989, and close on September 25, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-418, adopted June 21, 1989, and released July 10, 1989. 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.

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. Section 73.202(b), the FM Table of Allotments for Pennsylvania is amended by adding the following entry: Hawley, Channel 287A.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-16475 Filed 7-13-89; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503, 505 and 552

[Acquisition Circular AC-89-2]

General Services Administration Acquisition Regulation; Procurement Integrity

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary rule with request for comments.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12A), is temporarily amended to add sections 503.104, 503.104-4, 503.104-5, 503.104-9, 503.104-10, 503.104-11, and 503.104-12 to subpart 503.1 in order to implement and supplement the Federal Acquisition Regulation (FAR) requirements on procurement integrity; to revise section 505.303-70 and 505.403 to provide for use of a caution notice on any proprietary or source selection information provided to Members of Congress; and to add sections 552.203-8, 552.203-10 and 552.203-71 to provide the text of provisions and clauses related to procurement integrity to be included in solicitations and contracts for the acquisition of leasehold interests in real property. The intended effect is to implement and supplement the FAR as amended by FAC 84-47 and to provide uniform procedures for contracting under the regulatory system.

DATES: *Effective date:* July 16, 1989.

Expiration date: July 15, 1990.

Comment date: Comments should be submitted to the Office of GSA Acquisition Policy and Regulations at the address shown below on or before September 12, 1989 to be considered in the final rule.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward McAndrew, Office of GSA Acquisition Policy and Regulations (202) 566-1224.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Regulation (FAR) was amended by Federal Acquisition Circular (FAC) 84-47 to implement section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988 (Pub. L. 100-679), which amended the OFPP Act by adding section 27 (41 U.S.C. 423). Section 27 of the Act prohibits certain activities by competing contractors and Government procurement officials during the conduct of a Federal agency procurement. GSA is temporarily revising the GSAR as necessary to conform to the FAR as amended by FAC 84-47.

B. Determination To Issue a Temporary Regulation

A determination has been made to issue the regulation in GSAR AC-89-2 as a temporary rule. This action is necessary to revise the GSAR to bring it in line with the FAR as amended by FAC 84-47 and to implement Pub. L. 100-679 for acquisitions of leasehold interests in real property. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments are solicited and will be considered in formulating a final rule.

C. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

D. Regulatory Flexibility Act

This temporary rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it implements the FAR by providing agency procedures for implementing the procurement integrity provisions at FAR Subpart 3.1. In addition, the temporary rule supplements the FAR by codifying provisions and clauses for use in contracts for the acquisition of leasehold interests in real property Therefore, an Initial Regulatory Flexibility Analysis has not been prepared. Comments are invited from small business and other interested parties.

E. Paperwork Reduction Act

This temporary rule contains information collection requirements which implement the provisions of Pub. L. 100-679, the Office of Federal Procurement Policy Act Amendments of 1988, that require contractors to certify, prior to execution of each contract, modification or extension in excess of $100,000, with respect to conduct prohibited by the Act in contracts for the acquisition of leasehold interests in real property. Because the FAR does not apply to acquisitions for leasehold interests in real property, a Certificate of Procurement Integrity substantially the same as the FAR Certificate of

Procurement Integrity is provided for use in such acquisitions in this temporary rule. A request for approval of this information collection is being submitted to the Office of Management and Budget (OMB) as the information collection requirements in this temporary rule are within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. *Annual reporting burden:* The annual reporting burden is estimated as follows:

Respondents, *800*; responses per respondent, *1*; total annual responses; *800*; per response, *5 minutes*; and total response burden; *66.7 hours*. *Annual recordkeeping burden*: The annual recordkeeping burden with respect to incorporating the training requirement into training programs is estimated as follows: Respondents, *800*; responses per respondent, *1*; total annual responses, *800*; hours per response, *2*; and total response burden, *1600*. The information collection approval request has been submitted to OMB for expedited review pursuant to 5 CFR 1320.18. Public comments concerning the request should be submitted to OMB, Mr. Bruce McConnell, GSA Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

List of Subjects 48 CFR Parts 503, 505 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 503, 505 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 503, 505 and 552 are amended by the following Acquisition Circular:

General Services Administration Acquisition Regulation Acquisition Circular AC–89–2

To: All GSA Contracting Activities.
Subject: Procurement Integrity—OFPP Act Amendments of 1988.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12A), to implement and supplement the Federal Acquisition Regulation (FAR) as amended by FAC 84–47.

2. *Background.* The Federal Acquisition Regulation was amended by FAC 84–47 to implement section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988, which amended the OFPP Act by adding section 27 (41 U.S.C. 423). The Act prohibits certain activities by competing contractors and Government procurement officials during the conduct of a Federal agency procurement. In general, these prohibited activities involve soliciting or discussing post-Government employment, offering or accepting a gratuity, or soliciting or disclosing proprietary or source selection information. The Act also contains certification and disclosure provisions for both contractors and Government officials, imposes post-employment restrictions on Government officials and employees, and provides for criminal, civil, administrative, and contractual penalties for violations of the Act. This Acquisition Circular amends the GSAR as necessary to conform to the FAR as amended by FAC 84–47.

3. *Effective date.* July 16, 1989.

4. *Expiration date.* This Circular expires July 15, 1990, unless canceled earlier.

5. *Reference to regulation.* Subpart 503.1, section 505.303–70 and 505.402, and subpart 552.2 of the GSAR.

6. *Explanation of changes.*

PART 503—[AMENDED]

a. Subpart 503.1 is amended by adding sections 503.104, 503.104–4, 503.104–5, 503.104–9, 503.104–10, 503.104–11 and 503.104–12 to read as follows:

503.104 Procurement integrity.

503.104–4 Definitions.

"Derivative document" means a copy of a document defined as proprietary or source selection information by FAR 3.104–4 (j) and (k) and any document or copy of a document that contains references to, directly cites or paraphrases proprietary or source selection information.

503.104–5 Disclosure of proprietary and source selection information.

(a) The contracting officer or any other individual who prepares, makes or controls proprietary and source selection information, including derivative documents, shall—

(1) Ensure documents are marked as prescribed in FAR 3.104–4 (j) and (k) and 3.104–5(b).

(2) Provide physical security for documents in the office environment during and after duty hours.

(3) Ensure security of interoffice mailing of documents by using opaque envelopes, "double wrapping" with more than one envelope and sealing of envelopes.

(4) Maintain strict control over oral communications regarding the acquisition.

(b) Individuals responsible for preparing derivative documents are responsible for marking such documents in accordance with FAR 3.104–5(b).

(c) The GSA Form 3611, Cover Page for Source Selection Information and the GSA Form 3612, Cover Page for Proprietary Information, may be used to mark documents as required by FAR 3.104–5 (a) and (b).

(d) (1) The following classes of persons are authorized access to proprietary and source selection information to the extent necessary to accomplish their requisite duties and responsibilities with respect to a particular procurement:

(i) Requirements generators, including client agency representatives, program and technical experts involved in the development of statements of work, specifications or similar documents.

(ii) Contracting personnel acting in support of the contracting officer.

(iii) Secretarial, clerical and administrative personnel of the contracting activity directly involved in the procurement.

(iv) Supervisors in the contracting officer's chain of command.

(v) Attorneys in the Office of General Counsel and Regional Counsel's Office.

(vi) Contract auditors in the Office of Inspector General and Regional Inspector General's Offices.

(vii) Engineers and other technical support personnel who provide support to the contracting officer.

(viii) Small Business Technical Advisors.

(ix) Small Business Administration (SBA) personnel responsible for reviewing determinations not to set-aside acquisitions, determining the small business status of offerors under FAR 19.302, processing applications for Certificates of Competency under FAR 19.6, reviewing subcontracting plans, or awarding contracts under the 8(a) program.

(x) Department of Labor (DOL) personnel responsible for making eligibility determinations under the Walsh-Healey Public Contracts Act or for processing preaward EEO clearances under FAR 22.805.

(xi) Personnel in the Credit and Finance Branch, Region 6, and other personnel who provide support to the contracting officer in making contractor responsibility determinations.

(xii) Contract clearance personnel.

(2) The Associate Administrator for Acquisition Policy has authority to authorize additional classes of persons access to proprietary or source selection information.

(3) The contracting officer may authorize persons access to proprietary or source selection information when such access is necessary to the conduct of the procurement and to the extent

that the person has a "bona fide need to know." Access must be limited to only that information needed by the person to perform his/her responsibilities.

(4) The classes of persons in (d)(1) may be incorporated by reference in contract files. A record, by name and function, of other persons authorized access to proprietary or source selection information must be made by the contracting officer in the contract file.

(5) In accordance with FAR 3.104–5(j), the following caution notice must be prominently displayed on any document that releases proprietary or source selection information:

This document, or portions thereof, contains proprietary or source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient of the information to contractual, civil, and/or criminal penalties as provided by law.

(6) For requests from an individual Member of Congress see 505.403.

503.104–9 Certification requirements.

(a) If the contracting officer certifies that he/she has no information concerning a violation or possible violation of the statutory prohibitions, the certification must be included in the contract file. No other distribution is required.

(b) If the certification by the contracting officer contains information on a violation or possible violation of the statutory prohibitions, the procedures at FAR 3.104–11 and 503.104–11 must be followed.

503.104–10 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.203–71, Prohibited Conduct, in solicitations for the acquisition of leasehold interests in real property expected to exceed $25,000.

(b) The contracting officer shall insert the provision at 552.203–8, Requirement for Certificate of Procurement Integrity, in solicitations for the acquisition of leasehold interests in real property expected to exceed $100,000.

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.203–10, Remedies for Illegal or Improper Activity, in solicitations and contracts for the acquisition of leasehold interests in real property expected to exceed $25,000.

503.104–11 Processing possible violations.

(a) (1) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has no impact on the pending award or selection of a source must be submitted, along with supporting documentation, to the HCA or SES designee for review and approval of the determination before award of a contract.

(2) The contracting officer's determination that a reported violation or possible violation of the statutory prohibitions has an impact on the pending award or selection of a source must be referred along with all related information available to the HCA, who will:

(i) Refer the matter immediately to the Inspector General.

(ii) Determine the action to be taken on the procurement in accordance with FAR 3.104–11(c).

(b) The HCA acts as the agency head's designee with respect to actions taken under the FAR clause at 52.203–10, Remedies for Illegal or Improper Activity, or the clause at 552.203–10.

503.104–12 Ethics program training requirements.

(a) Except as provided in paragraph (b) of this section, the contracting officer is not responsible for ensuring that another agency's employee(s), who may function as a procurement official on behalf of that agency in interacting with GSA personnel, has executed the Procurement Integrity Certification pursuant to FAR 3.104–12. Such interaction may occur in the requirements determination process and the development of specifications or statements of work.

(b) Where a non-Government person or another agency's employee(s) act on behalf of GSA, e.g. serves on a Source Selection Board, the contracting officer is responsible for obtaining the GSA Procurement Integrity Certification from non-GSA or non-Government persons involved in the selection of a source in a GSA procurement.

PART 505—[AMENDED]

b. Section 505.303–70 is amended by revising paragraph (b) to revise subparagraph (2) and to delete subparagraph (4), and by deleting paragraph (c) to read as follows:

505.303–70 Notification of proposed substantial awards and awards involving Congressional interest.

* * * * *

(b) *Notification procedures.*

* * * * *

(2) Except for submittals hand delivered to S, the submittal must be made by facimile transmission and, in the case of proposed 8(a) awards, on GSA Form 2677, Minority Contract Fact Sheet. Except for contracts awarded under urgent and compelling circumstances, notification to S of an award must be made on the same day that the award is made and 24 hours before telephonic notice (if applicable) is provided to the contractor. If the timeframe for notification to S cannot be met, the Contracting Director must notify S by telephone.

* * * * *

c. Section 505.403 is revised to read as follows:

505.403 Requests from Members of Congress.

When responding to a Congressional inquiry would result in disclosure of classified material, confidential business information, proprietary or source selection information as defined in FAR 3.104–4 or information prejudicial to a competitive acquisition, the contracting officials shall consult with assigned legal counsel, refer the proposed reply to the head of the contracting activity (HCA), include the caution notice prescribed in 503.104–5(c)(5) in the response and inform the Office of Congressional Affairs of the action taken.

PART 552—[AMENDED]

d. Sections 552.203–8, 552.203–10 and 552.203–71 are added to read as follows:

552.203–8 Requirement for certificate of procurement integrity.

As prescribed in 503.104–10(b), insert the following provision:

Requirement For Certificate of Procurement Integrity (July 1989)

(a) *Definitions.* The definitions at FAR 3.104–4 are hereby incorporated in this provision.

(b) *Certifications.* The officer or employee responsible for the offer submitted in response to this solicitation shall submit the following certification to the Contracting Officer within the time period specified by the Contracting Officer when requesting the certificate. The Contracting Officer will request the successful offeror to submit the certificate before awarding a lease contract exceeding $100,000.

CERTIFICATE OF PROCUREMENT INTEGRITY

(1) I, [*Name of certifier*], am the officer or employee responsible for the preparation of this offer and hereby certify that to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsections 27 (a), (b), (c) or (e) of the Office of Federal Procurement Policy Act* (41 U.S.C.

423) (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (*solicitation number*).

(2) As required by subsection 27(d)(1)(B) of the Act, I further certify that each officer, employee, agent, representative, and consultant of [*Name of offeror*] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of the Act, as implemented in the FAR pertaining to this acquisition.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet)), ENTER "NONE" IF NONE EXISTS

_____

_____

_____

_____

(Signature of officer or employee responsible for offer) Date

_____

(Typed name of officer or employee responsible for offer)

*Section 27 became effective on July 16, 1989.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(c) Pursuant to FAR 3.104–9(d), the offeror may be requested to execute additional certifications at the request of the Government.

(d) Failure of an offeror to submit the certification required by FAR 3.104–9(b) or any additional certifications pursuant to FAR 3.104–9(d) shall render the offeror ineligible for lease award.

(e) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award under this solicitation. However, the Government, after the evaluation of the disclosure, may cancel the acquisition or take any other appropriate actions in the interest of the Government, such as disqualification of the offeror.

(f) In making the certification in paragraph (b) of this provision, the offeror may rely upon the certification of an officer, employee, agent, representative, or consultant that such person is in compliance with the requirements of subsections 27 (a), (b), (c), or (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR unless the offeror knows, or should have known, of reasons to the contrary. The offeror may rely upon periodic certifications obtained at least annually, supplemented with periodic training programs. These certifications shall be maintained for a period of 6 years from the date of execution.

(g) The certification in paragraph (b) of this provision is a material representation of fact upon which reliance will be placed in awarding a contract.

(End of Provision)

552.203–10 Remedies for illegal or improper activity.

As prescribed in 503.104–10(c), insert the following clause:

Remedies for Illegal or Improper Activity (July 1989)

(a) If the agency head or designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by 5 percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the agency head or designee shall provide to the Lessor a written notice of the action being considered and the basis therefor. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Goverment specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

(End of Clause)

552.203–71 Prohibited conduct.

As prescribed in 503.104–10(a), insert the following provisions:

Prohibited Conduct (July 1989)

(a) *Prohibited conduct.* The Office of Federal Procurement Policy Act (41 U.S.C. 423) provides that during the conduct of any Federal agency procurement of property or services, no offeror or prospective offeror or officer, employee, representative, agent, or consultant of any offeror or prospective offeror shall knowingly—

(1) Make, directly or indirectly, any offer or promise of future employment or busniess opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any official of the agency who is personally and substantially involved in a procurement for which the offeror is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement;

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any official of the agency who is personally and substantially involved in a procurement for which the offeror is or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement; or

(3) Solicit or obtain, directly or indirectly, from any officer or employee of the agency, prior to the award of a contract any proprietary or source selection information as defined in FAR 3.104–4.

(b) *Penalties.* Civil penalties for violation of these prohibitions are up to $100,000 for an individual or $1,000,000 for an offeror or prospective offeror other than an individual. Criminal penalties are up to 5 years imprisonment and/or a fine in accordance with Title 18, U.S.C.

(End of Provision)

e. Sections 553.370–3611 and 553.370–3612 are added to illustrate the GSA Form 3611, Cover Page Source Selection Information, and the GSA Form 3612, Cover Page Proprietary Information.

Note: GSA Forms 3611 and 3612 are made a part of the GSAR loose-leaf edition. Copies may be obtained from the Director of the Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Washington, DC 20405. Forms 3611 and 3612 will not appear in the Code of Federal Regulations.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

BILLING CODE 6820–61–M

Cover Page

Source Selection Information

See FAR 3.104

This document contains source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient of the information to contractual, civil, and/or criminal penalties as provided by law.

Cover Page

Proprietary Information

See FAR 3.104

This document contains proprietary information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient of the information to contractual, civil, and/or criminal penalties as provided by law.

General Services Administration GSA Form 3612 (7-89)

[FR Doc. 89-16557 Filed 7-13-89; 8:45 am]
BILLING CODE 6820-61-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB23

Endangered and Threatened Wildlife and Plants; Threatened Status for Phyllitis scolopendrium var. americana (American hart's-tongue fern)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines American hart's-tongue fern to be a threatened species under authority of the Endangered Species Act of 1973, as amended (Act). This rare fern is known from only two sites in Alabama, one in Tennessee, four in Michigan, nine in New York, and from a limited area in southern Ontario, Canada. It is threatened throughout most of its range by trampling, habitat alteration, or destruction by lumbering, residential development, and quarrying. This action will implement the protection of the Act for American hart's-tongue fern.

EFFECTIVE DATE: August 14, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Phyllitis scolopendrium (L.) Newman variety *americana* Fernald (American hart's-tongue fern) has evergreen, strap-shaped fronds that are 5 to 17 inches long (12 to 42 cm), ¾ to 1¾ inches wide 2 to 4.5 cm) and are auriculate (lobed) at their base. The green petiole portion of the frond is 1 to 5 inches long (3 to 12 cm) and has cinnamon-colored scales on its surface. The sori (groups of spore-producing reproductive structures called sporangia) are linear in shape and occur on the underside of the blade portion of the frond. The fronds arise in a cluster from a short, creeping rhizome which is covered with cinnamon-colored scales (Evans 1981, Lellinger 1985). Ferns recognized as belonging to the species *Phyllitis scolopendrium* (then referred to as *Scolopendrium vulgare*) were first discovered in the United States in 1807 when Pursh found the species growing in central New York (Maxon 1900).

Phyllitis scolopendrium, described by Linneus in 1753, is common in the British Isles and is rare to frequent in Europe (Love 1954, Small 1938). In 1849, Gattinger discovered the species in Roane County, Tennessee (Maxon 1900); and in 1857, Hincks found it in Grey County, Ontario, Canada (Soper 1954). In 1953 Hall and Hagenah discovered the species growing in Chippewa County, Michigan (Hagenah 1953). Osterlund, Batchelder, and Short discovered it in Jackson County, Alabama, in 1979 (Batchelder 1979, Short 1979). Fernald described the taxon *Phyllitis scolopendrium* var. *americana* in 1935. He distinguished it from the European variety on the basis of several distinct morphological features. These features include smaller fronds, fewer and shorter indusia (coverings over the sori), the presence of elongate tips on the frond's veinlets, and the distance of the veinlets from the edge of the frond (Fernald 1935).

Britton (1953) determined that, in addition to the morphological characters described by Fernald, the North American representatives of *Phyllitis scolopendrium* differed from the European plants cytologically in having 144 rather than 72 chromosomes. Lellinger (1985) also notes that *Phyllitis scolopendrium* var. *scolopendrium* is much more easily cultivated than is *Phyllitis scolopendrium* var. *americana*. Love and Love (1973) included the American hart's-tongue fern within their concept of *Phyllitis japonica* Kom. and designated it ssp. *americana* (Fern.) Love and Love. Some authors (e.g., Kartesz and Kartesz, 1980) include the genus *Phyllitis* within *Asplenium*. Neither of these treatments has been widely accepted in the United States. Lellinger's 1985 treatment that maintains the genus *Phyllitis* and includes American hart's-tongue fern in the European rather than the Japanese species is followed here.

In North America *Phyllitis scolopendrium* var. *americana* is usually found growing on or at least in close association with dolomitic limestone (limestone high in magnesium). This extremely rare fern is currently known from only seven counties in the Canadian Province of Ontario, two counties in New York, two counties in Michigan, two counties in Alabama, and one county in Tennessee. In the northern part of its range it usually occurs on or adjacent to limestone outcrops. The southern populations are only found within limestone pits that trap cold air, have high humidity, and are well shaded. At all known locations, American hart's-tongue fern appears to require high humidity, shaded conditions, a moist substrate, and the presence of dolomitic limestone.

In the 181 years that have elapsed since first being discovered in North America, American hart's-tongue fern has remained an extremely rare taxon that is found in small, widely disjunct groups of populations. Concern for the continued existence of this species has long been voiced by those interested in the preservation of the flora of the United States. This concern is demonstrated by early articles such as Benedict's 1925 "Saving the Hart's Tongue," House's 1934 "Saving the Scolopendrium Fern," and Faust's 1960 "Survival of Hart's-tongue Fern in Central New York." *Phyllitis scolopendrium* var. *americana* remains vulnerable to extinction throughout most of its range. A description of the status of the species in each North American State or province in which it occurs is provided below:

Alabama. There are two known populations of American hart's-tongue fern in Alabama. Both populations were discovered by cavers associated with the Huntsville Grotto of the National Speleological Society (Batchelder 1979, Evans 1982). One population occurs in a Jackson County sinkhole that is on lands managed as a national wildlife refuge by the Service. Short (1979) observed 20 plants present when he first visited the site. Evans (1981) found that the population had dwindled to nine plants by July 1981. Evans further states that this population appears, for undetermined reasons, to be in static or declining condition. The other population is in Morgan County in the privately owned pit entrance to a limestone cave. This population is located about 25 miles (40 km) southwest of the Jackson County population (Short 1980). Evans (1981) reports that this is a vigourous, healthy, reproducing population, which in 1981 supported 97 plants (26 fertile adults, 13 subadults, and 58 juveniles).

Tennessee. Tennessee has two records of American hart's-tongue fern. The first of these was discovered in the entrance to a Roane County cave by Gattinger in 1849. Despite repeated searches for the plant at this site since the early 1900s, it has not been seen again and is considered to be extirpated from the area (Maxon 1900, Shaver 1954, Evans 1981). The only extant Tennessee population is in Marion County and was discovered by Cheatham in 1879 (Williamson 1879, Evans 1981). Originally supporting about 200 plants, this population has contained only about 17 plants in the recent past (Evans 1981). Early concern about the decline of

this population led Graves in 1929 to scatter American hart's-tongue fern spores at the site. The spores were obtained from a plant collected in Ontario, Canada (McGilliard 1936). There appears to be no method of distinguishing Tennessee from Canadian representatives of this taxon; therefore, it is impossible to know the origin of the few plants that survive there. From 1982 to the present time, the site has been leased by The Nature Conservancy for the express purpose of protecting this species.

Michigan. The Michigan Natural Features Inventory recognizes four extant populations of American hart's-tongue fern (Sue Crispin, Michigan Natural Features Inventory, personal communication, 1986). All of these sites are in Mackinac County. Plants at one additional site in Chippewa County have not been observed since 1983, and the species may have been extirpated from the county. Of the four remaining populations, two are owned by the Michigan Nature Association. Both of the association's populations are healthy and support several hundred plants each. One population of approximately 64 plants is on land managed by the U.S. Forest Service (Hiawatha National Forest) (Henson 1978). To protect this population, the Forest Service rerouted a trail which was proposed for the area (Voss *in litt.*). The last population is on privately owned, unprotected land in fairly close proximity to the two populations owned by the Michigan Nature Association (Crispin, personal communication, 1986; Nepstad 1981; Futyma 1980; Hagenah 1953 and 1956).

New York. The plight of *Phyllitis scolopendrium* var. *americana* in New York has been carefully documented since the early 1900s (Hunter 1922; Faust 1960; Cinquemani *et al.* 1988). The delineation of individual populations provided here is that used by the New York Natural Heritage Program (Clemants *in litt.*). Their identification of populations is based primarily upon Faust (1960) and Hunter (1922).

The fern is known from a limited area within Madison and Onandaga Counties. Thirteen populations are currently recognized by the program; 3 of these are in Madison County, and 10 are or were in Onandaga County.

Four of the 10 Onandaga County populations are believed to be extirpated. Three of these were destroyed by quarrying operations between 1924 and 1935 and one by undetermined means soon after 1959. Four populations are small and vulnerable and in 1988 contained 4, 11, 88, and 271 individuals, respectively (Cinquemani *in litt.*). The remaining two populations are the largest in New York and indeed are the largest populations in the United States. These two populations are located in a State park, and in 1988 they contained a combined total of 2,657 individuals (Cinquemani *in litt.*).

Madison County supports three populations. Two of these, containing 48 and 54 plants respectively, are on unprotected privately owned lands. The third, which contained 346 plants in 1988, is within a State park (Cinquemani *in litt.*). About half of the plants that were originally in the park were destroyed before 1980 by trail construction and subsequent erosion.

Canada. Phyllitis scolopendrium var. *americana* is listed as a rare species in the Atlas of the Rare Vascular Plants of Ontario. Although locally abundant in the center of its range in Grey County, it was included in the Atlas "* * * because most of its world population occurs in the Province. On a continental basis, this is a very small area and all of the peripheral populations in the United States are at risk" (Dickson and White 1983). Adjacent southern Bruce County also supports healthy populations of the taxon. Much smaller and more isolated populations occur in Peel, Halton, Dufferin, and Simcoe Counties (Soper 1954, Britton *in litt.*). A population located near Niagara Falls in Welland County may have been extirpated by human activities or may have disappeared for other reasons (Hinds *in litt.*). Soper (1954) states that this population may have been transplanted to the site in the late 1800s. No plants have been observed there since 1925 (Dickson and White 1983).

Fernald (1970) includes New Brunswick in his description of the range of American hart's-tongue fern. However, Hinds (*in litt.*) states that the material collected in New Brunswick is the European variety and that the species is not believed to be native to the Province.

Phyllitis scolopendrium var. *americana* is threatened throughout most of its range by trampling, alteration, or destruction of its habitat by timber removal, quarrying, and residential or other development (Evans 1981, Nepstad 1981). Britton (*in litt.*) states that the most significant threats to the Canadian populations are "* * * lumbering or development of the escarpment lands e.g. quarries, ski slopes, country estates, etc." on which it occurs.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Phyllitis scolopendrium* var. *americana* was included in the Smithsonian report and the July 1, 1975, notice of review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act; *Phyllitis scolopendrium* var. *americana* was included in this proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. *Phyllitis scolopendrium* var. *americana* was included as a category 2 species in the revised notice of review for native plants published on December 15, 1980 (45 FR 82480). Category 2 species are those for which the Service has information that indicates that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or on file to support the preparation of rules. This species was also included in category 2 when the notice of review for native plants was again revised in 1983 (48 FR 53640) and in 1985 (50 FR 39526). The Service funded surveys to determine the Alabama, Tennessee, and Michigan status of *Phyllitis scolopendrium* var. *americana* in 1980, and final reports for these surveys were accepted by the Service in 1981. Additional information on the status of the species throughout its range and on threats to its continued existence have now been obtained by the Service.

All plants included in the comprehensive plant notices are treated as under petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the

case for *Phyllitis scolopendrium* var. *americana* because of the acceptance of the 1975 Smithsonian report as a petition. In 1983, 1984, 1985, 1986, and 1987, the Service found that the petitioned listing of *Phyllitis scolopendrium* var. *americana* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats was still being gathered.

On September 12, 1988, the Service published (53 FR 35210) a proposal to list American hart's-tongue fern as a threatened species. That proposal constituted the final 1-year finding as required by the 1982 amendments to the Endangered Species Act. The proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the status, distribution, and threats to the species.

Summary of Comments and Recommendations

In the September 12, 1988, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in *The Daily Sentinel* (Jackson County, Alabama), *The Decatur Daily* (Morgan County, Alabama), *The St. Ignace News* (Mackinac County, Michigan), *The Oneida Daily Dispatch* (Madison County, New York), *The Herald-Journal* (Onondaga County, New York), and *The Jasper Journal* (Marion County, Tennessee).

Seventeen comments were received in response to the proposed rule. All comments provided additional information on the status or distribution of the species and/or expressed support for the addition of American hart's-tongue fern to the Federal list of endangered and threatened species. Two commenters suggested that because of the vulnerability of the United States populations to extirpation, the species should be listed as endangered rather than threatened. The States of Michigan and Tennessee expressed support for the addition of the species to the Federal list. The State of New York previously expressed support for this action, and it is anticipated that the State of Alabama will cooperate in the protection of the species when it is added to the Federal list. No Federal activities were identified that would be affected by the addition of American hart's-tongue fern to the Federal list.

The new information provided in response to the proposed rule has been incorporated into this final rule where appropriate. The Service concurs with the conclusion that *Phyllitis scolopendrium* var. *americana* merits protection under the Act. The Service has evaluated the available information on the range-wide status of, and threats to, this species and believes that threatened status is appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Phyllitis scolopendrium* var. *americana* should be classified as a threatened species. Procedures found at Section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Phyllitis scolopendrium* (L.) Newman var. *americana* Fernald (American hart's-tongue fern) (Syn. *Phyllitis japonica* Kom. ssp. *americana* Love and Love) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* American hart's-tongue fern is threatened throughout most of its range by trampling, habitat alteration, or destruction by timber removal, quarrying or residential development. The southern populations are especially vulnerable to extirpation by inadvertent trampling because of their small size and the steep precarious nature of their habitat. Short (1979) reports that between October 21, 1978, and November 24, 1978, one of the 20 plants that occurred at the Jackson County, Alabama, site was destroyed by someone who had apparently slid off the main trail and onto the plant. Evans (1981) reports that in July 1981 only nine plants remained at this location. Quarrying operations destroyed three of New York's populations and remain a threat to at least one of the remaining New York sites and two of the southern sites (Clemants *in litt.*, Evans 1981). Timber removal at most of the sites would be expected to raise light levels and lower humidity levels to the detriment of the species. Alterations associated with residential or other development would, in most cases, either directly destroy the plants present or result in environmental changes that would make the sites unsuitable for American hart's-tongue fern. As previously stated, lumbering, quarrying, or other types of development are considered to be the most significant threats to the Ontario populations of the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is limited commercial trade in *Phyllitis scolopendrium* var. *americana*. The material currently in trade is believed to be of cultivated origin and not obtained from the wild populations. The original source of this material was one of the New York populations destroyed in the early 1900s by quarry operations (S. Clemants, New York Natural Heritage Program, personal communication, 1988). Most of the populations in New York, Michigan, Alabama, and Tennessee are much too small to support any collecting for scientific purposes, for fern enthusiasts, or for other reasons. Inappropriate collecting remains a threat to these populations (Nepstad 1981). The larger Ontario populations have withstood, apparently without ill effects, low levels of collecting for some time (Pryer *in litt.*).

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. *The inadequacy of existing regulatory mechanisms. Phyllitis scolopendrium* var. *americana* is listed as endangered under Michigan's Endangered Species Act and Tennessee's Rare Plant Protection and Conservation Act. In Michigan, taking is prohibited on all public and private lands; in Tennessee, taking is only restricted when the permission of the landowner or manager has not been obtained. In New York the species is protected under the Protected Native Plants Law, which states that removal of the fern without the landowner's permission is a violation of the law and subjects the violator to a $25 fine. In Alabama the species does not receive any protection by the State.

Addition of the species to the Federal list of endangered and threatened species provides additional protection from taking. Protection from inappropriate commercial trade (utilizing plants of wild origin rather than cultivated material) will also be provided.

E. *Other natural or manmade factors affecting its continued existence.* Because of climatic changes, the southern populations of the species are restricted to extremely rare sites with physical environments that duplicate the

conditions under which the northern populations grow. During the glacial period, the species may have been more widespread in southern limestone areas; but as the climate has warmed, it has become restricted to a few sites in or near caves (Evans 1982).

Crispin (personal communication 1986) reports that in 1985 an infestation of leaf miners destroyed the leaves on the trees above one of the Michigan sites. The loss of shade that resulted from this alteration of the canopy desiccated many of the ferns growing on the forest floor. Insect infestations that temporarily remove the leaves of the canopy or result in long-term damage to the trees found there remain a threat to the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Phyllitis scolopendrium* var. *americana* as a threatened species. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species, which is considered to be critical habitat, at the time the species is determined to be endangered or threatened. Most populations of this species are small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing protection. The owners and managers of all the known populations of *Phyllitis scolopendrium* var. *americana* have been made aware of the plant's location and of the importance of protecting the plant and its habitat. No additional benefits would result from a determination of critical habitat. Therefore, the Service concludes that it is not prudent to designate critical habitat for *Phyllitis scolopendrium* var. *americana*.

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 protecton, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of 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. All but two of the known populations of *Phyllitis scolopendrium* var. *americana* are on privately owned or State-owned land. One Alabama population is on land managed as a national wildlife refuge by the U.S. Fish and Wildlife Service, and one of the Michigan populations is on lands managed by the U.S. Forest Service. There are no known current or planned Federal activities that may affect this species.

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 plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisidiction 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 this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. The 1988 amendments (Pub. L. 100–478) to the Act protect listed plants from malicious damage or destruction on Federal lands. In addition these amendments prohibit removal, cutting, digging up, damaging, or destroying these plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can 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 few trade permits would ever be sought or issued since *Phyllitis scolopendrium* var. *americana* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038–7329, (202/343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, 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).

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Author

The primary author of this final rule is Mr. Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Aspleniaceae, 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					
*	*	*	*	*		
Aspleniaceae—Spleenwort family:						
Phyllitis scolopendrium var. *americana* (=*Phyllitis japonica* ssp. *americana*).	American hart's-tongue fern	U.S.A. (AL, MI, NY, TN), Canada (ON)	T	354	NA	NA
*	*	*	*	*		

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–16573 Filed 7–13–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90111–9110]

RIN 0648–AC49

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Final rule; effective date of a collection of information requirement and notice of OMB control number.

SUMMARY: NOAA announces approval by the Office of Management and Budget (OMB) of the collection of information requirement which may apply to persons engaged in commercial fishing in a regulatory area subject to quota management who land their catches in another regulatory area open to fishing. This rule establishes an effective date for the collection of information requirement and publishes the applicable OMB control number.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) at 206–526–6140, or Rodney R. McInnis (Southwest Region, NMFS) at 213–514–6199.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 9 to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978 was published on May 4, 1989 at 54 FR 19185 and codified at 50 CFR Part 661. In this final rule, NOAA announced delayed effectiveness of the following sections of the implementing regulations, pending OMB approval.

The regulations at 50 CFR 661.4(b) and 661.20(a)(1)(iii) and Appendix section II.B.12 provide that reporting requirements may be imposed on commercial fishermen as necessary to ensure timely and accurate assessment of catches in regulatory areas subject to quota management. Specifically, persons engaged in commercial fishing in a regulatory area subject to quota management who land their catches in

another regulatory area open prior to leaving the first regulatory area. The regulatory areas subject to these reporting requirements, the contents of the radio reports, and the entities receiving the reports will be specified annually during the preseason process of establishing and adjusting management measures.

The reporting requirements implemented by 50 CFR 661.4(b) and 661.20(a)(1)(iii) and Appendix section II.B.12 constitute a collection of information requirement subject to the Paperwork Reduction Act (PRA). However, pursuant to the PRA, the collection of information requirement is not effective before OMB approval of the requirement.

OMB approved the collection-of-information requirement on April 31, 1989, under OMB control number 0648.0222. Accordingly, 50 CFR 661.4(b) and 661.20(a)(1)(iii) and Appendix section II.B.12 are effective as of July 13, 1989.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping.

Dated: July 7, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-16459 Filed 7-13-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 134
Friday, July 14, 1989

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

DEPARTMENT OF ENERGY

10 CFR Part 764

Uranium Mill Tailings; Annotation of Land Records

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today is issuing a proposed rule under section 109 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901, et seq.; hereinafter, the "UMTRCA") for the purpose of clarifying the obligation of certain States to annotate local land records so as to ensure that future purchases of remediated properties will be notified of the extent of work performed on their properties.

DATES: Comments should be submitted by August 28, 1989. Comments received on or before the above date will be considered in the decision-making process on the final rule.

Pursuant to section 501 of the Department of Energy Organization Act, the Department will provide an opportunity for oral presentation of views, data and arguments. Interested persons may request a public hearing by August 28, 1989. If any requests for a public hearing are received by that date, the Department will conduct a public hearing on September 15, 1989 at 9:00 a.m. in Room 1E-245, 1000 Independence Ave., SW., Washington, DC. If no requests for a hearing are received, the hearing will be cancelled. The Department will attempt to give adequate advance public notice of any cancellation.

ADDRESSES: Comments should be sent to: Joelene Garcia, Uranium Mill Tailings Project Office, U.S. Department of Energy, 5301 Central Avenue, NE., S. 1700, Albuquerque, New Mexico 87108.

Comments will be available for public review at the above address during regular business hours 9:00 a.m.–4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: L.C. Brazley, Office of Nuclear Energy, NE-22, U.S. Department of Energy, Washington, DC 20545.

Steven R. Miller, Office of General Counsel, GC-11, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Background

The Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95-604, 42 U.S.C. 7901, et seq. (hereinafter, "the UMTRCA"), authorizes the Secretary of Energy, in cooperation with affected States, Indian Tribes, and site owners, to provide a program of assessment and remedial action at designated "processing sites." The purpose of the remedial action is to stabilize and control the tailings and other residual radioactive materials located on the inactive uranium processing sites in a safe and environmentally sound manner and to minimize or eliminate potential health hazards. The term "processing site" as used in the UMTRCA ecompasses both the inactive uranium milling sites where uranium was produced for sale to the United States, and other private properties in the vicinity which are contaminated with material from the site ("vicinity properties").

The Department is conducting remedial action at 24 designated processing sites located in 10 States and the vicinity properties associated with those 24 sites, and at the vicinity properties associated with the inactive Edgemont, South Dakota uranium mill, currently owned by the Tennessee Valley Authority. The remedial action is being conducted in accordance with the Environmental Protection Agency's (EPA) "Standards for Remedial Actions at Inactive Uranium Processing Sites," 40 CFR 192, dated January 5, 1983. The EPA standards recognize that in unique situations residual radioactive materials may be allowed to remain on vicinity properties. These situations are described in 40 CFR 192.21–22.

At the conclusion of remedial action at each processing site, DOE will send a letter certifying that a single vicinity property or group of properties have been cleaned up in accordance with EPA's standards to the participating State and the owner of record. A copy of a remedial action completion report will be enclosed with DOE's letter of certification to the participating state agency.

Upon receipt of a letter of certification for a vicinity property or group of properties associated with a processing site, the State will be required to take appropriate action to ensure that the land record for each vicinity propety at which remedial action is conducted is annotated as required by section 104(d) of the UMTRCA, 42 U.S.C. 7914(d). This will occur not later than 6 months after a letter of certification for a vicinity property has been sent to the State, or one year after the effective date of this rule, whichever is later.

Overview of the Proposed Rule

This proposed rule interprets and delineates the UMTRCA requirement for the annotation of land records by States in which inactive uranium milling sites and "vicinity properties" (hereinafter, "processing sites") are located. This requirement is set forth in section 104(d) of the UMTRCA (42 U.S.C. 7914(d)), and applies to residual radioactive material, as that term is defined in section 101(7) of the UMTRCA (42 U.S.C. 7911(7)). Today's proposed rule is intended to ensure that future purchasers of remediated properties will be notified of:

(1) The nature and extent of radioactive materials removed from the property;

(2) The date such work was performed; and

(3) The condition of the property following remedial actions.

Annotations of land records will be required for sites certified as having met EPA standards, 40 CFR 192, under the UMTRCA for the following site specific conditions:

(1) The vicinity property has been remediated in its entirety and all verification measurements fall below EPA standards.

(2) The vicinity property has been remediated; however, residual radioactive material remains as permitted under 40 CFR 192.21–22.

(3) The vicinity property has undergone remedial action and residual radioactive material has been removed in accordance with EPA's standards. However, radioactive materials other than residual radioactive materials derived from the inactive mill site remain on the property.

Effect of the Proposed Rule

The effect of this proposed rule will be that the land records of all properties that were at one time the subject of remedial action by DOE under the UMTRCA will be annotated as required by the UMTRCA. The specific procedures by which land records will be annotated will be drafted by each State and submitted to the DOE for review and approval.

Invitation to Comment and Notice of Public Hearing

Interested persons are invited to submit written comments and recommendations to the address set forth at the beginning of this document. All comments or recommendations received on or before August 28, 1989 will be considered before the issuance of the final rule.

All comments submitted in response to this proposed rule will be available for public inspection, during and after the comment period in Room S. 1700, 5301 Central Avenue, NE., Albuquerque, New Mexico 87108 between the hours of 9:00 a.m. and 4:00 p.m., Monday to Friday. Procedural rules for the hearing will be announced at the commencement of the hearing.

Procedural Matters

A. Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are not classified as major because they do not meet the criteria for major regulations established in that Order.

B. Regulatory Flexibility Act Certification

The regulations will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act of 1980

There are no information collection requirements in the proposed rules.

D. Federalism

The principal impacts of this rule will be the annotation of land records where residual radioactive materials were located and where remedial action took place as mandated by 42 U.S.C. 7901 of the UMTRCA. The rule is unlikely to have a substantial direct effect on the States, Tribes, the relationship between the States, Tribes and Federal Government or distribution of power and responsibilities among various levels of Government.

E. National Environmental Policy Act

The proposed rule will have no significant environmental impacts or create adverse effects upon the quality of the human environment.

List of Subjects in 10 CFR Part 764

Nuclear materials; Uranium mill tailings; Residual radioactive materials.

In consideration of the foregoing, Part 764 of 10 CFR Chapter III is proposed to be added as set forth below.

Issued in Washington, DC, July 11, 1989.

John Baublitz,

Acting Director, Office of Remedial Action and Waste Technology.

Part 764 is proposed to be added to 10 CFR Chapter III to read as follows:

PART 764—ANNOTATION OF LAND RECORDS

Sec.

764.1 Scope.
764.2 Purpose.
764.3 Definitions.
764.4 Annotation of land records.

Authority: The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*); Energy Reorganization Act of 1974 (42 U.S.C. 5801 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); Uranium Mill Tailings Radiation Control Act (Pub. L. 95–604, 92 Stat 3021; 42 U.S.C. 7901 *et seq.*).

§ 764.1 Scope.

This part applies only to residual radioactive material that is being cleaned up by the U.S. Department of Energy (DOE) at 24 inactive "processing sites," including radioactively contaminated "vicinity properties," under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), 42 U.S.C. 7901 *et seq.*. This part does not apply to other radioactive substances being cleaned up by DOE on other properties and under other authorities of law, or to byproduct material located on active uranium milling sites that are not the subject of remedial action by the DOE under the UMTRCA.

§ 764.2 Purpose.

The purpose of this part is to clarify the obligation of States in which "processing sites" are located to annotated local land records so as to ensure that future purchasers of properties at which DOE undertook remedial action under UMTRCA will be notified as to the nature and extent of residual radioactive materials removed from the site property, including notice of the date when such action took place and the condition of the property after the remedial action. This rule interprets and delineates the UMTRCA requirement for the annotation of land records by participating States, set forth in section 104(d) of the UMTRCA (42 U.S.C. 7914(d)). The requirement applies to residual radioactive material, as that term is defined in section 101(7) of the UMTRCA (42 U.S.C. 7911(7)).

§ 764.3 Definitions.

Processing Site means: Any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, except in the case of a site at or near Slick Rock, Colorado, unless—

(1) Such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency; or

(2) A license (issued by the U.S. Nuclear Regulatory Commission or its predecessor agency under the Atomic Energy Act of 1954, or by a State as permitted under section 274 of such Act) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date; and

(3) Any other real property or improvement thereon which is in the vicinity of such site, and is determined by the Secretary, in consultation with the U.S. Nuclear Regulatory Commission, to be contaminated with residual radioactive materials derived from such site.

(4) Any ownership or control of an area by a Federal agency which is acquired pursuant to a cooperative agreement under the UMTRCA shall not be treated as ownership or control by such agency for purposes of paragraph (1) of this definition. A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of paragraph (2) of this definition, if such production is in accordance with section 108(b) of the UMTRCA.

Residual Radioactive Material means: (1) Waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; or (2) other waste (which the Secretary determines to be radioactive) at a processing site which relates to such processing, including any residual stock of unprocessed ores or low-grade materials.

Secretary means: The Secretary of Energy.

UMTRCA means: The Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 96–604, 42 U.S.C. 7901 *et seq.*

Vicinity Property means: That portion of a processing site defined in paragraph (3) of the definition of processing site.

§ 764.4 Annotation of land records.

(a) Not later than 6 months after the State in which a processing site is located receives a letter of certification from the Secretary that a vicinity property near the processing site has met the U.S. Environmental Protection Agency's (EPA) standards contained in 40 CFR Part 192, or one year after the effective date of this rule, whichever is later, the State must submit to the local land use authority a record of the type, location, and quantity of residual radioactive material removed from the processing site. The State must identify the type, location, and extent of contamination and quantity of the residual radioactive material to the best of its knowledge and in accordance with available records.

(b) The State in which a processing site is located must take appropriate actions to assure that the following occurs:

(1) In accordance with state law, a notation must be made on the deed of each processing site (including the deeds of individual vicinity properties) from which residual radioactive material is removed, or some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

(i) The land originally contained residual radioactive material;

(ii) DOE has certified that the land now meets EPA's "Standards for Remedial Actions at Inactive Uranium Processing Sites," 40 CFR Part 192, under one of the following conditions:

(A) The vicinity property has been remediated in its entirety and all verification measurements fall below EPA standards.

(B) The vicinity property has been remediated; however, residual radioactive material remains as permitted under 40 CFR 192.21–22.

(C) The vicinity property has undergone remedial action and residual radioactive material has been removed in accordance with EPA's standards. However, radioactive materials other than residual radioactive materials derived from the inactive mill site remain on the property.

(iii) The survey plat and record of the type, location, and quantity of residual radioactive material removed have been filed with the local authority;

(2) The State provides to the local government one summary sheet including:

(i) The current "condition" of the property as described in paragraph (b)(1)(ii) of this section:

(ii) The nature and extent of residual radioactive material removed from the property, as described in the Secretary's letter of certification and accompanying completion report, a copy of which shall be retained at the State's document repository, and

(iii) The dates during which remedial actions were performed.

(c) The State shall furnish a copy of the appropriate summary sheet referred to in paragraph (b)(2) of this section to any prospective purchaser before entering into a contract, option, or other arrangement to sell or otherwise dispose of a processing site, of which the State is the owner.

[FR Doc. 89–16572 Filed 7–13–89; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0671]

Equal Credit Opportunity; Business Credit

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to revise Regulation B to implement amendments to the Equal Credit Opportunity Act. The amendments, enacted on October 25, 1988, require creditors to give written notice to business credit applicants of their right to a written statement of reasons for credit denials or other adverse action. The law also requires creditors to maintain records used in evaluating credit applications.

The proposed revisions to Regulation B would implement the statutory amendments and define coverage. Coverage of business credit applications generally would depend on the applicant's gross revenues: an application would be subject to the amendments if it involves a business applicant with gross revenues of $500,000 or less, except in the case of an application for trade credit and similar types of credit. The latter applications and applications from businesses with gross revenues greater than $500,000 would remain subject to modified rules currently provided by § 202.3(d) of Regulation B, although certain revisions to that section are also being proposed by the Board at this time.

The Board will adopt a final rule following a 60-day comment period, after review of the comments received. The Board contemplates issuing a final rule by late October 1989, with an effective date of January 1, 1990. Until then, the existing rules of Regulation B continue in effect.

DATE: Comments must be received on or before September 15, 1989.

ADDRESSES: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the Mail Services courtyard entrance on 20th Street, between C Street and Constitution Avenue NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R–0671. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, at (202) 452–2412 or 452–3867: Adrienne Hurt, Senior Attorney, or Jane Ahrens, Staff Attorney; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, marital status, race, color, national origin, religion, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from any public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The ECOA also provides that a credit applicant has the right to obtain a written statement of reasons for a denial of credit. The ECOA is implemented by the Board's Regulation B, 12 CFR Part 202. A staff commentary to the regulation, 12 CFR Part 202 Supp. I, applies and interprets the requirements of Regulation B.

Pursuant to authority granted under section 703(a) of the ECOA, 12 U.S.C. 1691b(a), the Board has previously provided limited exceptions, set forth in § 202.3 of Regulation B, from certain of the regulation's requirements for the following types of credit: Credit extensions involving public utility services; credit extensions subject to regulation under the Securities Exchange Act; credit payable in four or fewer installments, in which no credit card is used and no finance charge is imposed ("incidental credit"); extensions of credit to federal and state

governments; and extensions of credit primarily for business, commercial or agricultural purposes ("business credit").

The current exceptions for business credit relate to the following areas: Written notification of credit denials, record retention, marital status inquiries, and supplying information to third parties about accounts held jointly by married persons. Business credit transactions remain subject to all other provisions of Regulation B (which includes for example, rules that make it unlawful for a creditor automatically to require loan guarantees from a nonapplicant spouse).

The Women's Business Ownership Act amendments to the ECOA

For a number of years, members of Congress and others have expressed concern that the business credit exceptions under Regulation B do not provide business credit applicants, particularly small-business owners, with adequate rights under the ECOA. On October 25, 1988, the ECOA was amended by the Women's Business Ownership Act of 1988, Pub. L. No. 100-533, 102 Stat. 2689. These amendments to the ECOA require creditors to (1) give business credit applicants written notice of the right to obtain reasons for a credit denial and (2) retain records on business credit applications for at least one year, pursuant to the Federal Reserve Board's implementing regulation.

The statutory provision governing the Board's rulewriting authority also was amended to provide that any exemption from the requirement of the act or implementing regulation issued by the Board will end after five years. The Board may extend an exemption for an additional five-year period if the Board makes an express finding that an extension is appropriate.

(2) The Proposed Revisions to Regulation B

The Board proposes to revise Regulation B to implement the ECOA amendments regarding notice of credit denials and record retention; define the business credit applications to which the revised rules will apply; and revise the regulatory provisions that will govern all other business credit transactions.

General Coverage

The legislative history makes clear that the primary intent of the statutory amendments is to provide small-business owners, particularly women entrepreneurs, the same ECOA rights that are afforded to consumer credit borrowers. There is evidence of congressional intent that the amendments should not apply to applications by large corporations or to certain types of business credit (such as applications for trade credit and credit incident to factoring arrangements). *See* House Committee on Small Business, Selected Documents Pertaining to the Women's Business Ownership Act of 1988, 100th Cong. 2d Sess. (Comm. Print).

There is, however, no commonly accepted definition of a small business. The Board therefore considered various tests for determining coverage for purposes of the ECOA and Regulation B—for example, the asset size of the business entity, and the number of employees of the business entity. In many instances, however, the correlation between "small" and some of these characteristics depends on the nature of the business, industry dominance, and other factors. The Board also considered using the size of the loan transaction, but transaction size does not differentiate between small- and large-business credit applicants. Wanting to provide a simple test for determining coverage of transactions by Regulation B, the Board ultimately decided to propose a cutoff based on gross revenues.

Applications from businesses that had gross revenues of $500,000 or less in the preceding fiscal year would be subject to regulatory provisions implementing the statutory amendments on notice of credit denials and record retention. (A creditor would be permitted to rely on the applicant's assertions about the revenue size of the business). Applications to start a business would be included in this category. Applications for trade credit, credit incident to factoring arrangements, and similar types of credit—as well as credit applications from businesses with revenues exceeding $500,000—would continue to be subject to the modified rules for notification and record retention set forth in § 202.3(d)(3) of Regulation B, discussed later in this notice.

The $500,000 cutoff which the Board is proposing would provide coverage for credit applications involving some 70 percent of the businesses operating today. The Board believes that this test would ensure ECOA rights for most small businesses and at the same time not cover very large corporate entities. In seeking an appropriate dollar cutoff to delineate a small-business entity, for purposes of the ECOA and Regulation B, the Board looked to other legislation for guidance. The dollar test being proposed—$500,000 in gross revenues—corresponds to the test that was used to establish an exemption for small businesses under the minimum wage legislation recently passed by both the Senate and the House of Representatives. *See* Amendments to the Fair Labor Standards Act, H.R. 2, 100th Cong. 2d Sess. (1989)(subsequently vetoed by the President).

Notice of the Right to Reasons for a Credit Denial

The statutory amendments require creditors to inform business loan applicants, in writing, of the right to a written statement of the reasons for a denial of their loan applications. Under the Board's proposal, creditors would follow the notification rules in § 202.9(a)(3) of Regulation B, a new provision governing credit applications from businesses with $500,000 or less in gross revenues. Applications from businesses with revenues exceeding that amount would be governed by § 202.3(d) of the regulation, discussed below.

The proposed rules applicable to business credit closely parallel the rules that govern nonbusiness credit. Creditors that follow the present Regulation B rules governing nonbusiness credit will be in full compliance with the act and regulation. The Board's proposal does, however, contain one or two provisions that would offer creditors some flexibility and facilitate compliance.

Under the proposed rule, creditors would continue to be allowed to notify business credit applicants of a credit decision orally or in writing. (Nonbusiness credit applicants must be notified in writing when credit is denied or other adverse action is taken.) Notice of the credit decision would be given in accordance with the timing requirements of § 202.9(a)(1) of the regulation—typically within 30 days of receiving a "completed" application. Under § 202.2(f), an application is deemed to be "completed" when the creditor has received all the information it regularly obtains and considers in evaluating applications for credit (including any information requested from the applicant). If credit negotiations involve a series of counteroffers, the notice requirements of § 202.9 of the regulation would not be triggered by each counteroffer. *See* Regulation B, § 202.9(a)(1)(iv) and the accompanying official staff commentary.

The Board proposes to allow creditors to satisfy the requirement of providing a written notice of the right to a statement of reasons for a credit denial in one of two ways. First, the creditor could give the notice to all business applicants at the time of application provided the notice is given in a form the applicant

may retain. Notice could be given on a separate piece of paper or included on any documentation provided to the applicant. For example, the notice could be printed on an application form or financial statement. The disclosure should be noticeable, but there are no special requirements regarding location, type size, or type face.

Alternatively, the creditor could follow the rule used for nonbusiness credit and give notice of the right to a statement of reasons after a credit denial or other adverse action is taken. And of course, as in the case of nonbusiness credit, the creditor may provide the specific reasons for a credit denial, instead of merely giving notice of the right.

Whether a notice is provided at the time of application or when adverse action is taken, the notification must contain all the information required under § 202.9(a)(2) of Regulation B, except that—as noted above—creditors would be permitted to give the statement of the action taken (for example, that a line of credit or a loan has been denied) orally or in writing. The information required includes the name and address of the creditor; a statement of the provisions of section 701(a) of the ECOA (the "ECOA notice"); and the name and address of the federal agency that administers compliance with respect to the creditor.

Appendix C to Regulation B contains sample notification forms. The Board is proposing to add two notices—proposed forms C–7 and C–8—for use in connection with applications for business credit. Form C–7 is a sample notice of a statement of reasons for a credit denial. The reasons for a credit denial contained in form C–7 are illustrative only. Form C–8 is a sample disclosure of the right to a statement of reasons of the type that would be given at the time of application.

A creditor may design its own notification forms or use all or a portion of the forms contained in the appendix. Proper use of the forms will satisfy the requirements of § 202.9(a)(2)(i) and proposed § 202.9(a)(3), respectively, for applications for business credit.

Oral Notification for Telephone Applications

An oral or written request for an extension of credit, if made in accordance with procedures established by a creditor for the type of credit requested, is considered an application under § 202.2(f) of Regulation B. The Board recognizes that creditors that accept telephone applications might find it difficult to comply with the written notification requirements. Proposed § 202.9(a)(3) of the regulation therefore provides that when an application for business credit is made by telephone, compliance with the notification requirements would be satisfied by an oral disclosure of the applicant's right to a statement of reasons for a denial of credit. In this instance, the additional information otherwise required on a written notification need not be recited. For example, a creditor does not have to give an oral disclosure of the ECOA notice specified in § 202.9(b)(1) of the regulation.

A request for an advance under an existing line of credit is not considered an "application" for credit and therefore does not trigger the notification requirements of the regulation. *See* Regulation B, § 202.2(f) and accompanying commentary; *see also* § 202.2(c)(2). Inquiries from potential applicants seeking only credit information also are not covered by the notification requirements. Such inquiries are, however, subject to § 202.5(a) of Regulation B, which bars creditors from discouraging prospective applicants, on a prohibited basis, from making or pursuing an application.

Retention of Records Used to Evaluate Applications

Regulation B generally requires creditors to retain records for a 25-month period that starts when the creditor notifies an applicant of the action taken on an application for credit. The purpose of record retention is to evidence compliance with or enforce any action under the ECOA by preserving records that may disclose patterns of lending policies or practices, to help support or refute allegations of discrimination. A 25-month period was established by the regulation because an aggrieved applicant has two years in which to file a lawsuit alleging violations of the ECOA.

The statutory amendments to the ECOA require that creditors retain records on business credit applications for not less than one year, though the Board has the discretion to set a longer period for record retention. The Board is proposing that records for applications involving businesses with gross revenues of $500,000 or less be retained for 25 months, the same time period required for the retention of nonbusiness credit records. As in the case of notification, the Board would like to provide as much uniformity between business and nonbusiness credit rules as possible. The Board believes that doing so would facilitate creditor compliance by eliminating confusion that might result from having different rules for business and nonbusiness credit. The Board invites comment on whether requiring records to be retained for 25 months, instead of 12 months, would impose a significant incremental burden.

The rules governing record retention are contained in § 202.12 of Regulation B. Creditors are required to retain the original or a copy of any application document and other written or recorded data used in evaluating an application. (A "copy" includes carbon copies, photocopies, microfilm copies, copies produced by a computerized system, or copies produced by any other accurate retrieval system.) Typically, such data might include financial statements, tax returns, and business plans. The creditor must also retain a copy of any statement of reasons for a credit denial provided to an applicant. Any documents that are returned to the applicant upon the applicant's request need not be retained.

Regulation B does not require creditors to use written application forms to satisfy the record retention requirements of the regulation. In situations where no formal written application is used, or where there is little documentation concerning an application because a creditor is dealing with a customer of long standing or for some other reasons, the documentation necessary for record retention would be minimal.

Where a creditor provides a notice of rights, a creditor may evidence compliance in various ways. The creditor need not retain acknowledged copies of the actual notice of rights given to each individual applicant. A creditor could evidence compliance by having a sample copy of the type of notice provided to applicants and demonstrating that there are procedures in place to ensure that notices are being provided.

Notification and Record Retention Requirements for Applications by Businesses With Gross Revenues in Excess of $500,000, and Applications for Trade and Similar Credit

The proposed rules for notification and record retention discussed above would govern credit applications by businesses with gross revenues of $500,000 or less. Credit applications by businesses with gross revenues exceeding $500,000, and applications for trade credit, credit incident to factoring and similar credit (regardless of the applicant's revenues) would be subject to modified rules contained in § 202.3(d) of Regulation B. (Trade credit and credit extensions incident to factoring arrangements, typically involve the financing of inventory, equipment or accounts receivable. Some of these

transactions may involve numerous oral, instant-credit decisions made on a daily, or even hourly, basis under the credit relationship, and the legislative record indicates congressional intent that these transactions should not be subject to the new statutorily mandated provisions.)

The Board is proposing certain revisions to the rules in § 202.3(d) to simplify their application for both applicants and creditors, and to make it easier for creditors to comply by providing more uniformity among the various timing requirements for notice and record retention. Under the current regulation, a creditor must notify a business credit applicant of a credit denial, orally or in writing, within a reasonable time after receiving a completed application. (Notice provided in accordance with the timing requirements of § 202.9(a)(1) of Regulation B is deemed "reasonable" in all instances.) The applicant currently has the right to a written statement of the specific reasons for a credit denial, but must submit a written request within 30 days of a denial in order to obtain the reasons. Under the proposed revisions, applicants would have up to 60 days after a denial (as in nonbusiness credit) to request written reasons for the denial.

The current regulation requires creditors to retain records for 90 days after taking action on a business credit application. If during this time an applicant makes a written request to have records kept, the creditor must retain the records for 25 months. As in the case of the reasons for a credit denial, however, the creditor need not inform the applicant of the right to make the request. Under the proposed revisions to § 202.3(d), if the creditor receives a written request for a statement of reasons, the creditor would be required both to give the reasons and also to retain records for a 25-month period. Thus, rejected applicants would not need to make two distinct requests regarding the credit decision. Absent a request, a creditor would not have to retain records beyond the 60-day period in which a request might be received.

Elimination of Current Business Credit Exception Concerning Marital Status Inquiries

The ECOA prohibits creditors from discriminating on the basis of marital status in any aspect of a credit transaction. Section 202.5(d)(1) of Regulation B generally prohibits creditors from asking about marital status when an applicant applies individually for unsecured credit. Currently, however, individuals applying for business credit may be asked about their marital status whether the credit is to be secured or unsecured, under an exception provided by § 202.3(d)(2)(i).

The Board proposes to eliminate that exception. As a result, inquiries about a business credit applicant's marital status would now be governed by the rules that apply to nonbusiness credit. Inquiries about marital status would be permissible only if an applicant applies for secured credit, applies jointly for credit, resides in a community property state, or relies on property located in such a state as a basis for repaying a debt. See *generally* Regulation B, § 202.5(d)(1) and accompanying commentary.

Elimination of Exception Regarding Reporting Credit Information to Third Parties

The Board proposes to delete from § 202.3(d) the exception from § 202.10, the regulatory provision that governs the reporting of credit histories on joint accounts held by spouses. Under § 202.10, a creditor that furnishes credit information to third parties (for example, to a credit bureau or another creditor) must reflect the participation of both spouses on any account held jointly by married persons, even if one spouse is merely an authorized user on the account. This provision is intended to ensure that married women are able to develop credit histories in their own names so that in the event of widowhood or divorce, for example, they are not left without a credit history. The Board believes this provision has no applicability in the context of business credit accounts because any credit history reported about such an account pertains to the business entity and not to the individuals owning the business. The Board therefore believes that providing an exception from this provision is unnecessary, and proposes to eliminate the exception.

Exceptions for Nonbusiness Credit

The ECOA amendments of 1988 were enacted to modify the business credit exceptions, and no specific mention is made in the legislative record of other nonbusiness credit transactions. The modifications relating to the Board's rulewriting authority, however, also affect the other existing exceptions in § 202.3 (a)–(c) and (e) of Regulation B—for public-utilities credit, securities credit, incidental credit and credit to governmental agencies. Like the exceptions for business credit, the exceptions for these types of transactions will be subject to review every five years. The exceptions exist primarily because the extensions of credit to which they relate generally are incidental to some other service being provided, or because they are subject to regulation by another governmental entity. The nonbusiness exceptions have been republished in this notice. The Board invites specific comment on the appropriateness of retaining these exceptions.

(3) Comments Requested

Interested persons are invited to submit written comments on the proposed amendments and other matters addressed in this notice. Comments must be received by September 15, 1989. After the close of the comment period, based upon its analysis of the comments received, the Board will publish in the **Federal Register** its notice of final action. The Board contemplates issuing a final rule by late October 1989, with an effective date of January 1, 1990. Until then, the existing rules of Regulation B continue in effect.

(4) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed revisions to Regulation B. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

List of Subjects in 12 CFR Part 202

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority Groups, Penalties, Sex discrimination, Women.

(5) Text of Proposed Revisions.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside arrows, while language that would be removed is set off with brackets. Pursuant to authority granted in 15 U.S.C. 1691b of the ECOA, the Board proposes to amend Regulation B (12 CFR Part 202) as follows:

1. The authority citation for Part 202 is revised to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.3(a) through (c) and (e) are being republished. Section 202.3 is further amended by removing paragraph (d)(2), adding a new paragraph (d)(2), and revising paragraph (d)(3) to read as follows:

§ 202.3 Limited exceptions for certain classes of transactions.

(a) *Public-utilities credit.*—(1) *Definition.* Public-utilities credit refers to extensions of credit that involve

public-utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

(2) *Exceptions.* The following provisions of this regulation do not apply to public-utilities credit:

(i) Section 202.5(d)(1) concerning information about marital status;

(ii) Section 202.10 relating to furnishing of credit information; and

(iii) Section 202.12(b) relating to record retention.

(b) *Securities credit.*—(1) *Definition.* Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(2) *Exceptions.* The following provisions of this regulation do not apply to securities credit:

(i) Section 202.5(c) concerning information about a spouse or former spouse;

(ii) Section 202.5(d)(1) concerning information about marital status:

(iii) Section 202.5(d)(3) concerning information about the sex of an applicant;

(iv) Section 202.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(v) Section 202.7(c) relating to action concerning open-end accounts, but only to the extent the action taken is on the basis of a change of name or marital status:

(vi) Section 207.7(d) relating to the signature of a spouse or other person;

(vii) Section 202.10 relating to furnishing of credit information; and

(viii) Section 202.12(b) relating to record retention.

(c) *Incidental credit.*—(1) *Definition.* Incidental credit refers to extensions of consumer credit other than credit of the types described in paragraphs (a) and (b) of this section—

(i) That are not made pursuant to the terms of a credit card account;

(ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 226.4); and

(iii) That are not payable by agreement in more than four installments.

(2) *Exceptions.* The following provisions of this regulation do not apply to incidental credit:

(i) Section 202.5(c) concerning information about a spouse or former spouse;

(ii) Section 202.5(d)(1) concerning information about marital status:

(iii) Section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(iv) Section 202.5(d)(3) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;

(v) Section 202.7(d) relating to the signature of a spouse or other person;

(vi) Section 202.9 relating to notifications;

(vii) Section 202.10 relating to furnishing of credit information; and

(viii) Section 202.12(b) relating to record retention.

(d) *Business credit*—(1) *Definition.* Business credit refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in paragraphs (a) and (b) of this section.

[(2) *Exceptions.* The following provisions of this regulation do not apply to business credit:

(i) Section 202.5(d)(1) concerning information about marital status; and

(ii) Section 202.10 relating to furnishing of credit information.]

►(2) *Application from business with gross revenues of $500,000 or less.* An application from a business that had, in the preceding fiscal year, gross revenues of $500,000 or less (except an application for an extension of trade credit, credit incident to a factoring agreement, or other similar types of credit) is subject to all the provisions of this regulation. (See § 202.9(a)(3) for rule regarding notification.)◄

(3) [*Modified requirements.*]

► *Application from business with gross revenues in excess of $500,000; extension of trade or similar credit.* An application from a business that had gross revenues in excess of $500,000 in its preceding fiscal year, or an application for an extension of trade credit, credit incident to a factoring agreement, or other similar types of credit, is subject to all the provisions of this regulation, except that §§ 202.9 and 202.12◄ [The following provisions of this regulation] apply [to business credit] as specified below:

(i) ►Notification under◄ § 202.9 (a), (b), and (c) [relating to notifications]: the creditor shall notify the applicant, orally or in writing, of action taken or of incompleteness. When credit is denied or when other adverse action is taken, the creditor [is required to] ►shall◄ provide a written statement of the reasons and the ECOA notice specified in § 202.9(b) if the applicant makes a written request for the reasons within [30] ►60◄ days of that notification[; and] ►.◄

(ii) ►Record retention under◄ § 202.12(b) [relating to record retention.] ►: the◄ [The] creditor shall retain records of an application [as provided] ►for the 25-month period specified◄ in § 202.12(b) if the applicant [,within 90 days after being notified of action taken or of incompleteness, requests in writing that records be retained.] ►has requested in writing the reasons for adverse action (as provided in paragraph (d)(3)(i) of this section) or if, within 60 days after being notified of action taken or of incompleteness, the applicant requests in writing that records be retained.◄

(e) *Government credit*—(1) *Definition.* Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) *Applicability of regulation.* Except for § 202.4, the general rule prohibiting discrimination on a prohibited basis, the requirements of this regulation do not apply to government credit.

3. Section 202.9 is amended by adding paragraph (a)(3) to read as follows:

§ 202.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons.*

* * * * *

►(3) *Notification rule—application from business with gross revenues of $500,000 or less.* A creditor shall provide the notification required by this section to a business credit applicant with gross revenues of $500,000 or less in the preceding fiscal year (except in the case of an application for trade credit, credit incident to factoring arrangements, or other similar types of credit). The notification given to a business credit applicant when adverse action is taken shall be provided in accordance with paragraph (a)(2) of this section, except that the statement of action taken may be given orally or in writing. A creditor may disclose an applicant's right to a statement of reasons and other information required by paragraph (a)(2) of this section at the time of application, instead of when adverse action is taken.

provided the disclosure is in a form that the applicant may retain. For an application made by telephone, the requirements of this section are satisfied by oral notification of action taken and of the applicant's right to a statement of reasons for adverse action.◄

* * * * *

4. Appendix C is amended by revising the first and last paragraph of the introduction, and by adding sample Forms C–7 and C–8 to read as follows:

Appendix C—Sample Notification Forms

This appendix contains [six] ►eight◄ sample notification forms. Forms C-1 through C-4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§ 202.9(a) (1) and (2)(i) of this regulation. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under §§ 202.9(a) (1) and (2)(ii). Form C-6 is designed for use in notifying an applicant, under § 202.9(c)(2), that an application is incomplete. ►Forms C-7 and C-8 are intended for use in connection with applications for business credit under § 202.9(a)(3).◄

* * * * *

A creditor may design its own notification forms or use all or a portion of the forms contained in this appendix. Proper use of Forms C-1 through C-4 will satisfy the requirements of § 202.9(a)(2)(i). Proper use of Forms C-5 and C-6 constitutes full compliance with §§ 202.9(a)(2)(ii) and 202.9(c)(2), respectively. ►Proper use of Forms C-7 and C-8 will satisfy the requirements of §§ 202.9(a)(2)(i) and (3), respectively, for applications for business credit.◄

* * * * *

►Form C–7—Sample Notice of Action Taken and Statement of Reasons (Business Credit)

Creditor's name

Creditor's address

Date

Dear Applicant:

Thank you for applying to us for credit. We have given your request careful consideration, and regret that we are unable to extend credit to you at this time for the following reasons:

Value or type of collateral not sufficient
Lack of established earnings record
Slow or past due in trade or loan payments
Lack of managerial experience

Sincerely,

Notice

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis or race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Form C–8—Sample Disclosure of Right to Request Specific Reasons for Credit Denial Given at Time of Application (Business Credit)

Creditor's name

Creditor's address

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact [name, address and telephone number of the person or office from which the statement of reasons can be obtained] within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request.

Notice

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).◄

By order of the Board of Governors of the Federal Reserve System, dated July 10, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–16511 Filed 7–13–89; 8:45 am]

BILLING CODE 6210–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 250 and 259

[Release No. 35–24923; File No. S7–2–89]

Request for Comments on Certain Issues Arising Under the Public Utility Holding Company Act of 1935 Relating to Non-Utility Diversification by Intrastate Public-Utility Holding Companies.

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The Securities and Exchange Commission today announced that it has further extended from July 14, 1989, until August 15, 1989, the date by which comments on Public Utility Holding Company Act Release No. 24815 (February 7, 1989) [54 FR 6701, February 14, 1989] must be submitted.

DATE: Comments must be received on or before August 15, 1989.

ADDRESS: Persons wishing to express their views should submit comments in triplicate addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Mail Stop 6–9, Washington, DC 20549. Reference should be made to File No. S7–2–89. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden or Sidney L. Cimmet (202) 272–7676, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW., Mail Stop 7–1, Washington, DC 20549.

By the Commission.

July 10, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–16548 Filed 7–13–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 685]

RIN 1512–AA07

Mt. Veeder, CA; Viticultural Area Designations

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), is considering the establishment of a viticultural area located near the western boundary of Napa County, California, in the most southerly portion of the Mayacamas mountains which separate Napa Valley and Sonoma Valley to be known as Mt. Veeder. Mt. Veeder is the most prominent peak in the area at 2,677 feet elevation. This proposal is the result of a petition submitted by Mr. Robert E. Craig, President of Napa Valley Estate Vineyards and Winery. ATF believes that the establishment of viticultural areas and the subsequent use of

viticultural area names as appellations of origin in wine labeling and advertising will help consumes identify the wines they may purchase. The establishement of viticultural areas also allows wineries to specify further the origin of wines they offer for sale to the public.

DATE: Written comments must be received by August 28, 1989.

ADDRESS: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 685). Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tabacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin. Section 4.25a(e)(1), Title 27, CFR defines an American viticultural area as a delimited grape-growing region which has been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

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

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

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

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

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

Petition

AFT has received a petition proposing a viticultural area near the western boundary of Napa County, California, in the most southerly portion of the Mayacamas Mountains which separate Napa Valley and Sonoma Valley. The proposal was submitted by Mr. Robert E. Craig, President, Napa Valley Estate Vineyards and Winery. The proposed viticultural area is approximately 24 square miles or approximately 15,000 acres and is located in Napa County, California. There are five bonded wineries in the proposed viticultural area with approximately 850 acres of grapes. The proposed viticultural area is to be known as Mt. Veeder.

1. Evidence That The Name Of The Area Is Locally Or Nationally Known

A. *Name derivation.* Mt. Veeder is the most prominent peak in the area at 2,677 feet elevation. The mountain and viticultural area are named for Reverend Peter V. Veeder, who arrived in Napa in the mid–1850's and became pastor of the Napa Presbyterian Church in 1859. The exact date his name was first applied to the peak is uncertain, although the *Napa Daily Register* used the name in an article on July 11, 1879.

Although the petitioner has petitioned for the name Mt. Veeder–Napa Valley, ATF is only proposing the name "Mt. Veeder" since the evidence submitted with the petition does not support the inclusion of "Napa Valley." In fact, the petition suggests that this area has been viewed as a distinct district from the Napa Valley and the Sonoma Valley. Although "Napa Valley" is not being included in the proposed name, a reference to Napa Valley may be used in addition to Mt. Veeder if not less than 85 percent of the volume of the wine is derived from grapes grown in the proposed Mt. Veeder area. This would be permitted under 27 CFR 4.25(e)(4) which deals with overlap viticultural area appellations. For example, wine could be labeled "Mt Veeder, Napa Valley," or "Mt. Veeder–Napa Valley."

Mt. Veeder Vineyards is one of five wineries currently located in the proposed viticultural area. If the name Mt. Veeder is adopted, then the use of Mt. Veeder in a brand name is governed by 27 CFR 4.39(1) on brand names of geographical significance.

B. Local and national renown. According to the petition, Mt. Veeder received initial local and regional recognition for the healthful climate of the area. Articles on both the healthfulness and the beauty of the Mt. Veeder area were a regular occurrence in Napa Valley newspapers during the 1880s and 1890s. A measure of Mt. Veeder's significance as a resort site is shown in a long article in the *San Francisco Chronicle* of July 16, 1886, which listed Mt. Veeder as one of the prominent resorts of the area.

While the area surrounding Mt. Veeder has been locally recognized as a distinct district between Napa Valley and Sonoma Valley since the 1870's, it appears from the petition that the mountain's name was not widely used in reference to this area until later. During the period 1860 to around 1930, a substantial portion of the region east of the Napa/Sonoma County boundary was often referred to as the "Napa Redwoods." Mt. Veeder and the Napa Redwoods often appeared together in newspaper articles written during this period. According to the petition however, in the early 20th century, Mt. Veeder gained acceptance locally as the unofficial name for the region and in the early 1940's the term "Napa Redwoods" ceased to appear in newspaper articles.

2. Historical Or Current Evidence That The Boundaries Of The Proposed Viticultural Area As Specified In The Petition. The petitioner submitted three 1:24,000 scale U.S.G.S. maps which are the largest scale maps that describe the area. The boundaries of the proposed Mt. Veeder viticultural area coincide in a general manner with those of a region once known as the "Napa Redwoods". The petitioner claims that "Napa Redwoods" substantially ceased to be used as a term for the region in the 1940s and was supplanted by "Mt. Veeder." Public comments on whether this area is known as "Napa Redwoods" or is better known as "Napa Redwoods" than "Mt. Veeder" would be particularly useful to ATF.

The petitioner asserts that important to boundary considerations on a historical basis is that, in virtually all newspaper accounts during this era (1870's & 1880's), the proposed Mt. Veeder viticultural area was recognized as a distinct subdistrict to Napa Valley, separate from surrounding areas such as Browns Valley, Napa and Yountville.

3. Evidence Relating To The Geographic Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features Of The Proposed Area From Surrounding Areas.

A. Climatic overview Mt. Veeder. The climate of the proposed Mt. Veeder viticultural area is characterized by

cool, moist winters and warm, dry summers. Throughout the year in virtually all climatic zones, a natural temperature inversion develops at night, as cold, heavy air settles and warm, lighter air rises. Because of its elevated location, the minimum temperature in the Mt. Veeder region would be warmer than that on the valley floor or adjacent to San Francisco Bay both summer and winter. This inversion limits frost during the winter and keeps the region relatively frost-free during the spring, when vineyard bud push, flowering and crop "set" takes place. Rainfall increases with elevation, ranging from about 25 inches at lower elevation to over 65 inches at higher elevations in the northern part of the area. The elevated terrain of the Mt. Veeder region is a factor. The region receives more rainfall than the land east, south and north of it due to the terrain forcing the moist air masses of winter storms upward as they move inland along a southeasterly path from the coast, causing condensation. As Mt. Veeder is the highest point along the Mayacamas Mountains for several miles, the effect is very pronounced in the region. Rainfall averaged 49 inches a year over a 25 year period at a location near the center of the Mt. Veeder area, compared to an average rainfall of 25 to 35 inches (depending on location) in Napa Valley, Sonoma Valley and the Los Carneros. Conversely, mean annual temperatures decrease with elevation, but the seasonal range and temperature extremes are less at lower elevation. This is due to the moderating effect of cooling breezes from San Pablo Bay plus the periodic fog and low clouds at lower elevations.

The pattern of changing climatic conditions with increasing elevation is reflected in a variety of plant communities throughout the proposed viticultural area. At lower elevations, the vegetation is mostly open grassland with scattered oaks. With increasing elevation and precipitation, the plant cover changes to a dense shrub or mixed shrub-oak-madrone-plant community at intermediate elevations and then to a cover of redwood and douglas fir with some madrone, oaks and laurels at higher elevations or in more humid, north facing slopes along creeks at intermediate levels.

B. Soils of the Mt. Veeder Appellation Area. The proposed Mt. Veeder viticultural area encompasses the eastern slopes of the Mayacamas Mountains west of Napa. The area is roughly triangular in shape, extending southeastward from its apex at Bald Mountain to the rolling hills north of the Carneros District. Elevations generally range from approximately 2,200 feet at its northern apex to 400 feet in the southern end. Mt. Veeder, located in Napa County, is the highest peak in the proposed viticultural area with an elevation of 2,677 feet.

According to the petitioner, the soils of the proposed Mt. Veeder viticultural area are representative of residual upland soils developed from the weathering of underlying bedrock. Textures range from loams and clay loams to gravelly or stony sandy loams, loams and clay loams. Some soils are deep and permeable while others are shallow with slowly permeable bedrock. Soil reaction varies from neutral or slightly acid to moderately or strongly acid. Color ranges from light gray or pale brown to grayish brown, brown and dark brown, or dark reddish brown and dark reddish brown, depending on the type of parent material and the amount of organic matter present.

The wide ranges of soil characteristics of the upland soils of the proposed viticultural area were recognized by the Soil Conservation Service in their 1978 "Soil Survey of Napa County, California." In their mapping and classification of the upland soils, they recognized seventeen soil series, 31 soil types of phases, and one miscellaneous land type. Grapes are currently grown on 9 of these soils which are moderately deep or deep and have 4 to 7 inches or 6 to 10 inches of available water holding capacity (AWC), respectively.

The moderate depth to bedrock (generally 30 to 60 inches) of the grape producing upland soils of the proposed Mt. Veeder viticultural area limits the depth and size of the soil reservoir for rooting, plant nutrients, and available soil moisture. Additionally, not all of the 25 to 65 inches of winter rainfall is effective as much of it runs off, especially on steeper slopes. This loss of runoff waters and the lower AWC of the soils results in limited soil moisture in the late summer and fall months.

The alluvial soils in the Napa Valley, by nature of their mode of formation, types of parent material and physiographic position, are distinctively different, both genetically and morphologically, from the residual upland soils of the proposed Mt. Veeder viticultural area. The diversity of parent material and the wide range of soil characteristics was recognized by the Soil Conservation Service in their mapping and classification of the soils of Napa County. In the Napa Valley they recognized 10 soil series. None of these valley soils are found on upland slopes in the proposed Mt. Veeder viticultural area.

The county line between Sonoma County and Napa County is the drainage divide between the watersheds of Sonoma Creek and the Napa River. There is a sharp contrast between soils and vegetation on the southwest facing slopes in Sonoma County and northeast facing slopes in Napa County where the proposed Mt. Veeder viticultural area is located. This difference in soils and vegetation is partially due to the microclimate aspect differences between the warmer, more arid southwest facing slopes and the cooler, more humid northeast facing slopes. The warmer, southwest slopes have a greater loss of soil moisture which is reflected in the formation of shallow soils and a less humid shrub or brush type of vegetation. According to the petition, there are also significant differences in the geology between the Sonoma County and Napa County sides of the Mayacamas. The rocks on the southwest slopes in Sonoma County are entirely volcanic in origin (Sonoma Volcanics). On these southwest slopes there are broad, extensive areas of volcanic rockland and large acreages of the shallow, gravelly, cobbly or rocky soils of the Goulding and Toome series. There are no Goulding or Toomes soils in the proposed Mt. Veeder viticultural area and rockland is very rare. In comparison, the geology of the Mayacamas in Napa County is a combination of both volcanic rocks (Sonoma Volcanics) and sedimentary rocks. The soils have developed from sandstones and shales which are absent on the southwest slopes of the Mayacamas in Sonoma County. The petitioner contends there are distinct and significant differences in soils, geology, vegetation and climate between the southewestern slopes and the eastern slopes of the Mayacamas which support the justification of the proposed Mt. Veeder viticultural area.

Regulatory Flexibility Act

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

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C.

605(b)) that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

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

Paperwork Reduction Act

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

Public Participation—Written Comments

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

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

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

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

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

Authority and Issuance

27 CFR Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—[AMENDED]

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

Authority: 27 U.S.C. 205.

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

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.123 Mt. Veeder

Par. 3. Subpart C is amended by adding § 9.123 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.123 Mt. Veeder.

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

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the "Mt. Veeder" viticultural area are three U.S.G.S. Quadrangle (7.5 Minute Series) maps. They are titled:

(1) Napa, California (1951 (Photorevised (1980))

(2) Rutherford, California (1951 (Photorevised 1968))

(3) Sonoma, California (1951 (Photorevised (1980))

(c) *Boundaries.* (1) Beginning at Bald Mountain, elevation 2,275, on the common boundary between Napa County and Sonoma Country in Township 7 North, Range 6 West, Mount Diablo Base and Meridian on the Rutherford, Calif, U.S.G.S. map;

(2) Thence south along common boundary between Napa County and Sonoma County to unnamed peak, elevation 1,135 feet on the Sonoma, Calif. U.S.G.S. map;

(3) Thence continuing south along the ridge line approximately ½ mile to unnamed peak, elevation 948 feet;

(4) Thence due east in a straight line approximately 3/10 mile to the 400 foot contour;

(5) Thence following the 400 foot contour line north around Carneros Valley and then to the west of Congress Valley and Browns Valley on the Napa, Calif. U.S.G.S. map;

(6) Thence paralleling Redwood Road to its intersection with the line dividing Range 5 West and Range 4 West, east of the unnamed 837 foot peak;

(7) Thence north along the line dividing Range 5 West and Range 4 West approximately 4/10 mile to the 400 foot contour;

(8) Thence briefly southeast, then northwest along the 400 foot contour to the point where that contour intersects the northern border of Section 10, Township 6 North, Range 5 West immediately adjacent to Dry Creek on the Rutherford, Calif. U.S.G.S. map;

(9) Thence northwesterly along Dry Creek to the tributary stream that joins at elevation 760 feet;

(10) Thence northwest along the tributary and the northern fork of that tributary that joins at elevation 900 feet to its source;

(11) Thence following a straight line west-southwest approximately 3/10 mile to the peak of Bald Mountain, elevation 2,275, the starting point.

Signed: July 3, 1989.

Stephen E. Higgins,

Director.

[FR Doc. 89–16536 Filed 7–13–89 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Kansas permanent regulatory program (hereinafter, the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to general requirements, definitions, permit applications, public hearings, civil penalties, permit review, bonding

procedures, performance standards, underground mining, small operator assistance, lands unsuitable, blaster certification, employee financial interests, and inspection and enforcement. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

This notice sets forth the times and locations that the Kansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.d.t. August 14, 1989. If requested, a public hearing on the proposed amendment will be held on August 8, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t. on July 31, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below.

Copies of the Kansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (816) 374–6405.

Kansas Department of Health and Environment, Surface Mining Section, 1501 South Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231–8615.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program, can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Proposed Amendment

By letter dated June 29, 1989, (Administrative Record No. KS–436) Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment (1) in response to an October 21, 1988, letter that OSMRE sent in accordance with 30 CFR 732.17(c) requiring certain provisions of the State program to be updated for consistency with the Federal regulations through July 1, 1988, and to satisfy anticipated deficiencies in the State program through July 1, 1989, and (2) at the States own initiative to improve its program.

The regulations that Kansas proposes to amend are: Kansas Administrative Regulations (KAR) 47–1–1, Title; KAR 47–1–3, Communication; KAR 47–1–4, Sessions; KAR 47–1–8, Petitions to Initiate Rulemaking; KAR 47–1–9, Notice of Citizen Suits; KAR 47–1–10, General Notice Requirement; KAR 47–1–11, Permittee Preparation and Submission of Reports; KAR 47–2–14, Complete and Accurate Application Defined; KAR 47–2–21, Employee Defined; KAR 47–2–53, Regulatory Authority or State Regulatory Authority Defined; KAR 47–2–67, Surety Bond Defined; KAR 47–2–75, Definitions-Adoption by Reference; KAR 47–3–1, Application for Mining Permit; KAR 47–3–2, Application for Mining Permit-Adoption by Reference; KAR 47–3–3a, Application for Mining Permit-Maps; KAR 47–3–42, Application for Mining Permit-Adoption by Reference; KAR 47–4–14, Public Hearing-Incorporation by Reference of K.S.A. 77–501 *et seq.;* KAR 47–4–15, Administrative Hearings, Discovery, Incorporation by Reference; KAR 47–4–16, Interim Orders for Temporary Relief; KAR 47–4–17, Administrative Hearings, Award of Costs and Expenses; KAR 47–5–5a, Civil Penalties-Adoption by Reference; KAR 47–5–16, Civil Penalties-Final Assessment and Payment; KAR 47–6–1, Permit Review; KAR 47–6–2, Permit Revision; KAR 47–6–3, Permit Renewals-Adoption by Reference; KAR 47–6–4, Permit Transfers, Assignments, and Sales-Adoption by Reference; KAR 47–6–6, Permit Conditions-Adoption by Reference; KAR 47–8–9, Bonding Procedures-Adoption by Reference; KAR 47–8–11, Use of Forfeited Bond Funds; KAR 47–9–1, Performance Standards-Adoption by Reference; KAR 47–9–2, Revegetation; KAR 47–9–4, Interim Program Performance Standards-Adoption by Reference; KAR 47–10–1, Underground Mining-Adoption by Reference; KAR 47–11–8, Small Operator Assistance Program-Adoption by Reference; KAR 47–12–4, Lands Unsuitable for Surface Mining-Adoption by Reference; KAR 47–13–4, Training and Certification of Blasters-Adoption by Reference; KAR 47–13–5, Responsibilities of Operators and Blasters-in-Charge; KAR 47–13–6, Training Program; KAR 47–14–7, Employee Financial Interest-Adoption by Reference; KAR 47–15–1a, Inspection and Enforcement-Adoption by Reference; KAR 47–15–3, Lack of Information and Inability to Comply; KAR 47–15–4, Injunctive Relief; KAR 47–15–7, State Inspections; KAR 47–15–8, Citizen's Request for State Inspections; KAR 47–15–15, Service of Notices of Violation and Cessation Orders; and KAR 47–15–17, Maintenance of Permit Areas.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written Comments

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

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m., c.d.t. July 31, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, the hearing will not be held.

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

The public hearing will continue on the specified date until all persons scheduled to testify have been heard.

Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 916

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

Date: July 6, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-16520 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of International Investment

31 CFR Part 800

Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons

AGENCY: Department of the Treasury.

ACTION: Notice of proposed rulemaking and request for public comments.

SUMMARY: The purpose of these proposed regulations is to implement section 721 of Title VII of the Defense Production Act of 1950, as amended by section 5021 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), relating to mergers, acquisitions, and takeovers of U.S. persons by or with foreign persons. Section 721 provides that the President shall direct the issuance of implementing regulations. By Executive Order 12661 of December 27, 1988, 54 FR 779, the President delegated that authority to the Chairman of the Committee on Foreign Investment in the United States ("the Committee"), in consultation with other members of the Committee. The Chairman of the Committee, pursuant to Executive Order 11858 of May 7, 1975, 40 FR 20263, as amended by Executive Order 12188, January 2, 1980, 45 FR 989, January 2, 1980, and by Executive Order 12661, 54 FR 779, January 9, 1989, is the Secretary of the Treasury. In implementation of Executive Order 12661, the Treasury Department is proposing these Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons.

DATE: Comments by: September 12, 1989.

ADDRESS: Comments should be addressed in writing and in triplicate to Stephen J. Canner, Director, Office of International Investment, Room 5100, Department of the Treasury, 15th Street and Pennsylvania Ave., NW., Washington, DC 20220.

All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury library is located in Room 5030, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to read the comments submitted should contact the Office of International Investment at (202) 566-2386.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Deputy Assistant General Counsel, Department of the Treasury, 15th Street and Pennsylvania Ave., NW., Washington, DC 20220, (202) 566-8401.

SUPPLEMENTARY INFORMATION: Section 709 of the Defense Production Act exempts the functions exercised under that Act from the operation of the Administrative Procedure Act, but requires that any regulations issued under the authority of the Act be accompanied by a statement that industry representatives were consulted in the formulation of the regulations. Pursuant to that provision, the Committee has consulted with a number of such representatives, and has given consideration to their views and recommendations in drafting these regulations. Therefore, the Committee is not required to publish these regulations in proposed form. However, given the complexity of the subject area covered by the regulations, the Committee elected to do so as a means of soliciting public comment. These regulations will next be published in final form.

Additional Comment Information

Treasury requests comments from all interested persons concerning these proposed regulations. Comments may take the form of proposed regulatory language, narrative discussion, hypothetical case situations, or any other appropriate format. All oral comments must be reduced to writing and submitted to Treasury in order to be considered. All comments received before the closing date will be carefully considered. Comments received after the closing date will be considered, if possible. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in comments.

Executive Order 12291

These proposed regulations, if adopted as final regulations, are not subject to the requirements of Executive Order 12291 because they relate to a foreign and military affairs function of the United States.

Paperwork Reduction Act

The collections of information provided for in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1505-XXXX), Washington, DC 20503, with copies to the Office of International Investment at the address noted above.

The collections of information provided for in this proposed regulation are in §§ 800.402 and 800.505. This information is required by the Committee on Foreign Investment in the United States to assist it in determining whether to investigate mergers, acquisitions, and takeovers of persons engaged in interstate commerce in the United States by or with foreign persons for possible threats to the national security, as required by section 721 of the Defense Production Act. This information will be used to determine the extent and nature of foreign control, as well as the national security implications of the transactions at issue. The likely respondents are individuals and businesses.

Estimated total annual reporting burden: 5425 hours.

Estimated average annual burden per respondent: This varies, depending on individual circumstances, with an estimated average of 35 hours.

Estimated number of respondents: 155.

Estimated annual frequency of responses: 1.

Regulatory Flexibility Act

These regulations implement section 721 of the Defense Production Act of 1950 (50 U.S.C. 2158) ("DPA"). Section 709 of the DPA (50 U.S.C. App. 2159) provides that the regulations issued under it are not subject to the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553). Moreover, notice and public procedure are not required pursuant to 5 U.S.C. 553(a)(1). Accordingly, and although these regulations are being issued in proposed form for public comment, these regulations, which implement the Defense Production Act, are not subject to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

I. Background

The Statute

Section 721 of the Defense Production Act of 1950, 50 U.S.C. App. 2158 *et seq.*, reads as follows:

(a) Investigations. The President or the President's designee may make an investigation to determine the effects on national security of mergers, acquisitions, and takeovers proposed or pending on or after the date of enactment of this section by or with foreign persons which could result in foreign control of persons engaged in interstate commerce in the United States. If it is determined that an investigation should be undertaken, it shall commence no later than 30 days after receipt by the President or the President's designee of written notification of the proposed or pending merger, acquisition, or takeover as prescribed by regulations promulgated pursuant to this section. Such investigation shall be completed no later than 45 days after such determination.

(b) Confidentiality of information. Any information or documentary material filed with the President or the President's designee pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this subsection shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.

(c) Action by the President. Subject to subsection (d), the President may take such action for such time as the President considers appropriate to suspend or prohibit any acquisition, merger, or takeover, of a person engaged in interstate commerce in the United States proposed or pending on or after the date of enactment of this section by or with foreign persons so that such control will not threaten to impair the national security. The President shall announce the decision to take action pursuant to this subsection not later than 15 days after the investigation described in subsection (a) is completed. The President may direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce this section.

(d) Findings of the President. The President may exercise the authority conferred by subsection (c) only if the President finds that—

(1) there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security, and

(2) provisions of law, other than this section and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

The provisions of subsection (d) of this section shall not be subject to judicial review.

(e) Factors to be considered. For the purposes of this section, the President or the President's designee may, taking into account the requirements of national security, consider among other factors—

(1) domestic production needed for projected national defense requirements,

(2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services, and

(3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security.

(f) Report to the Congress. If the President determines to take action under subsection (c), the President shall immediately transmit to the Secretary of the Senate and the Clerk of the House of Representatives a written report of the action which the President intends to take, including a detailed explanation of the findings made under subsection (d).

(g) Regulations. The President shall direct the issuance of regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall to the extent possible coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.

(h) Effect on other law. Nothing in this section shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.

On August 23, 1988, President Ronald Reagan signed into law the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107. Section 5021 of that statute added a new section, section 721 (hereinafter referred to as "Section 721"), to the Defense Production Act of 1950, 50 U.S.C. App. 2061 et seq., relating to the President's authority to review certain mergers, acquisitions, and takeovers.

Section 721 provides that the President may suspend or prohibit any merger, acquisition, or takeover of persons engaged in interstate commerce by or with foreign persons which would result in foreign control, where such control threatens to impair the national security. Before the President may exercise this authority, he must find that (1) there is credible evidence that leads him to believe that the foreign interest exercising control might take action that threatens to impair the national security, and (2) provisions of law, other than the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) and section 721, do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security. Section 721 empowers the President to exercise these authorities with respect to transactions that were concluded on or after the date of enactment, i.e., August 23, 1988. Thus, any transaction which was completed prior to that date is not subject to section 721.

Section 721 also sets out certain procedural steps for reviewing transactions that may be subject to Presidental action. The statute creates a two-stage review and investigation process for transactions subject to section 721. The review of "notice" phase of this two-stage process must be completed within 30 days. If there is a decision not to follow up the notice phase with an investigation, action under section 721 with respect to the proposed transaction will be concluded, and the Committee must advise the President of that decision. If, however, an investigation is undertaken, it must be completed within 45 days. In the case of each transaction for which there has been a completed investigation, the President must take a determination no later than 15 days after the completion of the investigation as to whether and how he should exercise his powers to suspend, prohibit, or take other appropriate action with respect to the transaction.

Legislative History

The principal legislative history of section 721 is found in the Conference Report for Pub. L. 100–418 (H. Rep. 100–576, 100th Cong. 2d Sess. (1988), pp. 924–928) (hereinafter referred to as the "Conference Report"). The discussion below of various individual sections of the proposed regulations incorporates materials from the Conference Report. This discussion focuses on two areas of general significance for the regulations—national security and foreign investment—that are dealt with in the Conference Report.

The focus of the statute is on transactions that could harm the national security. Although neither the Conference Report nor the statute defines national security, the conferees explain that it is to be interpreted broadly and without limitation to particular industries. They further note that the term is not meant to imply any limitation on the term "national defense" as used elsewhere in the Defense Production Act (Conference Report at 926–927). Although broad, this term is nevertheless narrower than the language in the predecessor House bill, which referred to "national security and essential commerce." See H.R. 3, 100th Cong., 1st Sess. Sec. 905, 133 Cong. Rec. 2642, 2739 (1987).

In line with the guidance in the Conference Report, the proposed regulations do not attempt to define "national security." Nonetheless, the intent of the regulations is to indicate that notice, while voluntary, clearly appropriate when, for example, a company is being acquired that provides products or key technologies essential to the U.S. defense industrial base. However, the regulations are not intended to suggest that notice should be submitted in cases where the entire output of a company to be acquired consists of products and/or services that clearly have no special relation to national security, e.g., toys and games; food products; hotels and restaurants; or legal services. Persons contemplating transactions involving entities that operate in areas that do not appear reasonably related to the national security are invited to seek guidance from the Staff Chairman of the Committee before submitting notice under these regulations.

With respect to foreign investment, the regulations endeavor to incorporate the Conference Report's view that section 721 is not intended to raise obstacles to foreign investment. this point is made explicitly at p. 926 of the Conference Report ("The Conferees in no way intend to impose barriers to foreign investment"). In line with this guidance, and consistent with the long history of U.S. openness to foreign investment, the Committee intends to implement the statute only insofar as necessary to protect the national security.

At another point, the conferees state that they do not intend the legislation to abrogate existing obligations of the United States under treaties, including Treaties of Friendship, Commerce and Navigation. (Conference Report at 927.) Those treaties contain national treatment provisions under which the United States is obligated to extend foreign parties treatment no less favorable than that accorded domestic parties, but is permitted to institute measures to protect U.S. national security. The Committee intends to implement section 721 and the regulations in a manner fully consistent with the international obligations of the United States.

II. Discussion of Proposed Regulations

Overview

The proposed regulations create an essentially voluntary system of notice by the parties to an acquisition, but also allow for notice by agencies that are members of the Committee. Transactions that are covered by these regulations include both proposed transactions which could result in foreign control of a U.S. person, and completed transactions which do result in such control. The focus is on the acquisition and control of on-going, sustainable businesses in the United States. "Control," a key concept in these regulations, is defined in functional rather than mechanical terms.

The regulations spell out the obligations of parties giving notice to the Committee. These include the provision of certain specified types of information (§ 800.402), as well as the obligation to keep the Committee apprised of material changes or developments in a notified transaction (§§ 800.402(g) and 800.702). The Committee may reject notices that do not comply with the regulations. Once a transaction has been properly notified, the Committee has up to thirty days to determine whether an investigation is necessary. If an investigation is deemed necessary, the Committee will notify the parties accordingly, and has up to forty-five days to complete the investigation. During this time, the Committee may request additional information and meet with the parties regarding the notified transaction. Parties may request withdrawal of their notices at any time prior to an announcement by the President of his decision under section 721; the Committee will normally grant such requests.

With respect to transactions that have been notified, the President may exercise his powers under section 721 at any time within the statutory periods, whether or not the transactions have been completed. In the particular case where a notified transaction is completed prior to the expiration of the statutory periods, the President may nonetheless take divestment or other appropriate action. Acquisitions subject to section 721 that are not notified, either by one of the parties or by an agency, remain indefinitely subject to divestment or other appropriate action by the President.

Subpart A: General

Subpart A sets out rules of general applicability. Section 800.103 provides that section 721 only applies to acquisitions, mergers, or takeovers of U.S. persons which were proposed or pending after the date of enactment. Section 721 was enacted on August 23, 1988, when the Omnibus Trade and Competitiveness Act of 1988 became law. Therefore, only transactions which were proposed or pending after August 23, 1988 fall within section 721. Thus, transactions that were proposed before August 23, 1988, but were not completed until after that date (and were thus "pending after August 23"), would fall within the statute. Conversely, transactions that were completed prior to August 23, 1988, would not fall within the statute.

Section 800.104 makes clear that a transaction entered into for the purpose of avoiding section 721 shall be disregarded, and the Act and these regulations shall be applied to the substance of the transaction.

Subpart B: Definitions

Section 800.201. Section 721 applies as a threshold matter to mergers, acquisitions, and takeovers, by or with foreign persons, of persons engaged in interstate commerce in the United States. The regulations use the term "acquisition" as a form of shorthand to refer generally to mergers, acquisitions and takeovers. "Acquisition" is defined to include acquisitions of a business, including the acquisitions of certain plants and equipment. This formulation recognizes that an acquisition of a business may occur through the acquisition of assets. However, it is intended to exclude asset acquisitions that do not result in the acquisition and control of an ongoing, sustainable business, such as would occur in a transaction involving an ordinary sale and purchase of equipment.

The proposed regulations treat a proxy solicitation as a "takeover," and cover proxy solicitations that could result in foreign control of a U.S. person. Currently, the regulations permit notice when proxies are solicited. Other options are possible. The regulations might provide for only limited Committee review of proxy contests at the solicitation stage. Another option would be to review proxy contests only at such time as the election of a board of directors for which the proxies were

solicited results in foreign control of the company. Still another option might be to draw a distinction among the types of proxies that are being solicited, based upon whether the proxy is, or could be, irrevocable. The Committee would appreciate the public's views as to whether any of these options, or any other option, is preferable to the approach adopted in the regulations.

The Committee would also appreciate public views on two specific points: (1) The likelihood in the future that proxy solicitations will be used as a vehicle for foreign persons to obtain control over U.S. persons, and (2) the likelihood that any such control—if obtained—could be used in ways that could threaten the national security. With respect to the second point, the Committee particularly seeks views as to whether corporate law and other rules (on, e.g., director's responsibilities, shareholders rights, disclosure obligations in proxy statements) might restrict a controlling foreign interest's ability to take actions adverse to the national security.

Section 800.206. This section defines the term "entity" very broadly to reflect the usage of that term in the legislative history. The Conference Report uses the term to convey any on-going, sustainable business, including a corporation, partnership, a division of a corporation, or an unincorporated entity. (See Conference Report at 926.)

Sections 800.210 and 800.211. Section 721 covers acquisitions of "U.S. persons" where the acquiring party is a "foreign person." Under § 800.210, a "U.S. person" includes any entity but only to the extent of its business activities in interstate commerce in the United States, regardless of its form of organization or who actually controls it. Thus, a branch in the United States of a foreign entity is a U.S. person for the purpose of these regulations. However, an entity which does not have a branch office, subsidiary, or fixed place of business in the United States is not a "U.S. person" if its activities in interstate commerce are limited to sales to an unaffiliated company in the United States.

"Foreign person" is defined at § 800.211 in terms of the potential for functional control by a foreign interest, rather than in terms of a more mechanical test such as place of incorporation. As a result, an acquiring entity might be both a U.S. person and a foreign person under these regulations (i.e., if it does business in interstate commerce in the United States but is actually controlled by a foreign interest), in which case it would fall within section 721. On the other hand, it may be neither a U.S. person nor a foreign person under the regulations (i.e., if it does not do business in interstate commerce in the United States and is controlled by a U.S. person), in which case it would fall outside the statute.

Section 800.213. A key issue in section 721 is whether a foreign person could "control" a U.S. person as a result of any transaction proposed or pending after the date of enactment. As set forth in § 800.213, the test for control focuses on the power, whether or not exercised, to formulate, determine, direct, or decide important matters relating to the entity. Thus, if the foreign person will or could control the U.S. person, the transaction falls within section 721. By "could control," the regulations do not mean a remote, eventual possibility of control, as might exist when a foreign institutional investor acquires stock in a U.S. corporation solely for investment purposes. Rather, those words are meant to convey a situation where control could be exercised by virtue of significant stock ownership, contractual arrangements, or other means. Thus, a foreign person could control a U.S. company if, for example, it acquired a dominant minority of stock in that company, and met the requirements set out in § 800.213, even if the board of directors of the company were comprised entirely of U.S. nationals.

Control is relevant at two points under section 721. First, section 721 provides that the President or his designee may investigate a transaction which could result in foreign control of persons engaged in interstate commerce in the United States. Second, control is relevant under section 721 when the President exercises his authority under that section to suspend, prohibit, or take other appropriate action with respect to a transaction that has been the subject of an investigation. Section 721(c) provides that the President may take such action so that "foreign control will not threaten to impair the national security." Furthermore, section 721(d) provides that the President cannot take action unless he finds, inter alia, that there is credible evidence that the foreign interest exercising control might take action that threatens to impair the national security.

Sections 800.214 and 800.215. Sections 800.214 and 800.215 define the terms "parent" and "affiliate," respectively, by virtue of mechanical tests, for the purposes of facilitating identification of those entities when giving notice pursuant to § 800.402. Thus, a parent is a person entitled to hold 50 percent or more of the outstanding voting securities of an entity; or, in the case of an entity that has no voting securities, holds or will hold 50 percent or more of the profits, or has or will have the right in the event of a dissolution to 50 percent or more of the assets of an entity. An affiliate of an entity is any other entity in the chain of ownership between a parent and that entity.

Section 800.220. This section defines the concept "solely for the purposes of investment" in terms of the absence of an intent on the part of an acquiring party to participate in basic business decisions of the party to be acquired. This concept is incorporated in § 800.302, which describes transactions that are not acquisitions under section 721. Under paragraph (d) of that section, a purchase of voting securities by a foreign person "solely for the purposes of investment" is not a transaction subject to section 721 if it results in the ownership of ten percent or less of the outstanding voting securities of the U.S. person. However, if an investor subsequently changes his intent or takes steps inconsistent with a passive investment purpose, the acquisition falls within section 721. Section 800.302(d) also provides guidance for institutional investors purchasing voting securities solely for investment purposes.

The Committee would appreciate public comments concerning (1) the feasibility of the intent component of the standard pertaining to individual investors, which looks to an investor's intent when acquiring the securities, and (2) the advisability of a 10 percent threshold, as opposed, for example, to a higher or lesser threshold. Specifically, the Committee would be interested in public views on the extent to which investors acquire less than 10 percent of the outstanding voting securities of a company for the purposes of acquiring control.

Section 800.221. This section identifies the parties to an acquisition for purposes of giving notice. Paragraph (e), for parties to a proxy contest, has been left incomplete pending final resolution of how proxy contests will be covered under the regulations. (See the discussion under § 800.201.)

Subpart C: Coverage

Section 800.301. Subpart C identifies five categories of transactions that are subject to section 721. These categories are meant to be illustrative rather than exhaustive. They include completed transactions which either did or could result in foreign control of a U.S. person, such as when a foreign interest acquires a U.S. company but retains U.S. nationals on the board of directors; tender offers under which a foreign person offers to purchase all or a substantial portion of the shares of a

U.S. person; proposed or completed acquisitions by foreign-controlled companies in the United States of U.S.-controlled companies in the United States; acquisitions of businesses; and joint ventures which could result in a foreign person gaining control over a business of a U.S. person.

Section 721 is silent on the question of joint ventures, as is the Conference Report. The predecessor bill to section 721 in the House (H.R. 3, 100th Cong., 2d Sess. Sec. 905, 133 Cong. Rec. 2642, 2739 (1987)) would have explicitly included joint ventures, while the Senate version had no such reference. As § 800.301(b)(4) makes clear, joint ventures may be considered an acquisition for the purposes of these regulations, if the joint venture involves the acquisition of a business.

Section 721 applies to acquisitions of persons engaged in interstate commerce in the United States. Since "greenfield" investments are not on-going businesses and therefore not "persons engaged in interstate commerce," they are not subject to section 721. *See* § 800.301(4), example 3. Moreover, it is important to note that foreign acquisitions of U.S.-controlled businesses operating entirely outside the United States are not within section 721.

Section 800.302. The section identifies several categories of transactions that are not considered to be "acquisitions" for the purposes of section 721 and are therefore not covered under these regulations. One category in this section is the acquisition of assets that do not involve the control of a person. Since the acquisition of such assets — with nothing more — does not involve control of a "person," it falls outside section 721. However, as specified in § 800.201(b), the acquisition of assets may be an acquisition for the purposes of section 721 when the assets consist of production or research and development facilities, *and* the acquiring party will make substantial use of the technology or personnel of the U.S. person whose assets it acquires. (See § 800.201(b).)

As provided in paragraph (d), the term "acquisition" also does not include acquisitions made solely for the purpose of investment when the acquisitions would result in a foreign person's holding ten percent or less of the outstanding voting securities of a U.S. person. As mentioned earlier, under § 800.220 an acquisition is solely for the purpose of investment if the acquiring party has no intention of participating in basic business decisions of the issuer, including those outlined in the definition of control at § 800.213. Similarly, "acquisition" does not include a purchase made by a bank, trust company, insurance company, pension fund, mutual fund, finance company or brokerage company in the ordinary course of business for its own account, provided that a significant portion of that business does not consist of the acquisition of entities.

Finally, these proposed regulations do not apply to acquisitions of securities that do not result in control. Thus, acquisitions of stock as a result of stock splits, or by a securities underwriter in the course of its business, or by an insurance company pursuant to its insurance contract, are not considered "acquisitions" under these regulations. Similarly, an acquisition of convertible voting securities that does not involve control is not an acquisition for purposes of section 721. If, however, the acquiring party subsequently converts those securities into stock that entitles its holder to vote for directors, such conversion may constitute an acquisition under section 721. The Committee invites public comment on the advisability of this distinction.

Subpart D: Notice

Section 800.401. This section establishes a voluntary system of notice. If a proposed transaction consists of an acquisition in which a foreign person controls or could control a U.S. person, then the transaction falls within section 721, and either party to the transaction — even if the proposed acquisition is "hostile" — may submit notice of the transaction in accordance with the procedures in § 800.401. Once such notice is given, the Committee may also request information from the non-notifying party. Although the regulations create a voluntary notice scheme, it is important to note that if a transaction comes under section 721 and neither party, nor a Committee agency, submits notice to the Committee, it remains indefinitely subject to divestment should the President subsequently make the required findings as described in § 800.601(b).

Notice will only be accepted from parties. (Parties to an acquisition are defined in § 800.221.) Therefore, notice from third parties, such as shareholders, would not constitute notice under these regulations. However, any person, including non-parties, may informally contact the Committee regarding a particular transaction. Since such informal contacts would not constitute notice, they would not commence the running of the thirty-day notice period under section 721.

In addition to notice from the parties to a transaction, these regulations also provide for notice by an agency that is a member of the Committee. (See § 800.401(b).) Normally, the Staff Chairman will contact parties to a transaction about which the Committee has learned through its own efforts, if the Chairman believes that the transaction may be subject to section 721. Since these regulations create a voluntary notice system, parties that are contacted by the Staff Chairman are free to decide whether to give notice. An example of when agency notice may be given is where the Committee has ascertained that the parties to a transaction which appears to raise national security concerns do not intend to give notice.

Section 800.402. This section describes the information that must be submitted in order to constitute sufficient notice under section 721. Paragraph (h) provides that the Staff Chairman retains the right to reject voluntary notices that do not comply with the section. As provided in paragraph (g), parties are required to advise the Committee of any developments that are material to the Committee's review of the proposed transaction. The Committee has the right to reject any notice at any time if, after the notice has been submitted, there is a material change in the transaction that has been notified. The Committee would view such a material change as giving rise to a new transaction that may warrant a separate notice to the Committee.

Section 800.403. This section provides that the 30-day period following notice from parties is deemed to begin on the first calendar day following receipt of notice by the Committee Staff Chairman. This beginning date applies to voluntary notice as well as to agency notice. Parties to a transaction that is notified by a Committee agency will in most cases have already had informal contacts with the Committee and will therefore have been made aware of an agency's intention to notify.

Since the statute requires the Committee to conduct its work within fixed time periods, these regulations adopt the principle that time periods end on business days. Therefore, if the thirtieth day of the notice period is not a business day, the notice period will be extended to the next business day. However, there may be cases where the Committee will be able to determine before the thirtieth day that a transaction does not warrant an investigation. In such cases, it can advise the parties of its determination before the end of the notice period.

Subpart E: Committee Procedures: Review and Investigation

Sections 800.501–800.504. Subpart E sets forth Committee procedures for conducting its initial 30-day review and 45-day investigation. As provided in § 800.501, the Committee may examine three questions: (1) Is there an acquisition which could result in foreign control of a U.S. person? (2) Is there credible evidence to support a belief that such foreign control could threaten to impair the national security? and (3) Are no other provisions of law adequate to protect the national security? If the Committee's initial review leads it to believe that no national security concerns are raised by the transaction, the Committee will conclude its action under section 721, and the Staff Chairman will notify the parties accordingly. In such cases, no investigation will be undertaken, and no further action is available under section 721.

If, on the other hand, the Committee's initial review leads it to believe an investigation is warranted, the Committee will begin an investigation of the transaction no later than 30 days after the date the review period began. The Committee may ask the parties to provide additional information, and may schedule meetings for the parties to discuss the transaction with the Committee. This investigation period shall end no later than 45 days after it commences. Upon completing the investigation, the Committee shall make a recommendation to the President, unless the Committee is unable to reach a unanimous decision, in which case it will submit a report to the President that sets forth the differing views.

Section 800.505. This section provides that parties to a transaction may request that their notice be withdrawn at any time prior to an announcement by the President of his decision with respect to the matter. Such requests will ordinarily be granted. An agency may also withdraw a notice it has given concerning a transaction. Paragraph (c) makes clear that notice shall be considered not to have been made where a notice is withdrawn or rejected. Any notice made with respect to any subsequent acquisition among parties shall be deemed a new notice for purpose of the regulations.

Subpart F: Presidential Action

Section 800.601. Subpart F concerns the standards and nature of Presidential action under section 721. Section 800.601(a) reiterates the statutory time frame and requirements for Presidential action. As provided in § 800.601(c), Presidential action may include divestment with respect to a concluded transaction, as well as other appropriate relief. Section 800.601(d) makes clear that all authority available to the President under section 721(c), including divestment authority, remains available indefinitely, at the discretion of the President, for all acquisitions concluded after August 23, 1988, except for those which the Committee has decided not to investigate or with respect to which the President has determined not to exercise his authority. This authority extends to transactions that have not been the subject of a voluntary or agency notice. However, as provided in paragraph (d), divestment remains available for non-notified transactions only if the purpose for which divestment is sought is based on circumstances existing at the time the transaction was concluded.

The President's authority includes the ability to obtain divestment relief before the completion of a Committee review or investigation where a proposed acquisition is or may be completed after notice has been given, but before the close of the 15-day period for Presidential action. This is in line with guidance provided in the Conference Report, which recognizes that acquisitions can be completed so quickly that the President needs a broad range of remedies to respond appropriately to different circumstances, including attempts to circumvent the purposes of section 721. (See Conference Report at 927.)

Paragraph (e) provides for Committee action in the event parties to an acquisition have submitted false or misleading information, or have omitted material information. In such cases, the Committee can reopen the investigation, revise its recommendation to the President, and accept a new or resubmitted agency notification. Moreover, the President may take appropriate temporary action, and revise actions earlier taken.

Subpart G: Confidentiality

Subpart G provides guidelines with respect to the provision and handling of information.

Section 800.701. This section makes clear that the parties to a notified transaction are obligated to provide the Committee with information that will enable it to conduct a full review and/or investigation of the proposed transaction. This section incorporates a reference to the Defense Production Act (50 U.S.C. App. 2155(a)) to highlight the authorities available to the Committee for obtaining information.

Section 800.702. Subsection 800.702(a) reiterates the comprehensive confidentiality provision in section 721(h). To highlight the importance of maintaining the confidentiality of materials submitted under section 721, paragraph (b) reiterates the penalty provision of the Defense Production Act for willful disclosures of information or documentary material provided under these regulations.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (International Affairs). However, personnel from other offices at the Treasury Department and from other agencies that are members of the Committee participated extensively in its development.

List of Subjects in 31 CFR Part 800

Foreign Investments in the United States; Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, a new Chapter VIII, Office of International Investment, Department of the Treasury, is proposed to be added to Title 31 of the Code of Federal Regulations, consisting of Part 800, as set forth below.

CHAPTER VIII—OFFICE OF INTERNATIONAL INVESTMENT, DEPARTMENT OF THE TREASURY

PART 800—REGULATIONS PERTAINING TO MERGERS, ACQUISITIONS, AND TAKEOVERS BY FOREIGN PERSONS

Subpart A—General

Sec.

Subpart B—Definitions

Sec.

Authority: Section 721 of Pub. L. 100–418, 102 Stat. 1107, to be codified at 50 U.S.C. App. 2170; section 705 of the Defense Production Act of 1950, codified at 50 U.S.C. App. 2155; E.O. 12661, 54 FR 779 (January 9, 1989).

Subpart A—General

§ 800.101 Scope.

The regulations in this part implement Section 721 of Title VII of the Defense Production Act of 1950, hereinafter referred to as "Section 721" (see § 800.203 of this part). The definitions in this part are applicable to Section 721 and these regulations. The principal purpose of Section 721 is to authorize the President to suspend or prohibit any merger, acquisition, or takeover, by or with a foreign person, of a person engaged in interstate commerce in the United States when, in the President's view, the foreign interest exercising control over that person might take action that threatens to impair the national security. In addition, Section 721 authorizes the President to seek divestment or other appropriate relief in the case of concluded transactions.

§ 800.102 Effect on other laws.

Nothing in this part shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.

§ 800.103 Prior acquisitions.

Section 721 and the regulations in this part apply to acquisitions concluded on or after the effective date, including acquisitions concluded prior to issuance of these regulations. Section 721 and the regulations in this part do not apply to acquisitions concluded prior to the effective date.

§ 800.104 Transactions or devices for avoidance.

Any transaction(s) or other device(s) entered into or employed for the purpose of avoiding Section 721 shall be disregarded, and Section 721 and these rules shall be applied to the substance of the transaction(s).

Example. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards avoiding possible application of Section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a corporation which is organized under the laws of a state of the United States, and which engages in business activities in the United States. That transaction is subject to Section 721.

Subpart B—Definitions

§ 800.201 Acquisition.

The term "acquisition" is used within these regulations to refer collectively to an acquisition, merger, or takeover. It includes, without limitation:

(a) The acquisition of a person by:

(1) The purchase of its voting securities, or

(2) The conversion of its convertible voting securities,

(3) The acquisition of its convertible voting securities if that involves the acquisition of control.

(b) The acquisition of a business, including any acquisition of production or research and development facilities previously operated as part of a business of a U.S. person if there will likely be a substantial use of:

(1) The technology of that U.S. person or,

(2) Personnel previously employed by that U.S. person.

(c) A consolidation.

Example (relating to subparagraph (b)). Corporation A, organized under the laws of a foreign state and wholly owned and controlled by a foreign national, acquires, from separate United States nationals, (a) products held in inventory, (b) land, and (c) machinery for export. Corporation A has not acquired a business and has not made an acquisition within the meaning of these regulations.

§ 800.202 Effective date.

The term "effective date" means August 23, 1988, the date Section 721 became effective.

§ 800.203 Section 721.

The term "Section 721" means Section 721 of Title VII of the Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*, 64 Stat. 798, which section was added by section 5021 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107.

§ 800.204 Committee.

The term "Committee" means the Committee on Foreign Investment in the United States, as established in Executive Order No. 11858, 40 FR 20263, as amended by Executive Order 12188, January 2, 1980, 45 FR 989, January 2, 1980, and by Executive Order 12661, 54 FR 779, January 9, 1989.

§ 800.205 Person.

The term "person" means any individual or entity.

§ 800.206 Entity.

The term "entity" means any branch, partnership, associated group, association, estate, trust, corporation, division of a corporation, business enterprise, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency).

§ 800.207 United States.

The term "United States" means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the outer Continental Shelf, as defined in Section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1131 (a)). For purposes of these regulations and their examples, an entity organized under the laws of the United States of America, one of the States, or a commonwealth, territory, dependency or possession of the United States, is an entity organized "in the United States."

§ 800.208 United States national.

The term "United States national" or "U.S. national" means a citizen of the United States or an individual person who, though not a citizen of the United States, owes permanent allegiance to the United States.

§ 800.209 Foreign national.

The term "foreign national" means any individual other than a United States national.

§ 800.210 U.S. person.

The term "U.S. person" or "United States person" means any entity but only to the extent of its business activities in interstate commerce in the United States, irrespective of the nationality of the individuals which control it.

Example 1. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. It engages in business activities in a state of the U.S. through a branch office or subsidiary. That branch office or subsidiary of Corporation A is an "entity" and a "U.S. person."

Example 2. Same facts as in the first sentence of Example 1. Corporation A, however, does not have a branch office, subsidiary or fixed place of business in the United States. It exports and licenses technology to an unaffiliated company in the United States. Corporation A is not a "U.S. person."

§ 800.211 Foreign person.

The term "foreign person" means:

(a) Any foreign national or

(b) Any entity over which control is or could be exercised by a foreign interest.

Example 1. Corporation A is organized under the laws of a foreign state and is engaged in business outside the United States. All its shares are held by Corporation X, which controls Corporation A. Corporation X is organized in the United States, and is wholly owned and controlled by U.S. nationals. Corporation A, though organized and operating outside the U.S., is not a "foreign person."

Example 2. Same facts as in the first two sentences of Example 1, except that Country A through governmental intervenors exercises full decision-making power over Corporation A, including the decisions described in § 800.213(a) through (e). There is a foreign interest which is exercising control over Corporation A, which is a "foreign person."

Example 3. Same facts as in the first two sentences of Example 1, except that Corporation A is owned and controlled by a foreign national and, through a branch, engages in business in the United States. Corporation A and/or its branch is a "foreign person" should Corporation A make an acquisition. Its branch business in the United States is a "U.S. person" which may be the subject of an acquisition.

§ 800.212 Foreign interest.

The term "foreign interest" means any foreign person, including a foreign government.

§ 800.213 Control.

The term "control" means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an issuer, or by proxy voting, contractual arrangements or other means, to formulate, determine, direct or decide matters affecting the entity; in particular, but without limitation, to formulate, determine, direct, take, reach or cause decisions regarding:

(a) The sale, lease, mortgage, pledge or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;

(b) The dissolution of the entity;

(c) The closing and/or relocation of the production or research and development facilities of the entity;

(d) The termination or non-fulfillment of contracts of the entity; or

(e) The amendment of the Articles of Incorporation or constituent agreement of the entity with respect to the matters described at (a) through (d) above.

§ 800.214 Parent.

The term "parent," as used in §§ 800.302 and 800.402, means a person who or which, directly or indirectly:

(a) Holds or will hold the ownership of 50 percent or more of the outstanding voting securities of an entity; or

(b) In case of an entity that has no outstanding voting securities, holds or will hold the right to 50 percent or more of the profits of the entity, or has or will have the right in the event of the dissolution of 50 percent or more of the assets of the entity.

Example. Corporation P owns 50 percent of the voting securities of Corporations R and S. Corporation R owns 40 percent of the voting securities of Corporation X, and Corporation S owns 50 percent of the voting securities of Corporation Y. Corporation P is a parent of Corporations R, S and Y, but not of Corporation X. Corporation S is a parent of Corporation Y because it holds 50 percent of the voting securities of Corporation Y.

§ 800.215 Affiliate.

An "affiliate" of an entity, as that term is used in §§ 800.219 and 800.402, is any other entity in the chain of ownership between a parent and that entity.

Example. Same facts as the Example under "parent." Under this definition, Corporation S is an affiliate of Corporation Y. (An entity can be both an affiliate and a parent.) Corporation R is not an affiliate of Corporation S or Y because it is not in the chain of ownership between Corporation P and Corporation Y. Coroporation X is also not an affiliate of Corporation Y.

§ 800.216 Hold.

The terms "hold(s)" and "holding" mean beneficial ownership, whether direct or indirect, through fiduciaries, agents, or other means.

§ 800.217 Voting securities.

The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer, or, with respect to unincorporated entities, individuals exercising similar functions.

§ 800.218 Convertible voting security.

The term "convertible voting security" means a voting security which currently does not entitle its owner or holder to vote for directors of any entity. See §§ 800.201 and 800.302(c).

§ 800.219 Conversion.

The term "conversion" means the exercise of a right inherent in the ownership or holding of particular voting securities to exchange such securities for securities which currently entitle the owner or holder to vote for directors of the issuer or for any affiliate of the issuer.

§ 800.220 Solely for the purpose of investment.

(a) Voting securities are held or acquired "solely for the purpose of investment" if the person holding or acquiring such voting securities has no intention of participating in the formulation, determination or direction of the basic business decisions of the issuer, including those at § 800.213 (a) through (e).

(b) Voting securities are not held solely for the purpose of investment if the person holding or acquiring such voting securities:

(1) Possesses or develops any purpose other than investment, or

(2) Takes any action inconsistent with acquiring or holding such securities solely for the purpose of investment.

§ 800.221 A party or parties to an acquisition.

The terms "party to an acquisition" and "parties to an acquisition" mean:

(a) In the case of an acquisition of a person by the purchase of its voting securities, the person acquiring the voting securities, and the person issuing those voting securities;

(b) In the case of a merger, the surviving person, and the person which loses its separate pre-merger identity;

(c) In the case of an acquisition of an entity or a business of an entity, the person acquiring that entity or business, and the person selling that entity or business.

(d) In the case of a consolidation, the entities being consolidated, and the new consolidated entity;

(e) In the case of a proxy solicitation (to be determined).

Subpart C—Coverage

§ 800.301 Transactions that are acquisitions under Section 721.

(a) Section 721 applies to acquisitions:

(1) Proposed or pending on or after the effective date.

(2) By or with foreign persons.

(3) Which could result in foreign control of persons engaged in interstate commerce in the United States.

(b) Transactions that are acquisitions under Section 721 include, without limitation:

(1) Proposed or completed acquisitions by or with foreign persons which could or did result in foreign control of a U.S. person, irrespective of the actual arrangements for control planned or in place for that particular acquisition.

Example 1. Corporation A, a foreign person, proposes to purchase all the shares in Corporation X, which is organized in the United States and engages in business in the United States.

Under the applicable statutory law, Corporation A will have the right to elect directors and other primary officers of Corporation X, and those directors will have the right to reach decisions about the closing and relocation of particular production facilities, and the termination of contracts. They also will have the right to propose (for approval by Corporation A as a shareholder) the dissolution of Corporation X and the sale of its principal assets.

For purposes of Section 721, the proposed acquisition of Corporation X by Corporation A could result in control of a U.S. person (Corporation X) by a foreign person (Corporation A).

Example 2. Same facts as in Example 1, except that Corporation A plans to retain the existing directors of Corporation X, all of whom are U.S. nationals.

Although, under these plans, Corporation A may not in fact exercise control over Corporation X (because the directors as U.S. nationals may exercise that control), the acquisition of Corporation X by Corporation A still would result in foreign control over a U.S. person for purposes of Section 721.

(2) A proposed acquisition by or with a foreign person, which could result in foreign control of a U.S. person, including, without limitation, an offer to purchase all or a substantial portion of the securities of a U.S. person.

Example. Corporation A, a foreign person, makes an offer to purchase all the shares in Corporation X, a U.S. person. That acquisition is "proposed" and subject to Section 721.

(3) Proposed or completed acquisitions even by entities organized in the United States, if those entities are "foreign persons," and if those acquisitions could or did result in a new foreign interest controlling the U.S. person to be acquired.

Example 1. Corporation X is organized and operates in the United States. Its shares are held by a foreign person. While Corporation X is a "U.S. person," it is also a "foreign person" within the meaning of Section 721, because control over it is or could be exercised by a foreign person. Its acquisition of a U.S. person is subject to Section 721 because that acquisition could result in control by Corporation X (a "foreign person") of a U.S. person.

Example 2. Same facts as Example 1, except that Corporation Y, a foreign person, seeks to acquire Corporation X from its existing shareholder. That proposed acquisition is subject to Section 721 because it could result in control of Corporation X (in this context a "U.S. person") by a new foreign person (Corporation Y).

(4) Proposed or completed acquisitions by or with foreign persons which involve acquisitions of businesses and could or did result in foreign control of businesses located in the United States.

Example 1. Corporation A, a foreign person, proposes to buy a branch office business in the United States of Corporation X, which is a foreign person. For purposes of these regulations, the branch office business of Corporation X is a United States person to the extent of its business activities in the U.S., and the proposed acquisition of the business in question is subject to section 721.

Example 2. Corporation A, a foreign person, buys a branch office business located entirely outside the United States of Corporation Y, which is incorporated in the United States. The branch office business of Corporation Y is not deemed to be a United States person, and the acquisition is not subject to Section 721.

Example 3. Corporation A, a foreign person, makes a start-up or "greenfield" investment in the United States. That investment involves such activities as separately arranging for the financing of and the construction of a plant to make a new product, buying supplies and inputs, hiring personnel, and purchasing the necessary technology. The investment may involve the acquisition of shares in a newly incorporated subsidiary. Corporation A will not have acquired the "business" of a U.S. person, and its greenfield investment is not subject to Section 721.

(5) Joint ventures where a United States person and a foreign person enter into contractual or other similar arrangments, including agreements on the establishment of a new entity, in circumstances such that a foreign interest would gain control over a business of a U.S. person.

Example 1. Corporation A, a foreign person, and Corporation X, a United States corporation, form a separate corporation, JV Corp., to which Corporation X contributes an identifiable business in the United States. There is no foreign interest which does or could exercise control over Corporation X. Under the Articles of Agreement of JV Corp., Corporation A through its shareholding in JV Corp. may elect a majority of the Board of Directors of JV Corp. The formation of JV Corp. could result in foreign control of a U.S. person and is an acquisition subject to Section 721.

Example 2. Same facts as Example 1, except that, under the Articles of JV Corp., or pursuant to contractual arrangments between Corporations A an X, all decisions by JV Corp. identified under § 800.213 (a) through (e) may be made only by Corporation X or subject to its veto. The formation of JV Corp. is not an acquisition subject to Section 721.

§ 800.302 Transactions that are not acquisitions under Section 721.

The following transactions are not considered acquisitions for purposes of Section 721:

(a) An acquisition of voting securities pursuant to a stock split or pro rata stock dividend.

(b) An acquisition in which the parent of the entity making the acquisition is the same as the parent of the entity being acquired.

Example. Corporation A, a foreign person, merges its two wholly-owned U.S. subsidiaries S1 and S2, and in addition creates a new U.S. subsidiary, S3. S3 then buys a business from S4, another wholly-owned U.S. subsidiary of Corporation A. These acquisitions are not subject to Section 721.

(c) An acquisition of convertible voting securities which does not involve control.

Example. Corporation A, a foreign person, buys debentures, options and warrants of Corporation X, a U.S. person. By their terms, the debentures are convertible into common stock, and the options and warrants can be exchanged for common stock. The acquisition of those debentures, options and warrants is not subject to Section 721 so long as it does not involve control. The conversion of those debentures into common stock, or the exchange of those options and warrants for common stock, may be an acquisition for purposes of Section 721. See § 800.201.

(d) A purchase of voting securities or comparable interests in a United States person solely for purposes of investment, as defined in § 800.220, if, as a result of the acquisition,

(1) The foreign person would hold ten percent or less of the outstanding voting securities of the U.S. person, regardless of the dollar value of the voting securities so acquired or held, or

(2) The purchase is made directly by a bank, trust company, insurance company, investment company, pension fund, mutual fund, finance company or

brokerage company in the ordinary course of business for its own account, provided that a significant portion of that business does not involve the acquisition of entities.

Example 1. In an open market purchase solely for the purpose of investment, Corporation A, a foreign person, acquires 7 percent of the voting securities of Corporation X, which is incorporated under the laws of the United States and is widely held by U.S. nationals. The acquisition of those securities is not subject to Section 721.

Example 2. Same facts as Example 1 except Corporation A is an investment company which makes only portfolio investments. It purchases 14 percent of the voting securities of Corporation X for its own account, solely for the purpose of investment. The acquisition of those securities is not subject to Section 721.

Example 3. Same facts as Example 2 except that a significant portion of the business of Corporation A is acquiring control over corporations. Its purchase of 14 percent of the shares of Corporation X is subject to section 721.

(e) An acquisition of assets in the United States that do not constitute a business in the United States. See sections 800.201 and 800.301(b)(4).

Example 1. Corporation A, a foreign person, acquires, from separate United States nationals, (a) products held in inventory, (b) land, and (c) machinery for export. Corporation A has not acquired a "business" within the meaning of Section 721.

Example 2. Corporation X produces armored personnel carriers in the United States. Corporation A, a foreign person, seeks to acquire the annual production of those carriers from Corporation X under a long-term contract. Neither the proposed acquisition of those carriers, nor the actual acquisition, is subject to Section 721.

Example 3. Same facts as Example 2, except that Corporation X, a U.S. person, has developed important technology in connection with the production of armored personnel carriers. Corporation A seeks to negotiate an agreement under which it would be licensed to manufacture using that technology. Neither the proposed acquisition of technology pursuant to that license agreement, nor the actual acquisition, is subject to Section 721.

Example 4. Same facts as Example 2, except that Corporation A enters into a contractual arrangement to acquire the entire armored personnel carrier business of Corporation X, including production facilities, customer lists, technology and staff. This acquisition is subject to Section 721. See § 800.201.

(f) An acquisition of voting securities by a person acting as a securities underwriter, in the ordinary course of business, and in the process of underwriting.

(g) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business.

Subpart D—Notice

§ 800.401 Procedures for notice.

(a) A party or the parties to an acquisition subject to Section 721 may submit "voluntary notice" to the Committee of the proposed or completed acquisition by sending ten copies of the information set out in § 800.402 to the Staff Chairman of the Committee on Foreign Investment in the United States, Office of International Investment, Room 5100, Department of the Treasury, 15th Street and Pennsylvania Ave., NW., Washington, DC 20220.

(b) Any member of the Committee may submit "agency notice" of a proposed or completed acquisition to the Committee through its Chairman if that member has reason to believe, based on facts then available, that the acquisition is subject to Section 721 and may have adverse impacts on the national security.

(c) No communications other than those described in paragraphs (a) and (b) of this section shall constitute notice for purposes of Section 721.

§ 800.402 Contents of voluntary notice.

(a) If the parties to an acquisition jointly submit voluntary notice, they shall provide in detail the information set out in this section. If fewer than all the parties to an acquisition submit voluntary notice, each notifying party shall provide such information with respect to itself and, to the extent known or reasonably available to it, with respect to each non-notifying party.

(b) A voluntary notice submitted pursuant to Section 800.401(a) shall describe:

(1) The transaction in question, including:

(i) The nature of the transaction, *e.g.*, whether the acquisition is by merger, consolidation, the purchase of voting securities, or otherwise;

(ii) The name, United States address (if any), and headquarters address of the foreign person making the acquisition;

(iii) The name and address of the U.S. person being acquired;

(iv) The name, address and nationality of the parent, if any, of the foreign person making the acquisition, and of each affiliate of that person;

(v) The name, address and nationality of the persons or interests which will exercise control over the U.S. person being acquired, and the manner by which such control will be exercised; and

(vi) The expected date for concluding the transaction, or the date it was concluded.

(2) The assets of the U.S. person being acquired (to be described only for an acquisition of an entity structured as an acquisition of assets or a business).

(3) With respect to the U.S. person being acquired, and any entity of which it is a parent that is also being acquired.

(i) The business activities of each of them, as, for example, set forth in annual reports, and the product lines of each;

(ii) The location within the United States of the facilities of each of them, which are manufacturing products or producing services described in paragraph (b)(3)(v) of this section, and the Corporate and Government Entity Code (CAGE Code), if any;

(iii) The identification numbers given each specific contract with a military service of the United States or the Department of Defense;

(iv) Each contract (identified by number) with any agency of the Government of the United States involving any information, technology or data, which is classified under Executive Order 12356 of April 2, 1982; and

(v) Any products or services (including research and development) of each of them with respect to which:

(A) It is a supplier, direct or indirect, to any of the military services of the United States or the Department of Defense; or

(B) It has technology which has or could have military applications.

(4) The business or businesses of the foreign person making the acquisition, and of its parent and any affiliates, as described, for example, in annual reports.

(5) The plans of the foreign person for the U.S. person with respect to:

(i) Reducing, eliminating or selling research and development or facilities,

(ii) Changing product quality,

(iii) Shutting down, moving offshore, or relocating facilities within the United States, or

(iv) Consolidating or selling product lines or technology,

for defense-related goods or services or for goods and services otherwise affecting national security.

(c) The voluntary notice shall also indicate whether the U.S. person being acquired exports:

(1) Products or technical data under validated licenses or technical data under General License GTDR pursuant to the U.S. Export Administration Regulations (15 CFR Parts 768 through 799); if applicable, the relevant Commodity Control List number shall be provided and the technical data shall be described; and

(2) Defense articles and defense services under the International Traffic in Arms Regulations (22 CFR Subchapter M).

(d) The voluntary notice shall list any filings with or reports to agencies of the United States Government which have been or will be made in respect of the acquisition prior to its closing indicating the agencies concerned, the nature of the filing or report, the date by which it was or will be filed, and a contact point within the agency.

Example. Corporation A, a foreign person, intends to acquire Corporation X, which is wholly owned and controlled by a U.S. national, and which has a Facility Security Clearance under the Department of Defense Industrial Security Program. See Department of Defense, "Industrial Security Regulation," DOD 5220.22–R, and "Industrial Security Manual for Safeguarding Classified Information," DOD 5220.22–M. Corporation X accordingly files a revised Form DD 441s, and enters into discussions with the Defense Investigative Service about effectively insulating its facilities from the foreign interest.

Subparagraph (d) requires that certain specific information about these steps be reported to the Committee in a voluntary notice.

(e) In the case of a joint venture subject to Section 721, information for the voluntary notice shall be prepared on the assumption that the foreign person which is party to the joint venture has made an acquisition of the business or businesses that the U.S. person which is a party to the joint venture is contributing or transferring to the joint venture. In addition, the voluntary notice shall describe the name and address of the joint venture or other corporation.

(f) Persons filing a voluntary notice shall, in respect of the foreign person making the acquisition, and its parent and affiliates, and the U.S. person being acquired, and each entity of which it is a parent, append to the voluntary notice (except to the extent that the information is provided in one or more consolidated reports filed with the Committee) the most recent annual reports of each such entity.

(g) Persons filing a voluntary notice shall promptly advise the Staff Chairman of any material changes in plans or information provided to the Committee. See also § 800.701(a).

(h) The Staff Chairman retains the right to reject voluntary notices not complying with this Section. The Committee has the right to reject any such notice at any time if, after the notice has been submitted, there is a material change in the transaction as to which notification has been made.

§ 800.403 Beginning of thirty day review period.

(a) Following notice under Section 721, a thirty day period for review of the acquisition shall be deemed to commence on the next calendar day after voluntary notice (see § 800.401(a)) or agency notice (see § 800.401(b)) is received by the Staff Chairman of the Committee. Such review shall end no later than the thirtieth day after it has commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

(b) The Staff Chairmn of the Committee shall send written advice of an agency notice to the parties to an acquisition within two business days after its receipt by the Staff Chairman.

Subpart E—Committee Procedures: Review and Investigation

§ 800.501 General.

Committee review or investigation (if it has been determined that an investigation shall be conducted) shall examine, as appropriate, whether:

(a) The acquisition is by or with a foreign person and could result in foreign control of a U.S. person or persons engaged in interstate commerce in the United States;

(b) There is credible evidence to support a belief that the foreign interest exercising control of the U.S. person to be acquired might take action that threatens to impair the national security; and

(c) Provisions of law, other than Section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), provide adequate and appropriate authority to protect the national security.

§ 800.502 Determination not to investigate.

(a) If the Committee determines, during the review period described in § 800.403, not to undertake an investigation, such determination shall conclude action under Section 721.

(b) The Staff Chairman of the Committee shall promptly advise the parties to an acquisition of a determination not to investigate.

§ 800.503 Commencement of investigation.

(a) If it is determined that an investigation should be undertaken, such investigation shall commence no later than the end of the thirty-day period described in § 800.403.

(b) The Staff Chairman of the Committee shall send written advice to the parties to an acquisition of the commencement of an investigation.

§ 800.504 Completion or termination of investigation and report to the President.

(a) The Committee shall complete its investigation no later than the forty-fifth day after the date the investigation commences, or, if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(b) Upon completion or termination of any investigation, the Committee shall report to the President and present a recommendation. Any such report shall include information relevant to subparagraphs (d) (1) and (2) of Section 721. If the Committee is unable to reach a unanimous recommendation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

§ 800.505 Withdrawal of notice.

(a) A party to an acquisition which has submitted notice under § 800.401(a), or, if more than one such party has submitted notice, the parties to an acquisition, may request in writing that such notice(s) be withdrawn at any time prior to an announcement by the President of his decision as described in § 800.601. Such request shall be directed to the Staff Chairman of the Committee and shall state the reasons why the request is being made. Such requests will ordinarily be granted, except as determined by the Committee. A written notification of the decision on the request to withdraw notice shall be promptly sent to the requester(s).

(b) Any withdrawal of an agency notice in writing by the agency which submitted it shall be effective on its receipt by the Staff Chairman, who shall promptly send notice of the withdrawal to the parties to an acquisition.

(c) In any case where a request to withdraw notice is granted under paragraph (a) of this section, or where the withdrawal is effective under paragraph (b) of this section, or where notice has been rejected under § 800.402(h), such notice shall be considered not to have been made for purposes of § 800.401. Section 800.702 shall nevertheless apply with respect to information or documentary material filed with the Committee. With respect to any subsequent acquisition among the parties that is within this Part, notice made in accordance with § 800.401 shall be deemed a new notice for purposes of these regulations, including § 800.601.

Subpart F—Presidential Action

§ 800.601 Statutory time frame, standards for Presidential action, and permissible actions under Section 721.

(a) The President shall announce his decision to take action pursuant to Section 721 no later than the fifteenth day after an investigation is completed, or, if the fifteenth day is not a business day, no later than the next business day following the fifteenth day.

(b) The President may exercise the authority conferred by Section 721(c) if the President makes the findings required by Section 721(d), namely, that:

(1) There is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security, and

(2) Provisions of law, other than Section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), do not in the President's judgment provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

The President's findings under Section 721(d) shall not be subject to judicial review.

(c) Under Section 721 (c) and (d), the President:

(1) Is empowered to take such action for such time as the President considers appropriate to suspend or prohibit any acquisition subject to Section 721 that is the subject of a recommendation or recommendations by the Committee; and

(2) Is empowered to direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce Section 721.

(d) All authority available to the President under Section 721(c), including divestment authority, shall remain available at the discretion of the President in respect of acquisitions which have been concluded at any time on or after the effective date, but only if the purpose for which divestment or other appropriate relief is sought is based on facts, conditions, or circumstances existing at the time the transaction was concluded. Such divestment shall not remain available if:

(1) The Committee has previously determined under § 800.502 not to undertake an investigation of the acquisition when proposed, pending, or completed; or

(2) The President has previously determined not to exercise his authority under Section 721 with respect to that acquisition.

(e) In any case where the parties to an acquisition submitted false or misleading information to the Committee, or omitted material information, in addition to such other penalties as may be provided by law,

(1) The Committee retains the right to reopen its review or investigation of the transaction, and to revise any recommendation or recommendations submitted to the President;

(2) Any Committee member may submit or resubmit "agency notification" under § 800.401, to begain anew the process of review and investigation; and/or

(3) The President may take such action for such time as the President deems appropriate in respect of the acquisition, and may revise actions earlier taken.

(f) Divestment or other relief under Section 721 shall not be available with respect to transactions that were concluded prior to the effective date.

Subpart G—Provision and Handling of Information

§ 800.701 Obligation of parties to provide information.

(a) Parties to a transaction which is notified under Subpart D shall provide information to the Staff Chairman of the Committee that will enable the Committee to conduct a full review and/or investigation of the proposed transaction, and shall promptly advise the Staff Chairman of any material changes in plans or information provided to the Committee. See, generally, 50 U.S.C. App. 2155(a) for authorities available to the Committee for obtaining information.

(b) Documentary materials or information required or requested to be submitted under this part shall be submitted in English or, if the original document is in a foreign language, in certified English translation, at the request of the Committee.

§ 800.702 Confidentiality.

(a) Section 721(h) provides that any information or documentary material filed with the Committee pursuant to these regulations shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in section 721 shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of the Congress.

(b) The provisions of 50 U.S.C. App. 2155(e) relating to fines and imprisonment shall apply in respect of disclosure of information or documentary material filed with the Committee under these regulations.

Date: July 5, 1989.

Charles H. Dallara,

Assistant Secretary (International Affairs).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–306, RM–6671]

Radio Broadcasting Services; Elko, Nevada

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Holiday Broadcasting Company of Elko, seeking the substitution of Channel 237C for Channel 237A at Elko, Nevada, and the modification of its license for Station KRJC accordingly. Channel 237C can be allotted to Elko in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site. The coordinates for this allotment are North Latitude 40–54–35 and West Longitude 115–49–05. In accordance with 1.420(g) of the Commission's Rules, competing expressions of interest in use of the channel at Elko will not be accepted.

DATES: Comments must be filed on or before August 31, 1989, and reply comments on or before September 15, 1989.

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: Alan D. Hague, Executive Vice President, Holiday Broadcasting Company of Elko, c/o Carlson Communications International, P.O. Box 7040, Salt Lake City, Utah 84107 (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. 89–306, adopted June 21, 1989, and released July 10, 1989. 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 1.204(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.

Karl A. Kensinger,

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

[FR Doc. 89–16476 Filed 7–13–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–308, Rm–6691]

Radio Broadcasting Services; Neenah-Menasha and Rhinelander, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Evangel Ministries, Inc., licensee of Station WEMI(FM), Channel 261A, Neenah-Menasha, Wisconsin, proposing the substitution of Channel 26 1C2 for Channel 261A at Neenah-Menasha and the modification of its license to specify the higher class channel. In order to accomplish the co-channel upgrade at Neenah-Menasha the proposal requires the substitution of Channel 261C1 for Channel 262C1 at Rhinelander, Wisconsin and modification of the license of Station WRHN(FM). Channel 262C2 can be allotted in compliance with the Commission's minimum separation requirements at Station WEMI(FM)'s current transmitter site. The coordinates are 44–15–17 and 88–26–13. In addition, since the Rhinelander is located within 320 kilometers of the U.S.-Canadian border, the proposal requires concurrence of the Canadian government. Neenah-Meenasha could receive its first wide coverage area FM service.

DATES: Comments must be filed on or before August 31, 1989, and reply comments on or before September 15, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Dennis P. Corbett, Esquire, Leventhal, Senter & Lerman, 2000 K Street, NW., Suite 600, Washington, DC 20006–1809 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–308, adopted June 21, 1989, and released July 10, 1989. 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.

Karl A. Kensinger,

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

[FR Doc. 89–16477 Filed 7–13–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–307, RM–6301]

Television Broadcasting Services; Ceres and Modesto, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bet Nahrain, Inc., seeking the reallotment of UHF television Channel *23 from Modesto to Ceres, California, as that community's first local television broadcast service, for the presentation of noncommercial educational programming. Reference coordinates for this proposal are 37–35–24 and 120–157–06.

Although this proposal falls within the parameters of certain markets for which the Commission has imposed a "freeze" on TV allotments, or applications therefor, a waiver may be appropriate in this instance since Ceres is further removed from the affected markets than the current allotment at Modesto, and proposes continued use of the channel for noncommercial educational purposes.

DATES: Comments must be filed on or before August 31, 1989, and reply comments on or before September 15, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Bet Nahrain, Inc., Attn: Dr. Sargon Dadesho, P.O. Box 4116, Modesto, CA 95352.

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. 89–307, adopated June 21, 1989, and released July 10, 1989. 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

Television broadcasting.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-16478 Filed 7-13-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Parts 917 and 935

Acquisition Regulation

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to amend the Department of Energy's Acquisition Regulation (DEAR) to provide for the issuance of broad agency announcements for the acquisition of research as permitted by the Competition in Contracting Act of 1984 (CICA) (Pub. L. 98-369) and the Federal Aquisition Regulation (FAR) 6.102(d)(2), and FAR 35.016. The amendments being proposed today implement policies and procedures concerning the solicitation, evaluation, and selection of basic and applied research proposals by DOE through the use of broad agency announcements. These amendments will be included in the DEAR as a new section 936.016.

DATE: Written comments on this proposed rule must be received by September 12, 1989.

ADDRESS: Comments should be addressed to: Edward Simpson, Procurement Policy Division (MA-421), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Edward Simpson, Procurement Policy Division (MA-421), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8246.

Christopher T. Smith, Office of the Assistant General Counsel for Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 586-1526.

SUPPLEMENTARY INFORMATION:

I. Background

In estabishing a standard of full and open competition, CICA recognized the use of a general announcement of an agency's research interest in conjunction with a peer or scientific review of proposals as a competitive procedure for the aquisition of research (41 U.S.C. 259(b)(2)). The Federal Acquisition Regulation (FAR) originally implemented this portion of CICA in FAR 6.102(d)(2). However, specific procedures were not detailed in CICA or in the FAR. DOE, in following the requirements of CICA and the FAR, developed a broad agency announcement and published in the **Federal Register** on April 15, 1985, and annually thereafter. That announcement, proposals resulting therefrom, and subsequent awards have produced a historical base of experience which indicates that the process is workable. Further, a final rule was published it in the **Federal Register** on July 20, 1988 (53 FR 27460) which establishes, in the Federal Acquisition Regulation at FAR 35.016, general procedures (in addition to those previously set forth in FAR 6.102(d)(2)) for the use of broad agency announcements. The DOE proposes to amend the DEAR to supplement the FAR and implement DOE's policies, procedures, and requirements for the use of Research Opportunity Announcements (ROAs) as the specific form of broad agency announcements to be used by DOE.

DOE has concluded that specific regulatory coverage of the broad agency announcement mechanism is needed to allow for procedural distinctions between this type of competitive procedure and those other forms of competitive solicitations (such as Program Research Development Announcements (PRDAs) and Program Opportunity Notices (PONs)) through which DOE can contract for its research needs.

The amendments being proposed today would add a new section 935.016, Research Opportunity Announcements. The proposed section sets forth the requirements for the synopsis and content of announcements, proposal preparation instructions, proposal evaluation criteria and procedures, and the selection and award of contracts for basic and applied research using the broad agency announcement solicitation mechanism.

The ROA solicitation process has several procedural characteristics which differ significantly from more customary solicitation approaches. Firstly, after approval to use the ROA and its subsequent synopsis and issuance, the evaluation process is controlled primarily by the cognizant DOE program office as opposed to a cognizant contracting activity. This was deemed necessary (1) to allow for the timely evaluation and selection of proposals; and (2) to not overburden the local contracting activities by having to commit resources to unpredictable evaluation/selection cycles resulting from potentially sporadic proposal submissions. However, contracting personnel remain involved in the pre-solicitation phase and in the establishment of administrative controls. This involvement, when taken in conjunction with applicable acquisition regulations and other controlling guidance, establishes the needed checks and balances in the procedure to provide for the objective and fair treatment of proposals.

Secondly, DOE's implementation of the ROA procedure contains two significant limitations. Contrary to the authorization in FAR 35.016(a) to use the broad agency announcement to acquire not only basic and applied research, but also that part of development not related to the development of a specific system or hardware, DOE will use its ROA to acquire only basic and applied research. This limitation is considered prudent because DOE currently has at its disposal other viable means by which to support, fund, and acquire development related to its mission. In addition, the ROA shall not be used to solicit proposals from, or award contracts to, the specific entities which operate Government-owned or -controlled establishments, such as DOE's management and operating contractors, Federally Funded Research and Development Centers (FFRDCs) chartered by other agencies, or similar establishments.

An innovative feature of the ROA solicitation is its publication in the **Federal Register**, rather than its

publication as a discrete solicitation document. This feature is anticipated to produce both manpower and dollar savings by eliminating (1) the need to maintain mailing lists, (2) the publication of large numbers of individual solicitations, and (3) expensive mailing costs, yet all the while maintaining adequate public availability and exposure of the solicitation.

The ROA provides a solicitation vehicle through which DOE can encourage and stimulate the submission of proposals to conduct basic and applied research in support of its mission- and program-level objectives and goals. In this regard, DOE will define its broad mission and program needs in terms of potential areas of research and potential problem areas in relation to those specific objectives, and will solicit diverse and dissimilar solutions to those needs from a broad universe of potential offerors. It is expected that offerors will bring their own unique and specialized qualifications and capabilities to bear on concepts and ideas which advance scientific and technological research related directly to DOE's mission- and program-level objectives.

Although this approach may appear duplicative of the objectives of other solicitation mechanisms available to DOE to support its research initiatives, several key distinctions exist. The most significant of these distinctions is the ROA's use of scientific and/or peer reviewers for the evaluation of proposals. ROAs also do not have the common cutoff dates (other than the solicitation open period) found in more traditional solicitation processes. Further, ROAs do not require the establishment of a competitive range, or the submission of best and final offers. The ROA provides DOE with a structured, streamlined, and flexible approach to solicit research proposals in support of its mission and program needs.

As a result of the implementation of the ROA as a solicitation mechanism within DOE, an amendment to DEAR Subpart 917.73 is needed to clarify the use of PRDAs as a solicitation form. The current DEAR coverage prescribes the use of PRDAs under certain circumstances (see DEAR 917.7301). These circumstances when read in light of the proposed objectives and uses of the ROA may be interpreted similarly, thereby causing conflict in the determination as to which solicitation mechanism may be more appropriate under apparently like situations. In order to distinguish the two solicitation forms, DEAR 917.7301 is being amended to change the scope of the PRDA for use in acquiring research and development in support of a specific project area within an energy program, while the ROA will be used to acquire research in support of broad mission- and program-level objectives.

In preparing the proposed rule, DOE considered whether there was a continued need for the Notice of Program Interest (NOPI), as authorized by DEAR Subpart 915.5. The NOPI is a method by which DOE disseminates information on broad technical problem areas relevant to its mission for the purpose of stimulating the submission of unsolicited proposals. The NOPI is not considered a competitive solicitation and any unsolicited proposals selected for support must be justified in accordance with FAR Part 6 and DEAR Part 906. It was determined that the NOPI still serves a useful purpose within DOE. The NOPI provides DOE program offices with a mechanism by which to encourage the submission, and ultimate support, of certain research initiatives, when the ROA method is considered to be inefficient and ineffective because the total dollars targeted for contractually supported research are limited, the administrative burden associated with establishing an ROA is not warranted, or the scope of the program research agenda is more focused.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive order, entitled "Federal Regulation," requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. The Office of Management and Budget (OMB) has decided that agency implementations of the Competition in Contracting Act of 1984, Pub. L. 98–369, warrant review. Accordingly, this rule was submitted to OMB for review in accordance with Executive Order 12291 and OMB Bulletin 85–7. OMB has completed its review and approved publication.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), or the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and the DOE Guidelines (40 CFR Part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will implement and supplement certain policy and procedural requirements established in the Competition in Contracting Act and in the Federal Acquisition Regulations relating to the use of broad agency announcements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "ADDRESS" section of this notice. All written comments received by September 12, 1989, will be carefully assessed and fully

considered prior to publication of the proposed amendment as a final rule.

DOE has considered that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects

48 CFR Part 917

Special contracting methods.

48 CFR Part 935

Research and development.

For the reasons set out in the preamble, Parts 917 and 935 of Title 48 of the Code of Federal Regulations are proposed to be amended as set forth below.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

The regulations in 48 CFR Chapter 9 are proposed to be amended as set forth below:

PART 917—[AMENDED]

1. The authority citation for Parts 917 and 935 would continue to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

917.7301 [Amended]

2. Section 917.7301 is amended by revising paragraph 917.7301–(c)(1) to read as follows:

(c) * * *

(1) Research and development is required in support of a specific project area within an energy program with the objective of advancing the general scientific and technological base, and this objective is best achieved through:

(i) A diversity of possible approaches, within the current state of the art, available for solving the problems;

(ii) The involvement of a broad spectrum of organizations in seeking out solutions to the problems posed:

(iii) The application of the unique qualifications or specialized capabilities of many individual proposers which will enable them to perform portions of the research project (without necessarily possessing the qualifications to perform the entire project) so that the overall support may be broken into segments which cannot be ascertained in advance; and,

(iv) The fostering of new and creative solutions.

* * * * *

PART 935—[AMENDED]

3. Part 935 is proposed to be amended by adding a new subpart 935.016, Research Opportunity Announcements, to read as follows:

Subpart 935.016—Research Opportunity Announcements

Sec.

Subpart 935.016—Research Opportunity Announcements

935.016–1 Scope.

(a) This section sets forth the policies and procedures for contracting for research through the use of broad agency announcements as authorized by the Competition in Contracting Act of 1984 (CICA) (41 U.S.C. 259(b)(2)) and Federal Acquisition Regulation (FAR) 6.102(d)(2). Within DOE, broad agency announcements will be designated as Research Opportunity Announcements (ROAs).

(b) Research Opportunity Announcements are a form of competitive solicitation under which DOE's broad mission- and program-level research objectives are defined; proposals which offer meritorious approaches to those objectives are requested from all offerors capable of satisfying the Government's needs; those proposals are evaluated by scientific or peer review against stated specific evaluation criteria; and selection of proposals for possible contract award is based upon that evaluation, the importance of the research to the program objectives, and the funds availability.

935.016–2 Applicability.

(a) This section applies to all DOE Headquarters and field program organizations which, by virtue of their statutorily mandated mission or other such authority as may exist, support energy or energy-related research activities through contractual relationships.

(1) The ROA may be used as a competitive solicitation procedure through which DOE acquires basic and applied research in support of its broad, mission- and program-level research objectives, and these objectives may be best achieved through relationships where contractors pursue diverse and dissimilar solutions and approaches to scientific and technological areas related to DOE's missions and programs.

(2) The ROA shall not be used as a solicitation method when one or more of the following conditions exist:

(i) In accordance with the Federal Grant and Cooperative Agreement Act, Pub. L. 97–258, the principal purpose of the relationship will be assistance;

(ii) The purpose of the research is to accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components that would appropriately be acquired by Program Opportunity Notices (PONs) in accordance with 917.72;

(iii) The research is required in support of a specific project area within an energy program which appropriately would be acquired by Program Research and Development Announcements (PRDAs) in accordance with 917.73;

(iv) The research requirements can be sufficiently defined to allow the use of contracting by negotiation in accordance with Federal Acquisition Regulation (FAR) Part 15;

(v) The purpose of the research is the acquisition of goods and services related to the development of a specific system or hardware acquisition; or,

(vi) Any funds to be obligated to a resulting contract will be used to conduct or support a conference or training activity.

(b) Limitations:

(1) The use of broad agency announcements for the acquistion of that part of development not related to the development of a specific system or hardware is authorized by FAR 35.016(a). Notwithstanding that authorization, ROAs shall be used within DOE only to acquire basic and applied research.

(2) Proposals shall not be solicited from and contracts shall not be awarded to any specific entity which operates a Government-owned or -controlled research, development, special production, or testing establishment, such as DOE's management and operating contractor facilities, Federally Funded Research and Development Centers chartered by other agencies, or other such entities.

§ 935.016–3 Definitions.

"Awarding Contracting Activity", for purposes of this section, means any DOE Contracting Activity assigned to negotiate, award, and administer a resultant contract, and otherwise perform related post-selection acquisition functions.

"Cognizant Contracting Activity" and "Contracting Activity", for purposes of this section, mean the DOE Contracting Activity assigned to perform all acquisition functions from the initiation of the ROA requirement through completion of the selection process. The Cognizant Contracting Activity ("contracting Activity") shall be that DOE Contracting Activity which is anticipated to be the primary and predominant Awarding Contracting Activity for the negotiation, award, and administration of resultant contracts. However, the intitial assignment of a Contracting Activity as the "Cognizant Contracting Activity" for the ROA does not preclude the designation of additional Contracting Activities as Awarding Contracting Activities after the selection decision.

"Cognizant DOE Program Office", "DOE Program Office", and "Program Office" mean the Headquarters or field office element with direct responsibility for issuance of the ROA and the subsequent evaluation and selection of proposals.

"Objective review" means a thorough, consistent and independent examination and evaluation of a proposal by three or more persons knowledgeable in the field of endeavor for which support is requested; such review is conducted to provide facts and advice to the selection official based upon the evaluation critera established in the ROA.

"Peer reviewer" means a professional individual not employed by the Government, who has expertise in the same or related scientific or technical field as the research area set forth in the proposal and is recognized in the scientific or technical community, selected to conduct an objective review of a research proposal.

"Scientific reviewer" means a professional Government employee, who has expertise in the same or related scientific or technical field as the research area set forth in the proposal, selected to conduct an objective review of a research proposal.

"Selection Official" means the Senior Program Official or designee having the authority to select for award those proposals received in response to an ROA which were determined to be meritorious in relation to the evaluation criteria and the program policy factors set forth in the ROA.

"Senior Program Official", for purposes of this section, means, in addition to those individuals listed in § 902.100, Managers of DOE Operations Offices, and Directors of DOE Energy Technology Centers.

§ 935.016–4 Issuance of research opportunity announcements.

(a) In order to maintain a comprehensive and well-integrated research program, the cognizant DOE program office shall be responsible for issuance of the ROA and the subsequent evaluation and selection of proposals.

(b) Each ROA shall consist of the following:

(1) An ROA identification number and the statutory and/or regulatory authority for the issuance of the ROA;

(2) The title of the ROA;

(3) A description of the program objectives and a statement of the intended uses by DOE of the results of the research;

(4) A summary of the research agenda or potential areas for research initiatives, including any areas requiring additional research or any other information which identifies research areas in which contracts may be awarded;

(5) The period of time during which proposals will be accepted from offerors for evaluation and other information concerning the consideration and disposition of late proposals;

(6) The total amount of money available or estimated to be available for potential contract awards;

(7) The name and address of the DOE program office responsible for issuance of the ROA;

(8) The address for receipt of proposals;

(9) The name of the DOE official within the program office to serve as a point of contract for (i) additional information, (ii) the list of specific proposal forms to be used by the offeror in submitting a proposal, and (iii) the address where those forms may be obtained;

(10) All business, technical, and/or cost evaluation (including any requirement for cost participation by the offeror) criteria, including any additional criteria to those set forth in this subpart, the relative imprtance of the evaluation criteria, and other appropriate proposal preparation instructions;

(11) The factors to be considered in determining the importance of any proposed research to the program objectives;

(12) A statement that DOE is under no obligation to reimburse the offeror for any costs associated with the preparation or submission of proposals;

(13) A statement that DOE reserves the right to fund, in while or in part, any, all or none of the proposals submitted.

(14) A statement that DOE is not required to return to the offeror a proposal which is not selected;

(15) A statement that each proposal will be objectively reviewed on its own merit against the evaluation criteria stated in the ROA using scientific and/or peer reviewers, and that selection of a proposal will be made in consideration of that evaluation, the importance of the proposed research to the program objectives, and funds availability;

(16) A statement that DOE is not obligated to award a contract to an offeror merely because the offeror's proposal was accepted by DOE for evaluation.

(c) The Senior Program Official of the cognizant DOE program office shall determine in writing, after consultation with the responsible Contracting Officer at the cognizant Contracting Activity, that the use of a ROA is both necessary and appropriate as a solicitation instrument in meeting program objectives. This determination shall be made prior to the issuance of the ROA, and shall be based upon facts and explanations which address the conditions stated in 935.016–1 (a) and (b) of this section, and any other pertinent information.

(d) Prior to the synopsis and issuance of the ROA, a confidential evaluation plan based directly on the criteria to be used in evaluating proposals shall be developed.

(e) Any reviews, approvals, and concurrences of the ROA required prior to its issuance will be consistent with procedures established by the cognizant Contracting Activity for solicitations of similar dollar value and complexity.

(f) Each ROA issued will provide for a proposal submission period of at least ninety (90) days but not greater than one year. ROAs may be reissued by the program office at any time after the original ROA proposal submission period has elapsed, subject to the same requirements of this subpart as a new ROA.

(g) The full text of the ROA will be published in the **Federal Register**. Prior to the publication of the ROA, the Contracting Officer will announce the pending availability of the ROA in the *Commerce Business Daily* in accordance with FAR 35.016(c). Information concerning the availability

of the ROA may also be published in scientific, technical, or engineering publications.

935.016–5 Content of proposal submissions.

Each ROA shall require that a proposal (whether a new proposal or a proposal for the continuation of research previously funded by DOE as a contract) will be submitted by the offeror in the quantities specified in the ROA to the place designated in the ROA as the place for receipt of proposals. Each proposal will contain three distinct sections which, at a minimum, provided the following information:

(a) Section I: Offeror Information:

(1) Name and address of the offeror;

(2) The ROA solicitation number;

(3) The date of submission of the proposal and the offer acceptance period;

(4) The names and addresses of any other Federal, State, or local government agency, or any other public or private entity who has in the past, or is currently, or may in the future, provide funds for the same or similar research activities of the offeror;

(5) A proposal cover sheet signed by an individual authorized to contractually obligate the offeror.

(b) Section II: Technical Proposal:

(1) A detailed description of the proposed research, including the objectives of the research, the methodology and approaches for accomplishing those objectives, the anticipated results of the research, and a schedule depicting key research milestones with a description of the milestones and the relationship of the proposed research to the program objectives and evaluation criteria stated in the ROA. This description should also include (i) a listing and a discussion of any previous or on-going research performed by the offeror in areas related to those contemplated by the ROA, and (ii) a discussion of how the intended results of the research will achieve the use intended by DOE;

(2) Résumés for the proposed principal investigator(s) or other key individuals addressing the qualifications, experience, and capabilities of these individuals;

(3) A description of the facilities and other resources of the offeror which will be used by the offeror in performance of the proposed research;

(4) A description of any facilities and other non-monetary resources requested to be furnhised by the Government for use by the offeror in performance of the proposed research; and,

(5) A description of the scope and methods of management support and controls of the offeror applicable to the proposed research.

(c) Section III: Cost Proposal:

(1) A fully executed Standard Form (SF) 1411;

(2) Any supporting cost exhibits as may be required by the ROA.

935.016–6 Receipt and handling of proposals and late proposal submission.

(a) The cognizant DOE program office, with the concurrence of the responsible Contracting Officer, shall establish formal administrative procedures for accountability, control of receipt and distribution, evaluation, and disposition of proposals received in response to an ROA to insure that proposal information, in whole or in part, is properly safeguarded from unauthorized disclosure or use. These administrative procedures shall be consistent with the policies and procedures set forth in FAR 3.104, 15. 411, and 15.413, and in 915.413 and Subpart 927.70.

(b) The Senior Program Official for the cognizant program office shall be responsible for ensuring that the procedures concerning unauthorized disclosure or use of proposal information are consistently complied with by the evaluators assigned to the ROA.

(c) Proposals submitted and received for evaluation subsequent to the close of the proposal submission period will be considered in accordance with FAR 15.412.

935.016–7 Evaluation of proposals.

(a) The Senior Program Official for the cognizant DOE program office shall, by written delegation, appoint an individual within that program office to be responsible for the conduct and administration of the proposal evaluation process. This individual shall:

(1) Serve as the primary point of contact on all matters concerning the ROA;

(2) Develop a confidential evaluation plan based directly upon the evaluation criteria set forth in the ROA;

(3) Ensure that an initial review of proposals is conducted in accordance with paragraph (c) of this section;

(4) Select the scientific and/or peer reviewers and administer the evaluation of each proposal;

(5) Prepare a consolidated report of the evaluation findings for each proposal and other needs information to be included in and for use as an advisory report to the Selection Official; and

(6) Perform other administrative duties (e.g., conduct debriefings, notify offerors) as may be necessary to facilitate the evaluation process.

(b) The evaluation of each proposal shall begin upon its receipt, or as soon as possible thereafter.

(c) All proposals will undergo an initial review to determine (1) the responsiveness and completeness of the proposal to the requirements of the ROA, including the appropriateness of the research to the intended uses by DOE, and (2) the relevance of the proposed effort to the broad areas of research contemplated by the ROA. If, after completion of the initial review, a proposal is determined not to meet the requirements stated in paragraphs (c) (1) and (2) of this subsection, the offeror shall be promptly notified that its proposal has been eliminated from any further evaluation under the ROA and the general basis for such a determination.

(d) Proposals which survive the initial review will be objectively reviewed by at least three scientific and/or peer reviewers. The composition of the group may be any mix of scientific and peer reviewers except that individuals may not be used as reviewers if those individuals perform or are likely to perform any of the following duties:

(1) Encouraging or directing the submission of a proposal on behalf of any offeror for the instant requirement;

(2) Providing technical assistance to any offeror;

(3) Making selection recommendations concerning a proposal; or,

(4) Serving as the Contracting Officer, the Contracting Officer's Technical Representative, or otherwise monitoring or evaluating the offeror's performance under the program.

In instances where the cognizant program office has established a procedure for the review of financial assistance applications using an approved merit review system (See 10 CFR Part 600), the types of review groups allowed by 10 CFR 600.16(d) may be used for purposes of satisfying the requirements for scientific and/or peer review under this subpart, subject to any other requirements stated herein.

(e) Proposals will be evaluated against the criteria set forth in the ROA to determine, at a minimum, the following:

(1) The overall scientific and technical merit of the proposal including the merit and value of related research performed by the offeror under previous or existing contracts or other arrangements;

(2) The appropriateness of the proposed method or approach;

(3) The qualifications, capabilities, experience, and demonstrated past performance of the offeror, principal investigator, and/or key personnel;

(4) The adequacy of the offeror's facilities and resources; and,

(5) The realism of the proposed costs.

(f) Proposals received in response to the ROA should not be evaluated against each other since they are not submitted in accordance with a common statement of work. Competitive range determinations shall not be made, and best and final offers shall not be requested.

(g) During the evaluation process, only the individual designated in paragraph (a) of this section may communicate with an offeror and only for purposes of clarification of that offeror's proposal. Communication may be accomplished either in writing or orally, provided that, in instances where oral communications occur, a written record of such communication is maintained.

(h) A new proposal which provides for the continuation of research previously funded by DOE as a contract awarded as a result of either a previously issued ROA or an unsolicited proposal may be evaluated and considered for selection and award under the instant ROA, provided that: (1) The proposed research is within the specified areas of research contemplated by ROA; (2) the proposal is received during the open period of the ROA; and, (3) the proposal is fully responsive to the requirements of the ROA.

(i) A new unsolicited proposal not specifically submitted in response to the ROA may be evaluated and considered for selection and award under the instant ROA, provided that: (1) The conditions stated in paragraph (h)(1) and (h)(2) of this section are met; and, (2) the offeror, after written notification from the Program Office that the unsolicited proposal falls within the scope of the ROA, expressly states, in writing, that the unsolicited proposal is now to be considered a submission under the instant ROA; and, (3) the offeror is otherwise able to provide, within the open period of the ROA, any additional information required by the ROA to allow for an evaluation of that offeror's proposal.

(j) For each proposal, a consolidated written report shall be prepared and shall include all reviewer findings. The report shall contain sufficient detail to indicate that the proposal was evaluated fairly and objectively against the evaluation criteria. This report shall be submitted to the Selection Official as an advisory report to be used in selecting proposals. It shall not contain any recommendations as to whether the individual proposal should be selected for award.

935.016–8 Selection of proposals.

(a) The Selection Official shall determine, in consideration of the evaluation findings, the importance of the proposed research to the program objectives, and funds availability, whether a specific proposal warrants selection for negotiation and award of a contract. The decision of the Selection Official shall be documented in writing and shall address, at a minimum, the following:

(1) The scientific and technical merit of the proposal in relation to the ROA evaluation criteria;

(2) The qualifications, capabilities, and experience of the proposed personnel; technical approach; facilities; and where applicable, cost participation by the offeror (or any combination of the above);

(3) The importance of the proposed research to the program objectives;

(4) Which areas of the proposal, whether in whole or in part, have been selected for funding, and the amount of that funding; and,

(5) Assurances that any other requirements which are imposed by statute, regulation, or internal directives relating to the specific research activities and which are properly the responsibility of the Program Office have been satisfied.

(b) Absent extenuating circumstances, selection decisions regarding any individual proposal should be made within three (3) months after receipt of the proposal. Proposals which have been evaluated may be accumulated to allow for a consolidated selection decision so long as not more than three (3) months has passed since the receipt of any of the proposals so accumulated.

(c) The cognizant DOE program official shall notify successful and unsuccessful offerors of any selection/non-selection decisions. These notices shall be made in writing promptly after the decision is made, and shall, at a minimum, state in general terms, the basis for the determination. In the case of notices to successful offerors, the notices shall state (1) general information regarding the subsequent activities of the process leading to contract negotiation and award and a point of contact in the cognizant contracting activity, (2) that the proposal has been selected subject to negotiation and execution of satisfactory contract, (3) that DOE assumes no obligation, financial or otherwise, until such time as a contract is executed, and (4) that the offeror shall not begin performance of the effort, or any part thereof, until such time as a contract has been awarded. Notices to unsuccessful offerors shall contain information regarding the right to a debriefing in accordance with 915.1003, and shall state that revisions to the unsuccessful proposal will not be considered under the instant ROA.

(d) The program office shall, with the advice of the cognizant Contracting Activity, conduct any requested debriefings and document the proceedings in accordance with FAR 15.1003.

(e) Upon completion of a selection decision, the program office shall furnish the following information to the awarding Contracting Activity(ies):

(1) A completed Procurement Request (DOE F 4200.33);

(2) The complete original proposal;

(3) A statement of work representing the effort to be funded and any reporting requirements relating thereto;

(4) The original selection decision document;

(5) The findings of the evaluation team;

(6) Copies of any correspondence relating to the ROA;

(7) Any recommendations regarding property to be either furnished by the Government or purchased by the contractor with Government funds as a direct charge to the contract;

(8) Indicate whether restricted data or other classified information is likely to be used or developed in performance of the effort, and specify such classification and security requirement determinations, as may be appropriate;

(9) A technical evaluation of the proposed costs to determine the realism of the type and extent of labor and materials proposed;

(10) Any other determinations or approvals that may be required by law, regulation, or Departmental directives relating to the specific research activities and which are properly the responsibility of the Program Office; and

(11) Any additional information that may assist the cognizant Contracting Activity in the negotiation, award, and administration of the contract.

935.016–9 Responsibilities of the awarding contracting activity.

Upon receipt of the Procurement Request and the other information specified in 935.016–8(e), the awarding Contracting Activity shall:

(a) Advise the selected offeror that the Government contemplates entering into negotiations; the type of contract contemplated to be awarded; and the estimated award date, scope of the effort, and performance/delivery schedule;

(b) Send the selected offeror a draft contract, if necessary including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions;

(c) Request the selected offeror to complete and/or update and return the SF 1411 (with supporting documents), the offeror representations and certifications, and other appropriate forms, as needed;

(d) Conduct negotiations in accordance with FAR subparts 15.8 and 15.9 and Subparts 915.8 and 915.9, as applicable;

(e) Award a contract with reasonable promptness to the successful offeror; and,

(f) Comply with FAR Subparts 4.6 and 5.3 on contract reporting and synopses of contract awards, to the extent required by those subparts.

[FR Doc. 89-16571 Filed 7-13-89; 8:45 am]
BILLING CODE 6450-01-M

Notices

Federal Register
Vol. 54, No. 134
Friday, July 14, 1989

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

Forest Service

Deep Creek Timber Sale, Fishlake National Forest, Wayne County, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for the proposed Deep Creek timber sale on the east side of Thousand Lake Mountain. The area is located approximately eleven air miles northeast of Loa, Utah. The EIS will also consider amending the Forest Plan to consider changing Management Prescription 7A from clearcutting in Engelmann spruce and subalpine fir to an unevenaged management system in these timber types.

The proposed timber harvest and road construction is included in the Forest's Land and Resource Management Plan, but is within the western boundary of the Lookout Peak Roadless Area, Number 08321 that was managed for uses other than wilderness by the Utah Wilderness Act. The management activities would be administered by the Loa Ranger District of the Fishlake National Forest in Wayne County, Utah.

Scoping, data collection, and analysis have been in progress for about a year. Future scoping will consist of notification by newspaper and letter, and possible field review of the site. Scoping to date has indicated considerable interest in possible environmental effects of the timber sale. Forest Supervisor J. Kent Taylor has decided to prepare an environmental impact statement. The issues that tentatively have been identified include effects on soils and watershed, specifically the effects on water quality of Deep Creek, effects on wildlife, effects on threatened and endangered species, effects on visual resources including those of Capitol Reef National Park, effects of developing this previously unroaded area, economic effects on local communities of forgoing the use of this timber resource, and the effects on the proposed Great Western Trail in the vicinity of the sale area.

This EIS will tier to the Fishlake National Forest Land and Resource Management Plan (June 1986) which provides overall guidance (Goals, Objectives, Standards and Guidelines and Management Area direction) in achieving the desired future condition for this area. The purpose and goal for the proposed action is to achieve the desired future condition of the area, protect the forest resources and provide a sustained timber yield.

The Forest Service is seeking information and comments from Federal, State and local agencies, organizations and individuals who may be interested in or affected by the proposed actions. This input will be used in preparing the Draft EIS.

DATE: Comments concerning the proposed action and scope of the analysis must be received by August 15, 1989.

ADDRESS: Submit written comments to: Forest Supervisor, Fishlake National Forest, 115 East 900 North, Richfield, Utah 84701, Attention: Allen Henningson.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Allen Henningson, Forester, Phone (801) 896-4491.

SUPPLEMENTARY INFORMATION: Management activities under consideration would occur in an area encompassing approximately 300 acres of National Forest System lands on the Loa Ranger District, Wayne County, State of Utah.

The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The current Management Prescription for the potentially affected area involves the following:

Management Area 7A—Wood-Fiber Production and Utilization

Desired Future Conditions: Management emphasis is on wood-fiber production and utilization of large round-wood of a size and quality suitable for sawtimber. The harvest method by forest cover type is clearcutting in aspen and Engelmann spruce-subalpine fir and shelterwood in ponderosa pine and mixed conifers.

The area generally will have a mosaic of fully stocked stands that follow natural patterns and avoid straight lines and geometric shapes. Management activities are not evident or remain visually subordinate along forest arterial and collector roads and primary trails. In other portions of the area, management activities may dominate in foreground and middleground of viewing areas, but harmonize and blend with the natural setting.

Roaded-natural recreation opportunities are provided along forest arterial and collector roads. Semi-primitive motorized recreation opportunities are provided on those local roads and trails that remain open. Semi-primitive nonmotorized opportunities are provided on those that are closed.

Current research and/or experience indicates that an uneven aged management system for Engelmann spruce and subalpine fir would permit natural regeneration of the stand within five years and substantially reduce environmental impacts from timber harvest. Thus the Forest will consider amending the Forest Land and Resource Management Plan to reflect this thinking as part of the environmental analysis.

A reasonable range of alternatives will be considered. One of these will be the "No Action" alternative where no timber harvest or road construction will occur. However, current management will continue which includes grazing (including maintenance of an existing fence and other improvements), firewood collection, Christmas tree harvesting, and dispersed recreation. Other alternatives will examine timber harvest methods and intensities and various road building patterns to achieve management goals. The harvest methods proposed for the area is patch clearcutting (two to five acres in size) or group selection, and the construction of about a mile of road.

The Forest Service will analyze and document the direct, indirect and cumulative effects of the alternatives. This will include an analysis of the effects of the alternatives on the roadless character of the affected area.

The EIS will also include site specific mitigation measures.

Public participation is important during the analysis. Comments received during earlier scoping will be incorporated in the draft EIS. However, Federal, State and local agencies, potential users of the area, and other individuals or organizations who may be interested in or affected by the decision are welcome and invited to participate in this extended scoping by submitting new or additional comments by August 15, 1989.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

The Draft Environmental Impact Statement (DEIS) is expected to be available for public review in November 1989. After a 45 day public comment period the comments received will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed about March 1990. In the FEIS, the Forest Service will respond to comments received. The Forest Supervisor, who is the responsible official, will make a decision regarding this proposal, considering the comments and responses, environmental consequences discussed in the FEIS and applicable laws, regulations and policies. The decision and reasons for the decision will be documented in a Record of Decision.

J. Kent Taylor, Forest Supervisor, Fishlake National Forest, is the responsible official.

Date: July 6, 1989.

J. Kent Taylor,

Forest Supervisor.

[FR Doc. 89-16487 Filed 7-13-89; 8:45 am]

BILLING CODE 3410-11-M

Elkhead Creek/Slater Creek Vegetation Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to harvest timber, treat aspen, develop recreation opportunities, construct and/or relocate roads, and manage vehicle use in the Elkhead Creek/Slater Creek Area on the Bears Ears Ranger District, Routt National Forest, Routt County, Colorado. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of analysis must be received by August 15, 1989.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Allan Green, District Ranger, Bears Ears Ranger District, Routt National Forest, 356 Ranney Street, Craig, Colorado 81625.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Allan Green, District Ranger, Bears Ears Ranger District.

SUPPLEMENTARY INFORMATION: The Routt National Forest Land and Resource Management Plan was completed in November 1983. The management direction in the Plan called for further study of how and when to manage vegetation in the Elkhead Creek/Slater Creek Area.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives. One of these will be using a commercial timber sale. Other alternatives will consider alternative intensities for treating commercial forest land. Alternative methods for treating aspen will be considered.

Allan Green, District Ranger, Bears Ears Ranger District, Routt National Forest, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The District Ranger has prepared a preliminary scoping document and has scheduled a field trip and an open-house on August 1, 1989. The field trip will leave Hayden, Colorado, from the junction of U.S. 40 and Forest Road 150 at 10:00 a.m. The open house will run from 5:00 to 7:00 p.m. at the American Legion Hall, located on South Third Street across from Hayden Town Park. The preliminary scoping document is available upon request at the Bears Ears District Office.

The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1989. At that time EPA will publish a notice of availability of the Draft EIS in the **Federal Register.**

The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the Elkhead Creek/Slater Creek Area participate at that time. To be the most helpful, comments on the DIES should be as specific as possible and may address the adequacy of the statement

or the merits of the alternatives discussed (see The Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review on the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by May 1990. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR 217.6.

Date: July 5, 1989.

Allan Green,

District Ranger.

[FR Doc. 89-16486 Filed 7-13-89; 8:45 am]

BILLING CODE 3410-11-M

Stanislaus National Forest, CA; Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: The Forest Service is exempting from appeals its decision to harvest trees currently being killed by severe drought and bark beetle infestation and its decision to rehabilitiate the affected areas located on, and adjacent to, North Mountain on the Stanislaus National Forest.

There are currently higher than normal levels of three mortality occurring throughout the Stanislaus National Forest as a result of three consecutive, and four of the last five years, of below normal precipitation. This drought condition has caused a high degree of stress within the trees which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles. Trees subject to insect attack not only act as hosts for the insects which move on to healthy trees, but deteriorate very rapidly. For these reasons it is necessary to remove the affected timber as quickly as possible.

Due to the lack of roads in the harvest area, removal of the dead and dying timber will be by helicopter. The hauling distance for the 80% of the timber volume located in the North Mountain area will be greater than one mile. This longer than normal hauling distance means higher than normal harvesting costs and any further deterioration of the timber would make the proposed sale economically infeasible. For this reason it is necessary to remove the dead and dying timber as soon as possible after completion of the environmental analysis.

Pursuant to 36 CFR Part 217.4(a)(11), it is my decision to exempt from appeals the decision covering the harvest and restoration of the North Mountain, Cherry, Granite, Meyer, Bear, Rush Creek and Sawmill areas. The Forest Supervisor has determined through analysis that there is good cause to expedite this project in order to protect the remaining trees from insect attack, to rehabilitate the National Forest lands and to recover the dead and dying timber resulting from the ongoing drought and insect attack.

The environmental document under preparation will address the effects of the proposed action on the environment, will document public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to George A. Cadzow, Timber Appeals Coordinator, Timber Management Staff, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111 at (415) 556-2185, or Blaine L. Cornell, Forest Supervisor, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 at (209) 532-3671.

SUPPLEMENTARY INFORMATION: The catastrophic damage presently occurring on North Mountain and on adjacent areas covers some 13,000 acres of National Forest land on the Stanislaus National Forest in the North Mountain, Cherry, Granite, Meyer, Bear, Rush Creek and Sawmill resource compartment areas. The environmental analysis for this proposal will be documented in the North Mountain Helicopter Salvage environmental document. On June 15, 1989 the Supervisor of the Stanislaus National Forest published a notice in local newspapers of the Forest's intent to prepare an environmental document addressing the proposals to rehabilitate the land and to salvage dead and dying timber. Pursuant to 40 CFR 1501.7, scoping was conducted by the Forest to determine the issues to be addressed in the environmental analysis. Additional scoping will be conducted as necessary prior to completing the environmental analysis on the North Mountain Helicopter Salvage Sale. The Forest is expected to complete the environmental documentation by July 14, 1989. The environmental document and related maps will be available for public review at the Groveland Ranger Station, Star Route 75G, Groveland, CA 95321, and at the Stanislaus National Forest Supervisor's Office, 19777 Greenley Road, Sonora, CA 95370.

Analysis indicates that about 10 million board feet (MMBF) valued at about $500,000 is currently being killed by the combined effects of drought and bark beetle attack. Complete loss of this timber could result in an estimated loss of about $125,000 to Tuolumne, Alpine, Calaveras and Mariposa Counties in National Forest Receipts. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention and fuels reduction.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources during this field season. These delays would result in volume and value losses, and increase the chances of wildfires occurring due to the large additional quantity of standing and down fuels.

Date: June 28, 1989.

Raymond G. Weinmann,

Acting Deputy Regional Forester.

[FR Doc. 89-15665 Filed 7-13-89; 8:45 am]

BILLING CODE 3410-11-M

Loon Mountain Ski Area Expansion; White Mountain National Forest, Grafton County, New Hampshire

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to the draft Environmental Impact Statement (DEIS).

SUMMARY: The Forest Service will prepare a Supplement to the DEIS (EPA No. 890025) for Loom Mountain Recreation Corporation's proposed expansion of their special use permit on the Pemigewasset Ranger District, White Mountain National Forest, Grafton County, New Hampshire. This Supplement is in response to comments received on the DEIS which was issued February 10, 1989, (54 FR 6448).

DATE: The Supplement will be available for public comment on or about October 13, 1989. There will be a 45-day Comment period.

ADDRESS: Submit written comments to Michael B. Hathaway, Forest Supervisor, White Mountain National Forest, Laconia, New Hampshire, 03247.

Review of Comments to the DEIS: The public may inspect comments received on this proposed ski area expansion in the Forest Supervisor's Office in Laconia, NH, weekdays between the hours of 8:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dain Maddox, EIS Coordinator, White Mountain National Forest, P.O. Box 638, Laconia, NH 03247, phone (414) 291–3305

SUPPLEMENTARY INFORMATION: The DEIS was issued February 10, 1989, Federal Register Volume 54, page 6448). The Supplement to the DEIS is being prepared in response to agency and public comments concerning the following: The agreement between Loon Mountain Recreation Corporation and the Town of Lincoln regarding water withdrawals from Loon Pond; the status of Lincoln's sewage treatment facilities; "emergency pumping" from the East Branch of the Pemigewasset River into Loon Pond and Loon Pond Reservior; potential impacts from increased traffic; and additional mitigation information.

Our objective in issuing this Supplement is to inform the public about these events and give them an opportunity to make additional comments in response to this information. These comments, together with comments previously submitted in response to the DEIS, will be assessed and considered in the Final Environmental Impact Statement (FEIS).

The DEIS included three alternatives (No Action, Limited Development, and Proposed Action) and 17 possible mitigation measures. Other alternatives and mitigation measures may be considered as a result of this Supplement.

The Supplement will be distributed to the public in early fall of 1989. We will hold public informational meetings during the comment period. Meeting dates and locations will be announced in the local media and the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of Supplement to the DEIS must structure their participation in the environmental review of the proposals so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also environmental objections that could be raised at the DEIS stage of Supplement to the DEIS, but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Supplement to the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Supplement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The FEIS is schedule to be completed by March 1990. I will consider the comments, responses, and environmental consequences discussed in the FEIS: and applicable laws, regulations, and policies in making a decision regarding Loom Mountain Corporation's proposal. I will document my decision and reasons for the decision in the Record of Decision. The decision will be subject to appeal under 36 CFR 217.

Date: July 3, 1989.

Michael B. Hathaway,

Forest Supervisor

[FR Doc. 89–16516 Filed 7–13–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

Federal Register citation of previous announcement: 51 FR 28704 July 7, 1989.

Previously announced time of meeting: 10:30 a.m. July 26, 1989. Changes in the meeting: 9:00 a.m., July 26, 1989, the Herbert C. Hoover Building, Room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC.

Date: July 10, 1989.

Betty A. Ferrell,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 89–16480 Filed 7–13–89; 8:45 am]

BILLING CODE 3510–DT–M

National Institute of Standards and Technology

[Docket No. 71012–9155]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Institute of Standards and Technology (NIST) announces the establishment of an accreditation program for laboratories that perform analyses for asbestos content in samples of airborne particulates collected following asbestos abatement projects. Establishment of the program is pursuant to section 206d of the Asbestos Hazard Emergency Response Act (AHERA) of October 1986. The program provides accreditation for laboratories analyzing airborne asbestos samples by means of transmission electron microscopy (TEM), in accordance with protocols specified by the U.S. Environmental Protection Agency (EPA).

EFFECTIVE DATES: The evaluation of an initial group of applicant laboratories, for airborne asbestos analyses, will commence on or about October 1, 1989. Laboratories wishing to be accredited in the first group must submit an application form and pay all required fees by September 1, 1989. Laboratories whose applications are received after that date will be considered on a when-received basis. The fee is partially refundable if the laboratory's

application is withdrawn before its evaluation begins.

ADDRESSES: Laboratories may obtain applications for accreditation for airborne asbestos analyses by call (301) 975–4016 or writing to: Manager, NVLAP, Building 411/A124, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: John L. Donaldson, Manager, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, Building 411/A124, Gaithersburg, MD 20899, (301) 975–4016.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with the NVLAP Procedures (15 CFR Part 7). Establishment of this program is pursuant to the requirements of Pub. L. 99–519, the Asbestos Hazard Emergency Response Act (AHERA) of October 1986, for: (1) Inspection of schools for asbestos containing materials, (2) air monitoring following asbestos abatements, and (3) accreditation of laboratories that perform analysis of bulk and/or airborne materials for asbestos content.

A Federal Register notice (52 FR 39977–39978) October 26, 1987 announced establishment of an accreditation program for laboratories that perform bulk and airborne analysis of asbestos. A Federal Register Notice (53 FR 53048–53049) announced a Public Workshop which was held on March 28, 1989 at which the technical criteria and procedures for the airborne asbestos program were presented and reviewed.

Bulk Asbestos Testing

NIST accredits laboratories that meet NVLAP criteria for determining the asbestos content of building materials by polarized light microscopy (PLM).

Airborne Asbestos Testing

NVLAP will accredit laboratories which demonstrate their competence to perform airborne asbestos testing in accordance with protocols specified by EPA. Competence will be determined through quality assurance (proficiency) testing and on-site laboratory assessments performed by technical experts. Laboratories must meet all NVLAP criteria and requirements in order to become accredited.

NIST accreditation will be granted to laboratories that meet NVLAP criteria for measuring asbestos in airborne particulate samples, from post-abatement clearance testing, by transmission electron microscopy (TEM). Quality assurance (proficiency) testing will require demonstrated laboratory competence for detection at or near ambient levels of asbestos. However, levels may be higher in some cases to simulate ambient levels where abatement is incomplete (approximately 0.04 fibers per cubic centimeter).

Technical Requirements for the Accreditation Process

Specific requirements and criteria address quality systems, staff, facilities and equipment, calibrations, test methods and procedures, manuals, records, and test reports. Laboratory competence will be determined through: (1) On-site assessments (systems audit) of the laboratory by peer assessors, (2) evaluation of analysts background, competence, and experience, (3) review of the technical documentation, and (4) quality assurance (proficiency) testing through analysis of representative samples containing asbestiform and non-asbestiform fibers in accordance with designated procedures.

Laboratories which apply for accreditation and pay all necessary fees will be required to meet proficiency testing (quality assurance testing) requirements and on-site assessment requirements before initial accreditation and will be required to meet on-going proficiency testing requirements and periodic reassessments to retain accreditation.

Raymond G. Kammer,
Acting Director.

Date: July 11, 1989.

[FR Doc. 89–16561 Filed 7–13–89; 8:45 am]
BILLING CODE 3510–13–M

COMMITTEE FOR THE PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1989 a commodity to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 14, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 17, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 15244) of proposed addition to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018)..

No comments were received concerning the proposed addition to the Procurement List. After consideration of the material presented to its concerning capability of qualified workshops to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1989:

Enamel, Alkyd
8010–00–948–7388

Beverly L. Milkman,
Executive Director.

[FR Doc. 89–16576 Filed 7–13–89; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1989; Proposed Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed deletions from procurement list.

SUMMARY: The Committee has received proposals to delete from Procurement List 1989 a commodity produced and a service provided by workshops for the blind and other severely handicapped.

Comments: Comments must be received on or before August 14, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2). Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions. It is proposed to delete the following commodity and service from Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Commodity

Food Packet, Survival, Aircraft, Life Raft, Individual
8970-01-028-9406

Service

Assembly, Food Packet Assault Ration (8970-01-225-6504)

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-16577 Filed 7-13-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Follow on Forces Attack (FOFA)

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on September 6-7, 1989 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

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.

July 10, 1989.

[FR Doc. 89-16483 Filed 7-13-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Assistant Secretary of the Army (Civil Works): Request for Nominations to the Inland Waterways Users Board

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Section 302 of Pub. L. (Pub. L.) 99-662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its eleven members are appointed by the Secretary of the Army. This notice is to solicit nominations for six appointments or reappointments to two-year terms that will begin January 1, 1990. This notice is also to solicit nominations for one additional appointment for a vacancy on the Board resulting from a member resignation whose remaining term is to expire December 31, 1990. The appointment for this vacancy will be for the remainder of the term.

EFFECTIVE DATE: July 15, 1989.

ADDRESS: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20314-1000. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Dr. G. Edward Dickey; 202-272-0126.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of board members are covered by provisions of section 302 of Pub. L. 99-662. The substance of those provisions is as follows: *Selection.* Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterway commerce as determined by commodity ton-miles statistics. *Service.* The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterway construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress. *Appointment.* The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92-463 as amended) and Departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable.

The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows: *Carriers and Shippers.* The law uses the terms "primary users and shippers." Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user. *Geographical Representation.* The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in the Pub. L. 95-502 as amended have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) The Ohio River and its tributaries; (4) The Gulf Intracoastal Waterway in Louisiana and Texas; (5) The Gulf Intracoastal Waterway east of New Orleans and assocaited fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake River System and Upper Willamette. The intent is that each region shall be represented by at least one board member, with that representation determined by the residence and principal place of business of the individual. *Commodity Representation.* Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in *Waterborne Commerce of the United States.* In rank order they are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

Reflecting the preceding selection criteria, the present representation by Board members is as follows:

Members whose terms expire December 31, 1989, include three shipper representatives representing the Ohio River, Upper Mississippi and Lower Mississippi regions, and coal (2), and

grain and coal, respectively; three carrier representatives representing the East Gulf and Ohio River (2) regions, and coal and ores, coal and chemicals, and coal and grain, respectively.

Members whose terms expire December 31, 1990, include three shipper representatives representing the Ohio River and Upper Mississippi regions, coal, and chemicals and petroleum, and grain, respectively; one carrier representative representing the Ohio River, and coal and ores. Additionally, the carrier representative representing the Columbia River region, and grain and other commodities whose term also expires December 31, 1990, has resigned, thus, creating a vacancy on the Board.

Nominations to fill the vacancy representing the Columbia River, or to replace other members whose terms will expire in 1989, may be made by individuals, firms or associations. Nominations should state the region to be represented and whether the nominee is to represent carriers or shippers. Information should be provided on the nominee's personal qualifications and the commercial operations of the carrier and/or shipper that the nominee is associated with. The latter information should show the actual or estimated ton-miles of commodities carried or shipped on inland waterways in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations, received in response to the **Federal Register** notice published July 26, 1988, have been retained. Those nominees, including the individuals subsequently appointed to the Board and whose terms expire in 1989, will be given consideration for appointment or reappointment. Renomination is not required but may be desirable.

Deadline for Nominations: All nominations must be received at the address shown above no later than August 15, 1989.

Wilbur T. Gregory, Jr.

Colonel, Corps of Engineers, Executive, Civil Works.

[FR Doc. 89-16566 Filed 7-13-89; 8:45 am]

BILLING CODE 3710-92-M

Board of Visitors, United States Military Academy; Open 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: Board of Visitors, United States Military Academy.

Dates of Meeting: 10-12 August 1989.

Place of Meeting: West Point, New York.

Start Time of Meeting: 9:00 a.m., 10 August 1989.

Proposed Agenda: Briefings on: Summary Honor Reviews; Bicentennial 2002 Master Plan; Leader Development; Project Enrichment; OSHA Review; Women's Issues at West Point; USMA Graduates in Reserve/National Guard; Academy Environmental Issues; CEO's—Academy Graduates; Middle States Accreditation.

All proceedings are open.

For further information contact: Lieutenant Colonel Robert M. Currey, United States Military Academy, West Point, NY 10996-5000, (914) 938-4200.

For the Chairman of the Board of Visitors:

Robert M. Currey

LTC, GS, Executive Secretary, USMA Board of Visitors.

[FR Doc. 89-16567 Filed 7-13-89; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To prepare a Draft Environmental Impact Statement for the Levisa Fork Basin

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Huntington District currently has underway a study of potential flood damage reduction alternatives for Levisa Fork Basin of the Big Sandy River Drainage as authorized by Section 202 of the Energy and Water Development Appropriation Act of 1981 (Pub. L. 96-367). The possibility of significant environmental impacts to the aquatic and terrestrial ecosystem, as the result of implementation of these potential flood damage reduction alternatives, necessitates the preparation of a Draft Environmental Impact Statement (DEIS). Consequently, the Huntington District Engineer has directed the preparation of a Draft Environmental Impact Statement (DEIS) on the Levisa Fork Basin.

FOR FURTHER INFORMATION CONTRACT: Questions regarding the proposed action and DEIS should be addressed to: Mr. Thomas J. O'Neil, CEORH-PD-R, Phone: (304) 529-5712 Mr. James B. Twohig, CEROH-PD-S, Phone: (304) 529-5644 Planning Division Huntington District Corps of Engineers 502 Eighth Street Huntington, West Virginia 25701-2070.

SUPPLEMENTARY INFORMATION: 1. As of the date of this notice, all flood damage reduction alternatives to be recommended for implementation by the Huntington District are not known.

2. Study efforts when compete will be documented in a General Planning Memorandum (GPM), a supplement to a General Plan as directed and authorized by section 202 of Pub. L. 96-367. The study addresses only those flooding problems along the mainstem Levisa Fork from Louisa, Kentucky, to the downstream city limits of Grundy, Virginia, (approximately 100 stream miles excluding Fishtrap Lake) and along the mainstem Russell Fork from its confluence with Levisa Fork to and including Haysi, Virginia (approximately 31 stream miles). Study alternatives being considered include an assessment of the following: A dam on the mainstem Russell Fork; floodwalls and/or levees at major community centers along the mainstem Levisa and Russell Forks; floodproofing and floodplain evacuation in all study areas not otherwise afforded protection by the previously mentioned structural features.

These study efforts were discussed at great length at numerous public meetings and workshops with concerned basin residents during the period June 1984—September 1986. Meetings were conducted at most Levisa Fork communities where potential floodwall/levee projects were being considered and in the vicinity of the potential Haysi Lake project area. These meetings were being conducted as formulation study efforts progressed to optimize the potential mix of structural and non-structural alternatives in an effort to develop the most cost effective, environmentally and socially acceptable implementable basin plan. Initial alternatives evaluated consisted of eleven floodwall/levee projects along the Levisa and Russell Forks on the mainstem Russell Fork with three levels of flood control performance capabilities, and floodproofing/floodplain evacuation measures for both residential and nonresidential structures in each of the five counties within the study area limits. The tentatively selected plan, designated as the Haysi 6 Plan, consists of the following components:

- Haysi Lake Project with 6 inches of net flood control storage,
- Allen, Kentucky, Floodwall/Levee Local Protection Project (LPP),
- Floodproofing and Floodplain Evacuation Measures.

3. a. A draft GPM containing a summary of investigations with specific recommendations is scheduled for completion by mid to late 1990 with a final report to be completed by late 1990 or early 1991. This schedule is largely dependent upon identifying non-Federal sponsors as cost-sharing partners for the recommended plan components. Public involvement will continue throughout

this final phase of the study. Federal, state, and local agencies as well as other affected and concerned organizations will be apprised of any scheduled meetings.

b. Several potentially significant impacts have been identified. Studies have been conducted and are presently underway to assess and qualify the significance of each. Potentially significant impacts include: (1) Impacts on the present aquatic and terrestrial resources; (2) tailwater impacts; (3) changes in life style and traditional value; (4) stream flow management; (5) cultural resource. Any significant impact developed during the study will be analyzed and presented in the DEIS.

c. The DEIS will be developed under the guidance, requirements, and format in 40 CFR 1502.10. Consultation shall be conducted with the U.S. Fish and Wildlife Service and the Environmental Protection Agency during the DEIS process, pursuant to the requirements of the Fish and Wildlife Coordination Act 16 U.S.C. 661 *et seq.* (Pub. L. 85–624), the Endangered Species Act 16 U.S.C. 1531 *et seq.* (Pub. L. 93–205) and the Heritage Conservation and Recreation Service and State Historical Preservation Act of 1966 (80 Stat. 915) (Pub. L. 89–655), and the Preservation of Historic and Archeological Data (88 Stat. 174) (Pub. L. 93–291) and EO 11593. In addition, other interest groups or organizations will be included.

4. A public scoping meeting will be conducted in the proximity of the potential Haysi Lake Project Area in the summer, 1989. No additional public scoping meetings are anticipated during DEIS development.

5. It is anticipated that the DEIS will be made available for public review in Fiscal Year 1990.

Date: July 5, 1989.

Wayne D. Reynolds,

Major, Corps of Engineers, Acting District Engineer.

[FR Doc. 89–16568 Filed 7–13–89; 8:45 am]

BILLING CODE 3710-GM-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2735–012 California]

Pacific Gas and Electric Co.; Availability of Environmental Assessment

July 6, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of license for the Helms Pumped Storage Project on Helms Creek, within the North Fork Kings River Basin in Fresno County, California. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed amendment.

In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed amendment and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89–16494 Filed 7–13–89; 8:45 am]

BILLING CODE 6717-01-M

Marathon Oil Co., et al., Applications for Certificates and Amendment of Certificates [1]

[Docket No. G–11842–000, et al.]

July 7, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 26, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G–11842–000, E, C, June 13, 1989	Marathon Oil Co., P.O. Box 3128, Houston, TX 77253.	United Gas Pipe Line Co., Cotton Valley Field, Webster Parish, Louisiana.	Acreage acquired Dec. 1, 1987 from Tenneco Oil Co.
CI78–1133–001, C, June 15, 1989	Union Exploration Partners, Ltd., P.O. Box 7600, Los Angeles, CA 90051.	Texas Eastern Transmission Corp., West Cameron Block 279, Offshore Louisiana.	Application to add depths pursuant to a contract amendment dated Nov. 30, 1988.
CI89–456–000, E, June 13, 1989	Oryx Energy Co., P.O. Box 2880, Dallas, TX 75221.	El Paso Natural Gas Co., Snyder Plant, Scurry County, Texas.	Acreage acquired Oct. 1, 1988 from Amoco Production Co.
CI89–458–000, E, June 16, 1989	Sonat Exploration Co., P.O. Box 1513, Houston, TX 77251–1513.	Arkla Energy Resources, a division of Arkla, Inc., Bethany Field, Panola County, Texas.	Acreage acquired June 16, 1988 from SMK Energy Corp., SMK Resource Co., Michael H. Neufeld and W.L. Sudderth.
CI89–466–000, F, June 21, 1989	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 79189.	ANR Pipeline Co., Laverne Field, Beaver County, Oklahoma.	Acreage acquired Feb. 1, 1988 from Oneok Exploration Co.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 89–16495 Filed 7–13–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-18142-004, et al.]

Oryx Energy Co., et al.; Applications for Termination or Amendment of Certificates [1]

July 7, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 26, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-18142-004, D, June 30, 1989	Oryx Energy Co., P.O. Box 2880, Dallas Texas 75221.	Transwestern Pipeline Co., variaus fields, Texas and Beaver Counties, Oklahoma.	Assigned June 7, 1989 to VVWF Oil Inc.
CI62-1251-013, D, June 19, 1989	Oryx Energy Co	Arkla Energy Resources, a division of Arkla, Inc. Kinta, et al., fields, Haskell, et al., counties, Oklahoma.	Assigned Mar. 29, 1989 to Exxon Corporation.
CI62-1251-014, D, June 19, 1989	do	Arkla Energy Resources, a division of Arkla, Inc. Red Oak, et al., fields, Laflore, et al., counties, Oklahoma.	Do.
CI67-1349-000. D, June 19, 1989	Texaco Inc., P.O. Box 52332, Houston, Texas 77052.	Columbia Gas Transmission Corp., Little Pecan Lake Field, Cameron Parish, Louisiana.	Assigned Nov. 4, 1989 to Energy Properties Inc.
CI79-262-001. D, June 21, 1989	Tenneco Oil Co., General Partner, Tenneco Exploration, Ltd., P.O. Box 2511, Houston, Texas 77001.	Tenneco Oil Co., Eugene Island, Block 348 Area, Offshore Louisiana.	Assigned July 15, 1986 to Plumb Offshore Inc.
CI79-263-002, D, July 21, 1989	Tenneco Oil Co., P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Co., Eugene Island, 348 Area, Offshore Louisiana.	Do.
CI89-454-000, (G-10665), D, June 9, 1989.	Union Pacific Resources Co., P.O. Box 7, Forth Worth, Texas 76101.	Williams Natural Gas Co., Eureka Field, Grant County, Oklahoma.	Assigned Sept. 17, 1984 to Vernon E. Faulconer.
CI89-462-000, (CI75-747), D, June 21, 1989.	Tenneco Oil Co	Tennessee Gas Pipeline Co., Eugene Island, 342 & 343 Area, Offshore Louisiana.	Assigned July 15, 1986 to Plumb Offshore Inc.
CI89-463-000 (CI75-748) D, June 21, 1989.	Tenneco Exploration, Ltd., P.O. Box 2511, Houston, Texas 77001.	Tenneco Oil Co., Eugene Island, 342 & 343 Area, Offshore Louisiana.	Do.
CI89-464-000 (CI84-32) D, June 21, 1989.	Tenneco Oil Co., general partner, Tenneco Exploration, Ltd.	Tennessee Gas Pipeline Co., Eugene Island, 342 & 343 Area, Offshore Louisiana.	Do.
CI89-470-000, (CI68-651) D, June 26, 1989.	Union Pacific Resources Co	El Paso Natural Co., Gomez Field, Pecos County, Texas.	Assigned May 2, 1989 to Swift Energy Company.
CI89-471-000, (CI73-479), D, June 26, 1989.	do	do	Do.
CI89-472-000, (CI73-211), D, June 26, 1989.	do	El Paso Natural Co., Sand Dune South Field, Eddy County, New Mexico.	Do.
CI89-473-000, (CI77-709), D, June 26, 1989.	do	Mississippi River Transmission Corp., Holly Field, DeSoto Parish, Louisiana.	Do.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 89-16496 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA85-71-002]

Central Illinois Public Service Co.; Notice of Filing

July 7, 1989.

Take notice that on May 24, 1989, Central Illinois Public Service Company (CIPSCO) submitted for filing a refund report pursuant to the Commission Opinion Nos. 309 and 309-A issued August 1, 1988 and April 11, 1989, respectively.

CIPSCO's refund report included tabulations of refunds and applicable interest, billing determinations utilized in the computation of refunds for each full requirements rural electric cooperative, a summary of all refunds, and workpapers underlying the interest calculations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.114). All such motions or protests should be filed on or before July 21, 1989. 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. 89-16497 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES89-29-000]

Citizens Utilities Co.; Application

July 7, 1989.

Take notice that on June 30, 1989, Citizens Utilities Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act, relating to the issuance of up to $50,000,000 principal amount of Mortgage Bonds and/or Notes and/or Debentures ("New Debt Securities"), with a minimum maturity of maturities of nine months and a maximum maturity or maturities of 40 years, requesting an order (a) exempting the issuance of New Debt Securities from compliance with competitive bidding requirements and (b) authorizing the issuance and sale of New Debt Securities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, and 385.114). All such motions or protests should be filed on or before July 20, 1989. 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. 89-16498 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-5-21-000 (PGA89-3)]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on June 30, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective August 1, 1989:

One hundred and thirty-sixth Revised Sheet No. 16
Twenty-fourth Revised Sheet No. 16A2
Fortieth Revised Sheet No. 64A

Columbia states that the sales rates set forth on One Hundred and thirty-sixth Revised Sheet No. 16 reflect an overall increase of 12.12¢ per Dth in the Commodity rate, and increases of $.291 per Dth in the Demand-1 rate and 2.00¢ per Dth in the Demand-2 rate. In addition, the transportation rates set forth on Twenty-fourth Revised Sheet No. 16A2 reflect an increase in the Fuel Charge component of .33¢ per Dth.

The purpose of the subject tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustement Applicable to Sales Rate Schedules;

(2) A continuation of certain surcharges which were accepted by the Commission on April 27, 1989 to be effective during the 12-month period of May 1, 1989 through April 30, 1990; and

(3) A Transportation Fuel Charge Adjustment.

Copies of the filing were served upon the Company's jurisdictional customers 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, Union Center Plaza Building, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1989. 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16499 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-23-000]

Eastern Shore Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

July 7, 1989.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on June 30, 1989 certain revised tariff sheets included in the filing. Such sheets are proposed to be effective August 1, 1989.

ESNG states that such tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and Section 21 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.0009 per dt in the Commodity Charge; an increase of $1.3850 per dt in the Demand Charge 1; and an increase of $0.0220 per dt in the Demand Charge 2, all as measured against ESNG's previously scheduled PGA filing in Docket No. TA89-2-23-000 as filed on March 31, 1989. The current purchased gas cost adjustment has been developed using a quarterly projection of gas supply and purchase requirements and the latest applicable pipeline supplier rates on file with the Commission. ESNG further states that its projected cost of gas on the Transco system assumes continued implementation of the Stipulation and Agreement (S&A) filed by Transco with the Commission on April 3, 1989 in Docket Nos. RP88-68-000; RP87-7-000, et. al. Such S&A significantly alters the traditional Buyer-Seller relationship ESNG has with Transco as more fully described in the filing. Should Commission action alter the S&A as proposed in any way ESNG may find it necessary to amend or re-file its quarterly PGA.

ESNG states that copies of the filing have been served upon its jurisdictional customers 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, D.C. in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1989. 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. 89-16500 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-12-002]

El Paso Natural Gas Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

July 7, 1989.

Take notice that on June 30, 1989, El Paso Natural Gas Company, tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-A:

Second Revised Sheet No. 240
First Revised Sheet No. 242
Second Revised Sheet Nos. 248 and 251
First Revised Sheet No. 253
Second Revised Sheet No. 254

Any person desiring to be heard or to protest the subject 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 18 CFR 385.214 and 385.211. All such motions or protests must be filed by July 25, 1989. 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. 89-16501 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-4-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 7, 1989.

Take notice that on June 30, 1989, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective August 1, 1989.

FERC Gas Tariff, First Revised Volume No. 1

Sixth Revised 37th Revised Sheet No. 8

FERC Gas Tariff, Original Volume No. 2

Fifth Revised 59th Revised Sheet No. 128

The above-referenced tariff sheets are being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to section 15 (Purchased Gas Adjustment Clause) of FGT's FERC Gas Tariff, First Revised Volume No. 1 to reflect an increase in FGT's jurisdictional rates due to an increase in its average cost of gas purchased from that reflected in its Annual PGA filing, Docket No. TA89-1-34-001 effective May 1, 1989.

FGT states that the effect of the purchased gas cost increase being filed represents an increase of .436 cents/therm for Rate Schedules G and I and .13 cents/Mcf for Rate Schedule T-3 as measured against FGT's Annual PGA filing in Docket No. TA89-1-34-001 effective May 1, 1989.

FGT states that copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2 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 §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16502 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

July 7, 1989.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on June 30, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) a quarterly PGA filing, which includes Fourteenth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective August 1, 1989. The revised tariff sheet reflects no change in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $1.7219.

Kentucky West states that, effective August 1, 1989, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $1.7362 per dth, inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers 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, N.E., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure and 385.214). All such motions or protests should be filed on or before July 14, 1989. 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 Cashell,

Secretary.

[FR Doc. 89-16503 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-4-003]

Mid Louisiana Gas Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

July 7, 1989.

Take notice that on June 30, 1989, Mid Louisiana Gas Company, tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet, Nos. 261, 26m and 26t, Superseding Revised Substitute Original Sheet No. 261 and Substitute Original Sheet Nos. 26m and 26t.

Any person desiring to be heard or to protest the subject 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 18 CFR 385.214 and 385.211. All such motions or protests must be filed by July 25, 1989. 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. 89-16504 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-37-002]

MIGC, Inc.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

July 7, 1989.

Take notice that on June 30, 1989, MIGC, Inc. tendered the following tariff sheets for filing in the capitioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 310, Superseding Substitute Second Revised Sheet No. 310

Any person desiring to be heard or to protest the subject 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 18 CFR 385.214 and 385.211. All such motions or protests must be filed by July 25, 1989. 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. 89-16505 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-570-000, et al.]

Mobile Bay Pipeline Projects; Technical Conference

July 7, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of technical conference.

SUMMARY: On August 1, 1988, the Federal Energy Regulatory Commission issued a *Notice of Deadline For 1989-1990 Certification of Mobile Bay Construction Applications*, in Docket No. CP88-570-000 (Notice of Deadline). In response to this Notice of Deadline the Commission has on file 14 applications to construct and operate pipeline facilities in the Mobile Bay area. On May 24, 1989, staff convened an informal technical conference, where a number of parties indicated that private settlement negotiations were ongoing. Staff indicated that a future conference would be convened to assess the progress of such negotiations. This notice identifies the date and time for the next Technical Conference.

DATE: The Technical Conference will be held on July 28, 1989, at 10:00 am.

ADDRESS: The Conference will be held at: Federal Energy Regulatory Commission, Hearing Room (to be posted), 825 North Capitol Street, NE., Washington, DC 20426.

Each Mobile Bay Project sponsor is requested to participate and should file, by July 24, 1989, the name of the person who will make the presentation with: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: William C. Lansinger, Jr., Pipeline Certificate and Projects Branch, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5782.

SUPPLEMENTARY INFORMATION: This notice relates to staff's continuing efforts to analyze the pending applications to construct and operate pipeline facilities in the Mobile Bay area. This notice includes topics which the staff would like participants to address, and an agenda for the conference.

Topics for Discussion

a. What is the status of settlement discussions among the parties? Identify the parties to the discussions, the substance of the discussions and when the Commission can expect the parties to file a proposed settlement?

b. What is the most efficient and productive approach, other than data requests, to secure all gas supply information necessary to authorize any of the proposed projects?

c. Have any new contracts, precedent agreements or letters of intent been signed which would provide for attachment of gas supplies to a specific project?

d. Have any new contracts, precedent agreements or letters of intent been signed which would provide for transportation on a specific project?

Conference Details

This conference will be held on July 28, 1989, at 10:00 am at the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426. Participants should provide the Secretary of the Commission with the name of the individual who will speak at the conference by July 24, 1989. Each project sponsor will be allotted 10 minutes for presentations and should address the above topics first, and follow with any additional comments. As shown on the attached draft agenda, there will be an opportunity for further comments as time permits. Written comments may also be submitted.

Lois D. Cashell,

Secretary.

Mobile Bay Projects Technical Conference Agenda, July 28, 1989-10:00 am

A. Staff Presentation.
B. Comments by Project Sponsors.
  1. Response to staff's specific topics.
  2. Other Comments.
C. Comments by Others.
  1. Response to staff's specific topics.
  2. Other Comments.
D. Additional Comment Opportunity.
  1. Other Comments.

[FR Doc. 89-16493 Filed 7-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-49-006]

National Fuel Gas Supply Corp.; Filing of Motion To Place Into Effect Revised Tariff Sheets

July 7, 1989.

Take notice that on June 30, 1989, National Fuel Gas Supply Corporation ("National") submitted for filing, pursuant to Section 4(e) of the Natural Gas Act, as amended, § 154.67 of the Regulations of the Federal Energy Regulatory Commission ("Commission") thereunder, a motion to place the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, into effect as of July 1, 1989, subject to refund:

Substitute Eighteenth Revised Sheet No. 4
Substitute Second Revised Sheet No. 9
Substitute Fourth Revised Sheet No. 28
Substitute First Revised Sheet No. 31-33
Substitute Original Sheet Nos. 33-A through 33-C
Substitute First Revised Sheet Nos. 112-113
Substitute Original Sheet Nos. 114-118

Through the motion, National also seeks to place into effect the following sheets to its FERC Gas Tariff, First Revised Volume No. 2, as of July 1, 1989, subject to refund.

Substitute Second Revised Sheet No. 67
Substitute Fifth Revised Sheet No. 281
Second Substitute Seventh Revised Sheet No. 302
Substitute Original Sheet No. 302-A
Second Substitute Fifth Revised Sheet No. 321

Second Substitute Fifth Revised Sheet No. 341
Second Substitute Fourth Revised Sheet No. 538
Substitute Second Revised Sheet No. 558
Substitute Original Sheet No. 558–A
Substitute First Revised Sheet No. 640
Substitute First Revised Sheet No. 667
Substitute Second Revised Sheet No. 690

National states that copies of National's filing were served on National's jurisdictional customers and on the 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 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 17, 1989. 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. 89–16506 Filed 7–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–11–004]

Northwest Pipeline Corp.; Proposed Changes In FERC Gas Tariff Pursuant to Order No. 497

July 7, 1989.

Take notice that on June 29, 1989, Northwest Pipeline Corporation tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original No. 1–A:

Second Revised Sheet No. 423–A
First Revised Sheet Nos. 428, 433 and 436

Any person desiring to be heard or to protest the subject 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 18 CFR 385.214 and 385.211. All such motions or protests must be filed by July 25, 1989. 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. 89–16507 Filed 7–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–55–001]

Questar Pipeline Co.; Rate Change

July 7, 1989.

Take notice that on June 30, 1989, Questar Pipeline Company tendered for filing and acceptance Substitute Twenty-first Revised Sheet No. 12 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1989.

Questar Pipeline states that the purpose of this filing is to comply with the Commission letter order dated May 31, 1989, in the subject docket.

Questar Pipeline further states that Substitute Twenty-first Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.38401/Dth and the demand base cost of purchased gas as adjusted is $0.00767/Mcf. There is no change in the surcharge adjustment.

Questar Pipeline states that it has provided a copy of the filing to its sales customer and state public service commissions.

Questar Pipeline has pending a request for rehearing in Docket No. RP89–120. Should the Commission grant Questar Pipeline's request, Questar Pipeline has requested that Alternate Substitute Twenty-first Revised Sheet No. 12 be made effective June 1, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR §§ 385.214, 385.211 (1988)]. All such protests should be filed on or before July 14, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–16508 Filed 7–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM89–7–17–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 3, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Third Revised Sheet Nos. 56–59
Fourth Revised Sheet No. 60
Fourth Revised Sheet No. 61
Fourth Revised Sheet No. 62
Fourth Revised Sheet No. 63
Second Revised Sheet No. 483A
Second Revised Sheet No. 483B

The purpose of this filing is to track modifications made by Southern Natural Gas Company (Southern) on May 18, 1989 in Docket No. RP89–174–000 to the take-or-pay surcharges previously authorized in Southern's Docket Nos. RP88–96–000 and RP88–210–000. The tariff sheets filed by Southern on May 18, restate the previously authorized fixed and volumetric take-or-pay surcharges in accordance with the provisions of Southern's Stipulation and Agreement in Docket No. RP83–58, *et al.*, approved by the Commission on March 23, 1989. Texas Eastern is required, by Commission orders issued July 15, 1988 in Docket No. RP88–192–000 and August 24, 1988 in Docket No. RP88–223–000, to track changes in the take-or-pay surcharges in Southern's Docket Nos. RP88–96 and RP88–210, respectively, within 15 days of the issuance of an order in either of Southern's dockets. Southern's filing in Docket No. RP89–174–000 restating the take-or-pay surcharges authorized in Southern's Docket Nos. RP88–96 and RP88–210 was accepted by the Commission in an order issued June 16, 1989.

Pursuant to the terms of Southern's Stipulation and Agreement, Southern is entitled to recover from its customers a percentage of up to $790 million in buy-out and buy-down costs incurred through March 31, 1989. Pursuant to the allocation methodology proposed by Southern, Southern will bill and recover from Texas Eastern an aggregate principal amount of $17,479,601 by means of a monthly charge of $368,820, which includes amortization interest for a 60 month period beginning May 1, 1989. This represents a reduction from the total monthly charge of $563,001 currently being recovered by Texas Eastern under the separate Docket Nos. RP88–192 and RP88–223.

The tariff sheets proposed for filing herewith are being revised solely to

track the take-or pay charges as a result of Southern's Docket No. RP89–174. Sheet Nos. 60 through 63 set forth the principal amount plus the allocation factor for carrying costs that each customer will be required to pay in order to recover Southern's take-or-pay charges billed to Texas Eastern in Southern's Docket No. RP89–174. Workpapers setting forth Texas Eastern's determination of the allocation factor for the monthly principal amount (which includes a predetermined carrying charge) and a breakdown of the monthly principal amounts (which includes a predetermined carrying charge) each Texas Eastern customer will be required to pay as set forth under Appendix A of the filing.

In tracking Southern's methodology, Texas Eastern has given recognition to purchases by Texas Eastern's Rate Schedule SGS customers under Rate Schedule I in the determination of the base and deficiency periods to the extent these customers did not request Rate Schedule I gas in lieu of Rate Schedule SGS gas, but were given the benefit of the lower I rate. This methodology is consistent with the methodology used and approved by the Commission in Texas Eastern's previous filings.

If at any time Southern is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern will likewise change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from Southern in the above proceedings.

The proposed effective date of the above tariff sheets is May 1, 1989, coinciding with the effective date of Southern's revised tariff sheets.

Copies of the filing were served on Texas Eastern's jurisdictional customers 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 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 17, 1989. 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. 89–16509 Filed 7–13–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3615–6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed July 3, 1989 through July 7, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890182, Draft, FHW, OK, East 71st Street South Reconstruction, South Lewis Avenue to South Memorial Drive, Funding, City and County of Tulsa, OK, Due: August 28, 1989, Contact: Bruce Lind (405) 231–4624.

EIS No. 890183, Draft, EPA, TX, MXG, Brazos Island Harbor Entrance Channel Ocean Dredged Material Disposal Site Designation, Gulf of Mexico, TX, Due: August 28, 1989, Contact: Norm Thomas (214) 655–2260.

EIS No. 890184, Draft, EPA, TX, MXG, Port Mansfield Entrance Channel Ocean Dredged Material Disposal Site Designation, Gulf of Mexico, TX, Due: August 28, 1989, Contact: Norm Thomas (214) 655–2260.

EIS No. 890185, Draft, EPA, TX, MXG, Matagorda Ship Channel Ocean Dredged Material Disposal Site, Designation, Gulf of Mexico, TX, Due: August 28, 1989, Contact: Norm Thomas (214) 655–2260.

EIS No. 890186, Final, AFS, OR, WA, Pacific Northwest Region Western Spruce Budworm Management Plan, Implementation, WA or OR, Due: August 14, 1989, Contact: Dennis Weber (503) 326–2727.

EIS No. 890187, Final, BLM, ID, Jacks Creek Wilderness Study Areas, Wilderness Designation, Owyhee County, ID, Due: August 14, 1989, Contact: David Brunner (208) 334–1582.

EIS No. 890188, Final, BLM, NV, Caliente Resource Area, Wilderness Study Areas, Designation, Clark and Lincoln Counties, NV, Due: August 14, 1989, Contact: Frank Maxwell, (702) 646–8800.

EIS No. 890189, Draft, DOE, PRO, Clean Coal Technology Program, Continuation, Due: August 28, 1989, Contact: Allyn Hemenway (202) 586–7162.

Amended Notices

EIS No. 890090, DSuppl, DOE, NM, Waste Isolation Pilot Plant Construction, Updated Geological and Hydrological Information, Eddy County, NM, Due: July 11, 1989, Contact: W. John Arthur III (505) 889–3038.

Published FR 4–21–89—Review period extended.

EIS No. 890110, Draft, AFS, CA, Alder Timber Sale Management Plan, Implementation, Middle Deer Creek Management Area, Almanor Ranger District Lassen National Forest, Tehama County, CA, Due: July 31, 1989, Contact: Laurence Crabtree (916) 258–2141.

Published FR 5–5–89—Review period extended.

EIS No. 890111, Draft, AFS, CA, Polk Timber Sale Management Plan, Implementation, Lower Mill Creek, Middle Deer Creek and Lower Deer Creek Management Areas, Almanor Ranger District, Lassen National Forest, Tehama County, CA, Due: July 31, 1989, Contact: Laurence Crabtree (916) 258–2141.

Published FR 5–5–89—Review period extended.

Dated: July 11, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89–16569 Filed 7–13–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3615–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 26, 1989 through June 30, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. DS–IBR–J05016–UT, Rating LO, Diamond Fork Power System Project, Original Plan Reduction, Bonneville Unit, Central Utah Project,

Approval and Funding, Utah and Wasatch Counties, UT.

Summary: EPA has no objections to the proposed changes in this document.

ERP No. D–IBR–J05073–CO, Rating EC2, Uncompahgre Valley Reclamation Project, AB Lateral Hydropower Facility Construction and Operation, Leasing, Delta and Montrose Counties, CO.

Summary: EPA has some remaining concerns regarding how project modified flows may affect water quality in upstream segment of the Uncompahgre River. Also, Alternative C, the sponsor preferred plan requiring modification of the Gunnison Tunnel, needs further discussion to substantiate tunnel enlargement.

ERP No. D–UMT–C54006–NJ, Rating LO, Boonton Line/Montclair Branch Rail Lines Corridor Improvements, Funding, Hudson, Morris, Sussex, Essex and Passaic Counties, NJ.

Summary: EPA feels the proposed railway extension in Montclair, New Jersy will not have any significant environmental impacts. Accordingly, EPA does not have any objections to its implementation.

Final EISs

ERP No. F–AFS–K65118–CA, Grider Fire Recovery Project, 1987 August thru October Grider/Lake Fire Resource Management Plan, Klamath National Forest, Siskiyou County, CA.

Summary: EPA expressed its continuing concerns that salvage activities could adversely affect water quality and related beneficial uses such as the protection of anadromous fishery habitat. EPA also recommended that Forest Service consult with the U.S. Fish and Wildlife Service regarding the protection of spotted owl habitat, since steps have begun to officially list the spotted owl as a threatened species.

Dated: July 11, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89–16570 Filed 7–13–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3615–4]

Privacy Act of 1974, Systems of Records

AGENCY: Environmental Protection Agency.

ACTION: Privacy Act of 1974, notification of deletion of two systems of records.

SUMMARY: The Environmental Protection Agency is terminating "Professional Expertise Registry" and "Office of the Comptroller Career Development Plans". These two systems of records are no longer in use.

DATE: Effective July 14, 1989.

FOR FURTHER INFORMATION CONTACT: "Professional Expertise Registry" records: Donald J. Sadowsky, Office of Toxic Substances (TS–793), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 382–3536.

"Office of the Comptroller Career Development Plans" records: Arlene Bragg, Office of the Comptroller (PM–225), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 475–9674.

SUPPLEMENTARY INFORMATION: On June 21, 1979, the Agency published in the **Federal Register** (44 FR 36240) a notice of the system of records "Professional Expertise Registry". On July 31, 1986, the Agency published in the **Federal Register** (51 FR 27454) a notice of the system of records "Office of the Comptroller Career Development Plans". This notice deletes these systems of records.

Dated: July 3, 1989.

Charles L. Grizzle,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 89–16541 Filed 7–13–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59871; FRL–3616–2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 6 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89–140, July 9, 1989.

Y 89–141, July 10, 1989.

Y 89–142, 89–143, 89–144, 89–145, July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89–140

Importer. Confidential.

Chemical. (G) Copolymer of butadiene and methacrtlic monomers.

Use/Import. (G) Binder for printing products. Import range: Confidential.

Y 89–141

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Y 89–142

Manufacturer. Henkel Corporation, Emery Group.

Chemical. (S) Aliphatic dibasic acid polymers with 1,4-butanediolad 2-ethylhexanol.

Y 89–143

Manufacturer. Confidential.

Chemical. (G) Acrylic polyol.

Use/Production. (S) Component of urethane ans melamine coating. Prod. range: 21,500–43,000 kg/yr.

Y 89–144

Importer. Confidential.

Chemical. (G) Modified polypropylene.

Use/Import. (G) Binder used in packing. Import range: Confidential.

Y 89–145

Manufacturer. Confidential.

Chemical. (G) Modified polypropylene.

Use/Production. (G) Used in coatings applied by industrial manufacturers. Prod. range: Confidential.

Date: July 6, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-16543 Filed 7-13-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59272; RRL-3616-3]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 2 application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES: Written comments by:

T 89-17, July 22, 1989.

T 89-18, July 27, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-59272]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room L-100, Washington, DC 20460 (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89-17

Close of Review Period. August 5, 1989.

Manufacturer. Confidential.

Chemical. (G) Crosslinked starch hydrolized acrylonitrile copolymer.

Use/Import. (G) Oil fracturing fluid thickening agent. Prod. range: 250,000 kg/yr.

T 89-18

Close of Review Period. August 10, 1989.

Manufacturer. Confidential.

Chemical. (G) Rosin, polymer with substituted phenols, formaldehyde, pentaerythritol and metal hydroxide.

Use/Import. (G) Ink resin. Prod. range: Confidential. Prod. range: 250,000 kg/yr.

Date: July 6, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-16542 Filed 7-13-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-615-8]

Sole Source Aquifer Designation for the Vinalhaven Island Aquifer System, Maine

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In response to a petition from the State of Maine, notice is hereby given that the Regional Administrator, Region I, of the U.S. Environmental Protection Agency (EPA) has determined that the Vinalhaven Island Aquifer System satisfies all determination criteria for designation as a sole source aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. The following findings were made in accordance with the designation criteria: Vinalhaven Island Aquifer System is the principal source of drinking water for the residents of Vinalhaven Island; there are no viable alternative sources of sufficient supply; the boundaries of the designated area and project review area have been reviewed and approved by EPA; and, if contamination were to occur, it would pose a significant public health hazard and a serious financial burden to the State of Maine. As a result of this action, all federal financially assisted projects proposed for construction or modification to take place on Vinalhaven Island will be subject to EPA review to minimize the risk of ground water contamination from these projects.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time two weeks after the date of publication in the Federal Register.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region I, JFK Federal Building, Water Management Division, WGP 2113, Boston, MA 02203. The designation petition submitted may also be inspected at the Maine State Planning Office in Augusta, Maine.

FOR FURTHER INFORMATION CONTACT: Robert E. Mendoza, Chief of the Ground Water Management Section, EPA Region I, JFK Federal Building, WGP-2113, Boston, MA 02203, 617-565-3600.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C.) 300f, 300h-3(e), Pub. L. 93-523) states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On June 3, 1988, EPA received a petition from the State of Maine requesting the designation of the Vinalhaven Island Aquifer System as a sole source aquifer. EPA determined that the petition fully satisfied the Completeness Determination Checklist. A public meeting was then scheduled and held on March 6, 1989 on Vinalhaven Island, Maine, in accordance with all applicable notification and procedural requirements. A one month comment period followed the meeting.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the detailed review and technical verification process for designating an area under section 1424(e) were:

1. The Vinalhaven Aquifer System is a interconnected bedrock aquifer which the population draws for their fresh water needs. It serves as the principal source of drinking water to all residents within the service area.

2. There exists no reasonable alternative drinking water source or combination of sources of sufficient quantity to supply the designated service area.

3. EPA has found that the State of Maine has appropriately delineated the boundaries of the aquifer recharge area, project designation area and project review area.

4. Although the quality of the Island's ground water is considered adequate, it is vulnerable to contamination due to the Island's geological characteristics and possible land use activities. Because of this, contaminants can be rapidly introduced into the aquifer system from many sources with minimal assimilation. Since the aquifer serves as the principal source of drinking water for the residents, a serious contamination incident could pose a significant public health hazard.

III. Description of the Vinalhaven Island Aquifer System Designated Area and Project Review Area

The Vinalhaven Island is a 20 square miles ocean island located in the mid-coastal region of Maine, approximately 10 miles east of Rockport, the nearest mainland town. The aquifer system is comprised of a interconnected bedrock aquifer. The island's bedrock consists predominately of granite, gabbro, diorite and pelite of Devonian age. The Island has relief of 216 feet, with a irregular topographic profile.

The designated area is defined as the surface area above the aquifer system and its recharge area. For the Vinalhaven Island Aquifer System the boundary of the designated area coincides with the boundary of the watershed basin. The watershed boundary is the surface water divide based on topography, which corresponds to the ground water divide. The designated area, project review area and service area are conterminous, encompassing all of the Island.

IV. Information Utilized in Determination

The information utilized in this determination includes: the petition submitted to EPA Region I by the State of Maine and letters of support received. This information is available to the public and may be inspected at the address listed above.

V. Project Review

EPA Region I is working with the federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitments by federal agencies to projects which could contaminate the Vinalhaven Island Aquifer System. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments when appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into. However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to ensure that it will not contaminate the aquifer. Included in the review of any federal financially assisted project will be the coordination with state and local agencies and the project's developers. Their comments will be given full consideration and EPA's reviw will attempt to complement and support state and local ground water protection measures. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state and/or local control measures to protect the quality of ground water in the Vinalhaven Island Aquifer System.

VI. Summary and Discussion of Public Comments

During the public meeting, a request for an extension of the public comment period was made. It was extended an additional two weeks and expired on April 6, 1989. One comment raised the concern that the State of Maine, serving as the petitioner should have contacted the Island's municipal officials earlier in the process. This concern was conveyed to the appropriate state agency. Letters in support of designation were submitted to EPA.

Paul Keough,

Regional Administrator.

Date: May 31, 1989.

[FR Doc. 89-16544 Filed 7-13-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. July 31 and August 1, 1989, 8:30 a.m., Wilson Hall Auditorium, National Institutes of Health, Bldg. 1, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, July 31, 1989, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open public hearing, August 1, 1989, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergenic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 15, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 31, 1989, the committee will discuss promethazine. On August 1, 1989, the

committee will discuss a status report on surfactant replacement therapy and the guidelines for the evaluation of bronchodilator drugs.

The agency issued a proposal in the Federal Register to allow over-the-counter (OTC) marketing of promethazine in cough-cold products. Comments have been received on this proposal concerning the advisability of switching the marketing of such products containing promethazine from a prescription basis to an OTC basis. The agency wishes to discuss this issue in an open public meeting of the advisory committee.

The committee's discussion and conclusions regarding promethazine hydrochloride will be considered by the agency both in: (1) Reviewing the current marketing status and labeling of cough-cold drug products containing promethazine hydrochloride and (2) preparing a final monograph on OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products. Such a monograph is being developed as part of the OTC drug review. The tentative final monograph (proposed rule) for these products was published in the Federal Register of August 12, 1988 (53 FR 30522). The agency is not aware of any OTC marketing of any combination product containing promethazine hydrochloride. Manufacturers of prescription promethazine products have voluntarily agreed to withhold OTC marketing at this time.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–643, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: July 10, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–16702 Filed 7–12–89; 2:14 pm]

BILLING CODE 4160–01–M

Public Health Service

Health Resources and Services Administration; Native Hawaiian Health Care Act of 1988; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of June 14, 1989, from the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration, the Administrator has redelegated all of the authorities delegated to him under the Native Hawaiian Health Care Act of 1988, as amended hereafter, to the Director, Bureau of Health Care Delivery and Assistance. Excluded was the authority to issue regulations and to submit reports to the Congress.

Redelegation

These authorities may be redelegated.

Effective Date

This delegation became effective on July 6, 1989.

John H. Kelso,

Acting Administrator

Date: July 6, 1989.

[FR Doc. 89–16515 Filed 7–13–89; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on June 30, 1989.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Pain Instrument Development Studies—New—The information collected by these forms will be used by the Social Security Administration to develop and refine final information collection forms which will be used

whenever a claimant for disability benefits alleges pain in connection with his or her disability. The affected public will consist of the State Disability Determination Services agencies who review this information, and the individuals who are selected to participate in this study.

Number of Respondents: 1955
Frequency of Response: 1
Average Burden Per Response: 1 hour 13 minutes
Estimated Annual Burden: 2,387 hours

2. Disability Hearing Officer's Report of Disability Hearing —0960–0440—The information collected on the form SSA–1205 is used by the Social Security Administration to provide disability hearing officers with a structured guide for conducting reconsideration evidentiary hearings. The form assists disability hearing officers to review all pertinent issues, avoid repetition, and to prepare a disability decision. The SSA–1205 serves as a record of what occurred at the hearing. The respondents are disability hearings officers in the State Disability Determination Services.

Number of Respondents: 25,315
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 12,658 hours

3. Notice Regarding Substitution of Party Upon Death of Claimant-Reconsideration of Disability Cessation—0960–0351—The information collected on the form SSA–770 is used by the Social Security Administration to obtain information from substitute parties regarding their intention to pursue hearings for deceased claimants who had requested reconsideration of disability cessation, but died before the reconsideration determinations were completed.

Number of Respondents: 1,601
Frequency of Response: 1
Average Burden Per Response: 4 minutes
Estimated Annual Burden: 107 hours

4. Agreement, To Sell Property—0960–0127—The information collected on the form SSA–8060 is used by the Social Security Administration to document an agreement that an individual or couple will receive conditional Supplemental Security Income Payments if the individual or couple will dispose of excess nonliquid resources and repay the conditional payments. The respondents are applicants for and recipients of Supplemental Security Income payments.

Number of Respondents: 20,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 3,333 hours

OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: July 10, 1989.

Ron Compston,

Social Security Administration Reports Clearance Officer.

[FR Doc. 89–16527 Filed 7–13–89; 8:45 am]

BILLING CODE 4190–11–M

Supplemental Security Income Program Demonstration Project; Permanent Housing for the Homeless

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary plans to demonstrate through a model program entitled "Permanent Housing for the Homeless" of the Mental Health Law Project (MHLP) the effectiveness of using pooled retroactive Social Security disability insurance (DI) and Supplemental Security Income (SSI) benefits, along with funds from State and local governments and private sources, to provide stable, permanent housing for certain DI and SSI recipients described below. This notice announces that the Secretary of Health and Human Services (the Secretary) will study the effect of using these collective funds to meet the shelter needs of the participants under the authority of section 1110(b) of the Social Security Act (the Act). Under this demonstration project, the Secretary will suspend certain existing SSI income and resources counting rules as they relate to the receipt of shelter and other in-kind items provided to participants in the project. These participants are mentally disabled SSI recipients in the State of New York who were class members in the court case, *Bowen* v. *City of New York*, which is described more specifically below. Existing rules will be suspended only where their application to the receipt of shelter and other in-kind items by participants as the result of their participation in the project will affect the SSI eligibility or payment amount of participants. We are publishing this notice to comply with the notification requirement at 20 CFR Part 416, section 250(e).

EFFECTIVE DATES: This demonstration project is for the period July 14, 1989 to July 14, 1992.

FOR FURTHER INFORMATION CONTACT: Jane Pasco, 3–N–3 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–9829.

SUPPLEMENTARY INFORMATION:

Background

The MHLP is a national, nonprofit, public-interest organization advocating for the mentally disabled. In 1983, a class action law suit was brought against the Secretary by the City of New York and other plaintiffs challenging the denial of disability benefits to a class of individuals residing in New York who had, within a specified time period, been denied disability benefits or whose benefits were terminated. The District Court ordered the Secretary to reopen the decisions denying or terminating benefits and to redetermine eligibility. *City of New York, et al.* v. *Heckler*, 578 F. Supp. 1109 (E.D.N.Y. 1984). The decision of the District Court was eventually affirmed by the United States Supreme Court. *Bowen, et al.* v. *City of New York, et al.* 476 U.S. 467 (1986). As a result, the Secretary is redetermining the eligibility of class members for DI and SSI benefits. Certain class members determined eligible will now receive significant retroactive DI/SSI benefits.

MHLP conducted a statewide outreach effort in New York to locate class members. During the outreach effort, MHLP learned that many class members are homeless or housed in substandard conditions and that their single most important priority is safe, affordable, and permanent housing. Later, in response to this recognized critical need, MHLP developed a model program to generate permanent, supportive housing for these individuals which the Secretary believes will assist in promoting the objectives of the SSI program. The program offers class members a unique opportunity to invest their retroactive Social Security and SSI disability benefits to obtain decent housing.

The program offers three housing assistance options in return for the contribution of the lump-sum retroactive DI/SSI benefits to the Permanent Housing for the Homeless program. One option, rental assistance, permits class members to pay a certain percentage of current DI/SSI benefits for rent each month with the lump-sum contribution used to make up the difference. The second option, upgrading of existing rental housing, permits the MHLP to negotiate a contract with a landlord for

necessary renovation using the class member's lump-sum contribution. The third option gives the class member a lifetime right to occupy certain housing in exchange for the lump-sum retroactive benefits along with a specified monthly housing fee.

The MHLP will administer the program. Retroactive DI/SSI benefits paid to class members by the Social Security Administration (SSA) will be voluntarily contributed by class members to MHLP and pooled with funds from State and local governments and private investments to build, renovate, and lease housing throughout New York State. The MHLP expects to finance housing for at least 300 class members. In addition to housing, the MHLP, in conjunction with local mental health and social services agencies, will arrange for provision of health, support, and vocational services.

Supplemental Security Income Program Demonstration Project; Permanent Housing for the Homeless

Section 1110(b) of the Act authorizes the Secretary to develop and conduct experimental, pilot, and demonstration projects to promote the objectives or improve the administration of the SSI program. These projects are intended to explore the advantages of altering certain requirements, conditions, or limitations that apply to SSI applicants and recipients. This section also authorizes the Secretary to waive certain provisions of the Act as is necessary to conduct these experiments and demonstration projects.

The Secretary will study the effectiveness of using pooled retroactive Social Security and SSI disability benefits along with other funds throught the Permanent Housing for the Homeless program demonstration project under the authority of section 1110(b) of the Act. As such, SSA will suspend certain existing SSI income and resources counting rules as they relate to the receipt of shelter and other in-kind income provided by the program to participants. These participants are mentally disabled SSI recipients in the State of New York and who were also class members in *Bowen* v. *City of New York*. While not all of the housing options provides shelter which would normally be counted as income, other types of in-kind income may be received by the participants utilizing these housing options.

The Secretary will suspend certain SSI income and resources counting rules only in cases where failure to so suspend will adversely affect the SSI eligibility or payment amount of the participant. Specifically, retroactive DI/SSI benefits will not be considered resources under section 1611 (a)(1)(B) and 1611 (a)(2)(B) of the Act whill these funds are held by the MHLP for use in providing housing. Any housing subsidy or other in-kind income in the form of support and maintenance provided by the program to the participant using the participant's funds will not be considered income under section 1612(a)(2)(A) of the Act. Also, any interest paid by the MHLP on funds which it also has held will not be considered income under section 1612(a)(2)(F) of the Act.

If an SSI recipient terminates his or her contract with the MHLP and some or all of the retroactive DI/SSI benefits are returned, the benefits will not count as income in the month of receipt under section 1612(a)(2) of the Act, and will be subject to the resources exclusion that applies to retroactive DI/SSI benefits under section 1613(a)(7) of the Act. Specifically, retroactive benefits returned to and received by the participant prior to October 1, 1989, will be excluded from countable resources for 9 months beginning with the month following the month of receipt. Retroactive benefits returned to and received by the participant after September 30, 1989, will be excluded for 6 months beginning with the month following the month of receipt.

The recipient's consent for participating in this demonstration project is needed to satisfy a requirement in section 1110(b) of the Act. Consequently, a recipient's consent providing that the recipient's participation is voluntary and that he or she can revoke participation must be obtained in order for him or her to be eligible under the provisions of this project.

Under this demonstration project, the MHLP will be required to provide periodic status reports to SSA. Projects carried out under section 1110(b) of the Act must be reported in the Secretary's Annual Report to Congress.

The objectives of SSA participating in this demonstration project are to:

- Assist certain mentally disabled SSI recipients in the State of New York who were class members in *Bowen* v. *City of New York* in meeting their shelter needs, thereby fulfilling one of the purposes of the SSI program as it relates to these individuals; and
- Permit class members who are homeless or are living in marginal housing to use their retroactive DI/SSI benefits to obtain permanent housing and supportive services without affecting their SSI eligibility or payment amount, thereby enabling them to function as autonomously and productively as possible; and
- Evaluate this type of arrangement on behalf of SSI applicants/recipients.

Statutory Provisions Waived

The Secretary waives, for the duration of an individual's participation in the MHLP demonstration project that occurs within the time period shown under "Effective Dates" of this notice, certain SSI income and resources counting rules only where participation in the MHLP project otherwise could affect the eligibility or payment amount of an SSI recipient. The specific statutory provisions waived are those described in the section *Supplemental Security Income Program Demonstration Project; Permanent Housing for the Homeless.*

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance; 13.807 Supplemental Security Income)

Dated: July 6, 1989.

Dorcas R. Nardy,

Commissioner of Social Security.

[FR Doc. 89-16528 Filed 7-13-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commission

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: July 14, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Date: July 6, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89–16600 Filed 7–13–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–09–4332–01–2410; FES 89–17]

Availability of Final Environmental Impact Statement; Caliente Final Wilderness Studies

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Caliente Final Wilderness Environmental Impact Statement.

SUMMARY: The Caliente Final Wilderness Environmental Impact Statement assesses the environmental consequences of managing five wilderness study areas as wilderness or non-wilderness. The alternatives assessed include: (1) An "All Wilderness Alternative" for each wilderness study area; (2) a "No Wilderness Alternative" for each wilderness study area; (3) a "Partial Wilderness Alternative" for each wilderness study area; and (4) a "Partial Wilderness/Wilderness Accent Alternative" for each wilderness study area.

The names of the wilderness study areas, their total acreage and the acreage recommended suitable and nonsuitable under the Proposed Action are as follows:

South Pahroc Range—28,600 acres; 28,395 suitable; 205 nonsuitable.
Clover Mountains—84,935 acres; 84,165 suitable; 770 nonsuitable.
Meadow Valley Range—185,744 acres; 97,180 suitable, 88,564 nonsuitable.
Mormon Mountains—162,887 acres; 123,130 suitable; 39,757 nonsuitable.
Delamar Mountains—126,257 acres; 126,257 nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: Copies of the environmental impact statement may be obtained from the District Manager, Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, or Telephone (702) 646–8800.

Copies are also available for inspection at the following locations:

Bureau of Land Management, Office of Public Affairs, Interior Building, 18th and C Streets, NW., Washington, DC 20240.
Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.
Bureau of Land Management, Caliente Resource Area Office, P.O. Box 237, Caliente, Nevada 89008.

FOR FURTHER INFORMATION CONTACT:

Bob Taylor, District Wilderness Coordinator, Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646–8800.
or
Dave Wolf, Nevada BLM Wilderness Coordinator, Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 1200, Reno, Nevada 85520, (702) 328–6281.

John Farrell,

Acting Director, Office of Environmental Project Review.

Date: July 7, 1989.

[FR Doc. 89–16306 Filed 7–13–89; 8:45 am]

BILLING CODE 4310–HC–M

[ID–010–09–4332–01–2410; FES 89–16]

Availability of Final Environmental Impact Statement; Jacks Creek Final Wilderness Studies

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Jacks Creek Wilderness Final Environmental Impact Statement.

SUMMARY: The Jacks Creek Wilderness Final Environmental Impact Statement assesses the environmental consequences of managing seven wilderness study areas as wilderness or non-wilderness. The alternatives assessed include: (1) An "All Wilderness Alternative" for each wilderness study area; (2) a "No Wilderness Alternative" for each wilderness study area; (3) a "Partial Wilderness Alternative" for three wilderness study areas; (4) an "All Manageable Wilderness Alternative" for four wilderness study areas; (5) a " Minimum Resource Conflict Alternative" for two wilderness study areas; (6) and a "Rim to Rim Wilderness Alternative" for two wilderness study areas.

The names of the wilderness study areas, their total acreage and the acreage recommended suitable and nonsuitable under the Proposed Action are as follows:

Little Jacks Creek—58,040 acres; 34,000 suitable, (including 1,030 non-WSA acres); 25,070 non suitable.
Duncan Creek—10,005 acres; 9,400 suitable (including 640 acres state land); 1,245 nonsuitable.
Big Jacks Creek—54,833 acres; 44,525 suitable; 10,308 nonsuitable.
Pole Creek—24,509 acres; 24,509 nonsuitable.
Sheep Creek West—11,680 acres; 11,680 suitable.
Sheep Creek East—5,050 acres; 5,050 nonsuitable.
Upper Deep Creek—11,510 acres; 11,510 nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations. 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: Copies of the environmental impact statement may be obtained from the District Manager, Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

Copies are also available for inspection at the following locations:

Bureau of Land Management, Office of Public Affairs, Interior Building, 18th and C Streets, NW., Washington, DC 20240.
Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT:

George Nelson, Wilderness Program Leader, Bureau of Land Management,

Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334–1616.

John Farrell,

Acting Director, Office of Environmental Project Review.

Date: July 7, 1989.

[FR Doc. 89–16305 Filed 7–13–89; 8:45 am]

BILLING CODE 4310–GG–M

[NM–010–4111–02]

Albuquerque District, New Mexico; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Advisory Council meeting.

SUMMARY: The BLM Albuquerque District Advisory Council will meet August 9–10, 1989 in the Farmington Resource Area Office located at 1235 La Plata Highway in Farmington, New Mexico. The meeting will begin at 10:00 a.m. on Wednesday, the 9th with a short field trip to the Lee Acres landfill beginning at about 3:30 p.m.

Topics on Wednesday's agenda will include the role of the Council, the San Antonio Mountain prescribed fire, the Val Verde pipeline, the BLM existing roads policy, the Ovilla Verde Recreation Area, and updates on other current issues.

On Thursday, August 10th, the Council will meet at the BLM office in Farmington at 8:00 a.m. and proceed on a tour of the coal/methane gas development area, returning to the office by 2:00 p.m.

The public is invited to attend all or part of the meeting, but transportation on the field trips will not be provided.

Persons wishing to address the Council should contact Alan Hoffmeister, Public Affairs Specialist, 435 Montano NE, Albuquerque, NM 87107, (505) 761–4513.

Robert T. Dale,

District Manager.

[FR Doc. 89–16488 Filed 7–13–89; 8:45 am]

BILLING CODE 4310–FB–M

[ID–060–09–4410–11]

Coeur d'Alene District; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 92–463, that a meeting of the Coeur d'Alene District Advisory Council will be held on Monday and Tuesday, August 28 and 29, 1989. The meeting will begin at 8:30 a.m. on August 28, 1989 and will be held at the BLM Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho.

The agenda items are: election of officers, briefing and field trip concerning the Lower Coeur d'Alene River mine waste study, and an update on the Land Tenure Adjustment Management Framework Plan Amendment.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:30 and noon on August 29, 1989, or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814 by August 24, 1989.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours (7:45 a.m. to 4:30 p.m.) within 30 days after the meeting.

Date: July 6, 1989.

John B. O'Brien III,

Acting District Manager.

[FR Doc. 89–16489 Filed 7–13–89; 8:45 am]

BILLING CODE 4310–GG–M

Nevada; Las Vegas District Advisory Council

ACTION: Las Vegas District Advisory Council meeting.

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Bureau of Land Management Las Vegas District Advisory Council will be held August 3, 1989.

The meeting will be held in the Conference Room of the Bureau of Land Management Law Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada, and will begin at 9:00 a.m.

The meeting agenda will include the following:

1. Introduction of Council Members to the Las Vegas District Management Team.
2. Update of the Desert Tortoise Plan:
   Review of the Rangewide Plan,
   Categorization of Tortoise Areas,
   Role of the District Advisory Council/Tortoise Coordination Committee.
3. Discussion of Current Issues:
   Apex Withdrawal Legislation,
   L.A. Department of Water and Power Land Exchange Proposal,
   North Las Vegas Land Sale Proposal.
4. Public Comment.

The meeting of the Las Vegas District Advisory Council is open to the public.

Persons wishing to make oral statements to the Council should contact the District Manager, Bureau of Land Management, Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126 by July 28, 1989. The District Manager may establish a per-person time limit for oral statements to the Council.

Summary minutes of the meeting will be maintained in the Bureau of Land Management Las Vegas District Office.

Date: June 29, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89–16517 Filed 7–13–89; 8:45 am]

BILLING CODE 4310–NC–M

[OR–050–4410–10; GP9–279]

Prineville District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a meeting of the Prineville District Advisory Council will be held on August 15, 1989. The meeting will begin at 10:00 AM in the conference room of the Bureau of Land Management Office located at 185 East Fourth Street, Prineville, Oregon 97754. The agenda will include the following items: (1) Discussion of the Record of Decision for the Brothers/LaPine Resource Management Plan; (2) progress on the development of the Deschutes and John Day River Management Plans; and (3) implementation of the Omnibus Wild and Scenic River legislation within the Prineville District.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral comments to the Board is requested to contact the District Manager at the above address prior to August 8, 1989.

Summary minutes of the meeting will be available for review and reproduction within 30 days following the meeting.

Dated: July 6, 1989

James L. Hancock,

District Manager.

[FR Doc. 89–16490 Filed 7–13–89; 8:45 am]

BILLING CODE 4310–33–M

[OR-080-09-6310-12: GP9-264]

Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act of 1976 that a field trip meeting of the Salem District Advisory Council will commence at 8 a.m., Friday, August 18, at the Bureau of Land Management Salem District Office at 1717 Fabry Road SE., Salem, Oregon.

The tour of the Nestucca River of the Salem District's Yamhill and Tillamook Resource Areas will cover Areas of Critical Environmental Concern (ACECs), wild and scenic river eligibility studies, Oregon Scenic Waterways, the Nestucca and Elk Creek fisheries enhancement programs, law enforcement, Coastal Oregon Productivity Enhancement (COPE) studies, and timber management activities.

The tour is open to the public. Interested persons must provide their own transportation. Individuals may make oral statements to the Council or file written statements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 1717 Fabry Road SE., Salem, Oregon 97306, by the end of the business day on Tuesday, August 15, 1989. A time limit may be established by the District Manager.

FOR FURTHER INFORMATION CONTACT: Van W. Manning, BLM Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306 (Telephone 503/399-5646).

Van W. Manning,

District Manager.

[FR Doc. 89-16491 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-33-M

[NV020-4320-02]

Winnemucca District Advisory Council Meeting

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Winnemucca District Advisory Council will be held on Thursday, August 17, 1989. The meeting will be from 10:00 a.m. to 3:00 p.m. in the conference room of the Bureau of Land Management Office at 705 3. 4th Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Organization of the Council and Election of officers.

2. Update of district programs and major issues.

The meeting is open to the public. Interested persons may make oral statements to the council at 2:00 p.m. or file written statements for the councils consideration. Anyone wishing to make an oral statement must notify the District Manager by August 15, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection (during regular business hours) within 30 days following the meeting.

Ron Wenker,

District Manager.

Dated: July 5, 1989.

[FR Doc. 89-16529 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-HC-M

[CA-940-09-5410-10-ZBAN; CACA 25072]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private lands described in this notice, aggregating 160.00 acres, are segregated and made unavailable for filings under the public land laws, including the mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Managment Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, Room-2841, Sacramento, California 95825, (916) 978-4920.

Serial No.-CACA 25072

T. 4 N., R. 15W., San Bernardino Meridian
Sec. 9, SE¼SE¼;
Sec. 10, NW¼SW¼;
Sec. 16, N½NE¼.

County—Los Angeles.

Minerals Reservation—All minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interest owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segragative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifing the date and time of opening; upon issuance of a patent or other document to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: July 3, 1989.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 89-16518 Filed 7-13-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-932-09-4212-24; C-38487, C-44263, C-46589, C-46594]

Conveyance of Lands; Reconveyance of Lands; Opening of Reconveyed Lands; Eagle, Garfield, Grand and Jackson Counties, Colorado

July 6, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance documents and opening.

SUMMARY: This action informs the public and interested State and local officials of the conveyance of 1,344.05 acres of public lands out of Federal ownership, the reconveyance of 1,347.05 acres of land into Federal ownership, and the opening of the 1,347.05 acres of reconveyed lands to operation of the appropriate public land laws. These exchanges enabled private parties to obtain title to lands that were needed by them for use with contiguous lands they owned, and enabled the United States to obtain title to lands containing high multiple resource values. These actions were based on equal values of the properties exchanged, or payment of cash equalization where there were differences in the estimated fair market value between the government and non-government lands. The public interest was well served by completion of these exchanges.

FOR FURTHER INFORMATION CONTACT: Andrew J. Senti, Bureau of Land

Management, Colorado State Office 303 236–1752.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the completion of exchanges of land between the United States and private parties.

1. The Bureau of Land Management issued exchange conveyance documents to the parties listed below for the following described land under Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Sixth Principal Meridian, Colorado

To: Joan L. Savage
T. 7 S., R. 94 W.,
Sec. 17, lot 4, SW¼NW¼, and W½SW¼;
T. 7 S., R. 95 W.,
Sec. 25, lots 13 and 14;
Sec. 35, S½S½;
Sec. 36, lots 3, 4, 13, 14, 15, and 16.
627.46 acres
To: Michael D. Hoffman
T. 5 S., R. 85 W.,
Sec. 2, lots 7 and 8;
Sec. 11, lot 1.
57.48 acres
To: Douglas K. Powers
T. 1 S., R. 78 W.,
Sec. 17, lots 1, 2, 4, 6, 8, 11, 12, 13, 14, 16, 17, 18, 20, 21, NE¼NE¼, N½SE¼NE¼, SE¼SE¼NE¼, and N½SW¼SE¼NE¼.
147.69 acres.
To: Harvey T. Stitt, Herman Walsky, and David W. Farrand
T. 8 N., R. 80 W.,
Sec. 6, lot 3;
Sec. 7, lots 2, 3, and NE¼NW¼.
T. 9 N., R. 80 W.,
Sec. 28, SW¼SW¼;
Sec. 31, S½SE¼;
Sec. 32, W½W½NE¼, SW¼NW¼, and SW¼SW¼.
T. 8 N., R. 81 W.,
Sec. 2, SE¼SE¼;
Sec. 12, SE¼NE¼ and NE¼SE¼.
511.42 acres.

2. In exchange for these private lands, the United States obtained title to the following described lands from the parties listed below:

Sixth Principal Meridian, Colorado

a. From: Joan L. Savage
T. 7 S., R. 94 W.,
Sec. 1, S½SW¼ and S½SW¼SE¼;
Sec. 11, lots 3, 4, S½NW¼, and SW¼;
Sec. 12, lots 3, 4, and S½NW¼;
Sec. 15, SW¼SW¼.
610.22 acres.
b. From: Michael D. Hoffman
T. 4 S., R. 85 W., portions of Tracts 42 and 43 North of Interstate Highway 70.
T. 5 S., R. 85 W., portions of Tracts 45A, 47, 50 and 52 North of Interstate Highway 70.
69.04 acres.
c. From: Douglas K. Powers
T. 7 S., R. 87 W.
Sec. 32, metes and bounds parcel within lots 9 and 17;
Sec. 33, metes and bounds parcel within lots 7 and 8.
22.98 acres.
d. From: Harvey T. Stitt, Herman Walsky and David W. Farrand
T. 8 N., R. 80 W.,
Sec. 2, All, except a 13.91 acre parcel for State Highway 14.
624.81 acres.

3. At 10:00 a.m. on August 18, 1989, all the land described in paragraph 2, will be opened to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on August 18, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. No mineral rights were conveyed to the United States with the lands described in 2b and 2d.

4. At 10:00 a.m. on August 18, 1989, the lands in paragraph 2a and 2c will be open to applications and offers under the mineral leasing laws.

5. At 10:00 a.m. on August 18, 1989, the land described in paragraph 2a and 2c will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for determination in local courts.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 89–16492 Filed 7–13–89; 8:45 am]

BILLING CODE 4310–JB–M

[ID–050–09–4212–14; IDI–20397]

Competitive Sale of Public Lands in Blaine County, Idaho

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The land has been examined, and through the development of land use decisions based upon public input, it has been determined that the sale of this parcel is consistent with section 203(a) of the Federal Land Policy and Management Act of 1976. The lands will be offered at no less than the appraised fair market value.

Parcel	Legal description	Acreage	Fair market value
I–20397	T. 1 N., R. 22 E., B.M. Sec. 27: SW4SW4	40	$1,600

When patented, the land will be subject to the following reservations:

A right-of-way for ditches and canals constructed by the United States under the authority of the Act of August 30, 1890, (20 Stat. 291); 43 U.S.C. 945). Oil and gas, and geothermal reserved to the United States.

The lands are hereby segregated from appropriation under the public land laws, including the mining laws, as provided by 43 CFR 2711.1–2(d).

DATE: The sale offering will be on Friday, September 15, 1989 at 10:00 a.m. If no qualified bids are received at this offering, the parcel will be made available each Friday, excepting holidays, until December 31, 1989, at which time the sale will be cancelled.

ADDRESS: Sale will be held at the Bureau of Land Management, Shoshone District Office, 400 West F Street, Shoshone, Idaho 83352.

Sale Procedures: Only sealed bids will be accepted. The bid must be sealed in an envelope with the date and the serial number of the parcel being bid upon in the lower left-hand corner on the front of the envelope.

Bid must be received in this office no later than 10:00 a.m. on September 15, 1989. If two or more valid bids are equal and are the high bid, a supplemental oral bid in a minimum of $50.00 increments will be held to determine the successful bidder. Any participants who submitted a valid bid in the sealed bidding may participate in the oral bidding. A valid bid will constittue an application to purchase that portion of the mineral estate of no known value. A thirty percent (30%) deposit of the bid price (nor appraised price) must accompany each bid as well as a separate and additional $50.00 to process the mineral purchase application. Fees must be paid by certified check, money order, bank draft or cashier's cashier's check only.

Federal law requires that bidders be a U.S. citizen 18 years of age or older, or, in the case of a corporation, subject to the laws of any State of the U.S. Proof of citizenship shall accompany the bid. The remainder of the full price bid shall be paid within 180 days of the date of the sale. Failure to pay the full price within the 180 days shall disqualify the

apparent high bidder and cause the bid deposit to be forfeited to the BLM.

SUPPLEMENTAL INFORMATION: Contact the Monument Resource Area Manager or Realty Specialist at the District Office, or phone at (208) 886–2206.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager regarding the proposed action.

Comments will be evaluated and the proposed action may be vacated, modified or affirmed. In the absence of any objections, this realty action will become the final decision of the Department.

Date: July 7, 1989.

K Lynn Bennett,

Shoshone District Manager.

[FR Doc. 89–16519 Filed 7–13–89; 8:45 am]

BILLING CODE 4310–GG–M

[UT–060–4410–08]

Resource Management Plan; San Juan Resource Area, UT

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of availability of proposed resource management plan.

SUMMARY: The proposed resource management plan (RMP) for the San Juan Resource Area, Moab District, Utah is available for distribution to the public, Federal, state and local agencies, and Indian tribes. The RMP will guide management of the public lands and resources in the San Juan Resource Area, Bureau of Land Management (BLM).

The proposed RMP would provide comprehensive management for public lands and resources on 1.8 million acres of public land in San Juan County, Utah. It would designate ten Areas of Critical Environmental Concern (ACECs). The special management designations are summarized in the accompanying table.

A 30-day protest period on the proposed RMP will commence with publication of Notice of Availability in the **Federal Register**. The RMP will be implemented after publication of a separate Record of Decision and Final RMP.

FOR FURTHER INFORMATION CONTACT: Ed Scherick, San Juan Resource Area Manager, BLM, Box 7, Monticello, Utah 84535; (801) 587–2141.

SUPPLEMENTAL INFORMATION: The proposed resource management plan (PRMP) was first issued in September 1987 as the proposed RMP and final environmental impact statement (EIS). Because of the complexity of issues and the agency's concern for adequate public involvement an additional comment period was allowed on the 1987 document. Some changes were made to the PRMP as a result of the additional comment period. These changes were made to improve clarity of the document and BLM management intentions of lands. None of the changes would result in a change to the impact analysis in the EIS or require new analysis.

This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR Part 1610. The proposed RMP is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests must be received by the Director of the BLM, 18th and C Streets, NW., Washington, DC 20240, within 30 days after the date of publication of Notice of Availability for the proposed Resources Management Plan.

James M. Parker,

State Director.

SAN JUAN PROPOSED RMP ACECs

Name of ACEC	Public land acres	Critical value protected	Summary of special conditions on surface use
Akali Ridge	35,890	Cultural resources	Cultural properties protected from surface use; ORV use limited to existing routes.
Bridger Jack Mesa	5,290	Relict plant communities	No surface occupancy; no grazing; closed to ORV use.
Butler Wash	13,870	Scenic values	No surface occupancy, exception may apply; mineral entry with approved plan; closed to ORVC use.
Cedar Mesa	323,760		
Grand Gulch Special Emphasis Area	49,130		
Valley of the Gods Special Emphasis Area	36,800		
Primitive Recreation Opportunity Areas	21,120	Cultural resources, scenic and natural values	Cultural properties protected from surface use; ORV use limited to designaged routes. Grand Gulch: closed to leasing; segregated from mineral entry; closed to ORV use. Valley of the Gods: no surface occupancy, exception may apply; mineral entry with approved plan; ORV use limited to designated routes. Primitive Recreation: no surface occupancy; segregated from mineral entry; closed to ORV use.
Dark Canyon	82,040	Scenic and natural values	Closed to leasing; segregated from mineral entry; no grazing except Fable Valley; closed to ORV use.
Hovenweep	1,500		
Cajon Pond Special Emphasis Area	10		
Visual Emphasis Zone	880	Cultural resources, waterfowl habitat	Cultural properties protected from surface use; ORV use limited to designated routes. In special emphasis areas: no surface occupancy; grazing use limited and seasonal conditions on surface use (Cajon Pond)
Indian Creek	13,100	Scenic values	No surface occupancy; exception may apply; mineral entry with approved plan; closed to ORV use.
Lavender Mesa	640	Relict plant communities	No surface occupancy; no grazing; closed to ORV use.
Scenic Highway Corridor	78,390	Scenic values	No surface occupancy; exception may apply; mineral entry with approved plan; ORV use limited to existing routes.
Shay Canyon	1,770		

SAN JUAN PROPOSED RMP ACECs—Continued

Name of ACEC	Public land acres	Critical value protected	Summary of special conditions on surface use
Upper Indian Creek Special Emphasis Area	200	Cultural resources, riparian habitat	Cultural properties protected from surface use; ORV use limited to designated routes. In special emphasis area: managed to enhance riparian/aquatic and fishery habitats.

[FR Doc. 89-16513 Filed 7-13-89; 8:45 am]
BILLING CODE 4310-DQ-M

Fish & Wildlife Service

Intent To Prepare a Programmatic Environmental Impact Statement on the Administration and Management of the Pittman-Robertson Federal Aid in Wildlife Restoration Program and the Dingell-Johnson Federal Aid in Sport Fish Restoration Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary for the preparation of an Environmental Impact Statement for the Federal Aid in Wildlife Restoration Program and the Federal Aid in Sport Fish Restoration Program as amended by the Deficit Reduction Act of 1984. The area involved includes all 50 States, 5 Territories and the District of Columbia. Public meetings will be held in the vicinity of Service headquarters in Washington, DC and, if appropriate or requested, in the 7 Service Regional Offices. Further notice will be provided in the **Federal Register** and by separate notification on the location and time of public meetings. This notice is being furnished as required by the National Environmental Policy Act regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comment and participation in this scoping process are solicited.

DATES: Written comments should be received no later than September 12, 1989.

In addition to the Washington, DC area, public meetings may be held in the proximity of one or more of the following Service Regional Offices:

Denver, Colorado, Anchorage, Alaska, Atlanta, Georgia, Minneapolis, Minnesota, Portland, Oregon, Albuquerque, New Mexico, Boston, Massachusetts.

ADDRESS: Comments should be addressed to: Director, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phillip Agee, Wildlife Biologist, U.S. Fish and Wildlife Service, Division of Federal Aid, Mail Stop 322 ARLSQ, 18th & C Streets, NW., Washington, DC 20240, Telephone: 703/358-2156.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service proposes to prepare an Environmental Impact Statement which will update and supersede the document entitled "Environmental Statement—Operation of the Federal Aid in Sport Fish and Wildlife Restoration Program" which was published in 1978. The analysis of environmental impacts will consider actions to be carried out by the 50 States, Guam, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa and the District of Columbia, with funding assistance by the Pittman-Robertson Federal Aid in Wildlife Restoration Act (Pub. L. 75-415 (50 Stat. 917)) or the Dingell-Johnson Federal Aid in Sport Fish Restoration Act (Pub. L. 81-681 (64 Stat. 430) as amended (16 U.S.C. 777-777k)). The existing regulations for implementing these Acts are found in 50 CFR Part 80.

Federal funds utilized in this program are derived from excise taxes and fees which are levied on products employed in hunting, fishing, shooting and boating. The resulting revenue is allocated annually among the States in conformance with statutory formulae based on geographic areas and numbers of licensed hunters and fishermen and among the Territories and insular possessions listed above based on prescribed percentage shares.

A State may propose specific activities within prescribed categories (land acquisition, development, research, surveys and inventories, hunter education, boating facilities, etc.). If the Service, acting on behalf of the Secretary, finds the proposal to be substantial in character and design, the State may proceed with accomplishing the activity, using non-Federal funds. The State may then claim reimbursement of up to 75 percent of these outlays—territories and insular possessions may claim up to 100 percent—from the grant allocation.

The States use of funds from these two assistance programs during fiscal years 1985, 1986 and 1987 are summarized as follows:

Activity	Funds ($1000) and percent of total expended			
	Pittman-Robertson	Percent	Dingell-Johnson	Percent
Hunter education	$23,242	9		
Land acquisition	15,891	6	3,463	2
Development	30,185	11	31,055	20
Surveys and inventories	45,940	17	50,899	36
Research	28,230	11	82,139	24
Technical guidance	9,773	4	6,725	5
Operation and maintenance	87,240	33	10,508	5
Planning	3,221	1	2,544	2
Administration	22,698	8	9,524	6

It is not possible to specify with certainty the actions that will characterize this program in years ahead since the States are the primary determinants in the selection of these actions. For this Environmental Impact Statement, anticipated activities will be based on the expectations of a panel of State officials and on records from recent years but with modifications to accommodate any known trends and legislative redirections.

The environmental impacts produced by these programs are believed to be primarily beneficial. Such impacts include the maintenance of lands in a more or less natural state, the restoration and maintenance of fish and wildlife species and providing for a sustained program of public recreation and education. However, the execution of these programs may result in other impacts, such as altering certain habitats and animal populations, flooding or burning certain vegetation areas and affecting changes in local economic activity by altering the status or availability of fish and wildlife.

Many of the fish and wildlife species given management attention under this program are subjected to harvest by hunters, fishermen and trappers. Such harvests, if properly conceived and carried out, are considered legitimate and biologically defensible parts of fish and wildlife management. However, this activity is a State responsibility performed upon action by the State's policy-making body. Hence, hunting and fishing are not program activities and will not be addressed in this Environmental Impact Statement.

Since their inception in 1937 and 1950, the Wildlife Restoration and Sport Fish Restoration Acts, respectively, have been primary forces in the recovery of numerous wildlife and fish species. During early years, managers focused almost exclusively on species of interest to hunters and fishermen. While this was consistent with the sources of funds and the demands of the public initially, this focus has broadened somewhat.

The States currently direct all of their Dingell-Johnson funds (as required by the Dingell-Johnson Act) and roughly 80 percent of their Pittman-Robertson funds to harvested species. There may be a need for even greater attention to: (1) The management of non-harvested species, (2) the education of the public regarding natural systems, and (3) the facilitation of a broad-spectrum program of related public recreation with greater attention to the needs of urban and suburban areas. This Environmental Impact Statement will consider alternatives formulated to evaluate the environmental consequences of pursuing such emphases. Under the present laws, changes deemed necessary would probably be accomplished through a more stringent interpretation of "substantiality in character and design" or by revision of the Secretary's Rules and Regulations. The following draft alternatives will be examined for possible refinement or revision during the scoping process.

Alternative #1 Federal requirements would mandate that at least 50 percent of each year's Pittman-Robertson funds expended by the State would be on waterfowl habitat or in pursuit of the North American Waterfowl Management Plan and at least 50 percent of each year's Dingell-Johnson funds expended by the State would be on the protection, maintenance and improvement of aquatic habitats, including water quality.

Alternative #2 At least 50 percent of each year's Pittman-Robertson funds would be expended on restoring and enhancing terrestrial ecosystems without reference to hunted/non-hunted status. At least 50 percent of each year's Dingell-Johnson funds would be expended on restoring and enhancing aquatic ecosystems without reference to sport fisheries.

Alternative #3 All projects funded would be required to be free of practices considered offensive to significant portions of the public (e.g., marsh burning, the use of fish toxicants, the use of herbicides or insecticides, research resulting in death or stress on animals, etc.).

Alternative #4 By 1995, all States would be required to have in place a comprehensive plan or other systematic process for setting work priorities consistent with human needs and the status of the resource base. Thereafter, all requirements and prohibitions on activities would be repealed and the Federal role would be limited to allocating funds and, monitoring compliance with Federal statutes.

Through the scoping process, the Service will seek public input on the following:

1. New or revised alternatives to be considered.
2. Impacts to be evaluated for each of the alternatives considered.
3. Comments (favorable or unfavorable) on the Pittman-Robertson or Dingell-Johnson program in its present configuration.
4. Comments on the adequacy or inadequacy of present funding levels.
5. If funding levels are inadequate, proposals for source(s) of additional funds.

The public is encouraged to participate in this process by providing their views on the administration and management of this program and by providing options or alternatives to be considered and evaluated in the programmatic Environmental Impact Statement.

The environmental review of this program will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331, *et seq.*), National Environmental Policy Act regulations (40 CFR Parts 1500–1508), other appropriate Federal laws and regulations, and Service procedures for compliance with those regulations.

We estimate the Draft Environmental Impact Statement will be made available to the public by October 31, 1990.

Date: July 5, 1989.

Richard N. Smith,

Acting Director.

[FR Doc. 89–16479 Filed 7–13–89; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31491]

Burlington Northern Railroad Co.—Trackage Rights Exemption—the Atchison, Topeka and Santa Fe Railway Co.

The Atchison, Topeka and Santa Fe Railway Company has agreed to grant overhead trackage rights to Burlington Northern Railroad Company between milepost 552.33, at Amarillo (East Tower), and milepost 676.51, at Lubbock, a distance of 124.2 miles, in Potter, Randall, Swisher, Plainview, and Lubbock Counties, TX. The trackage rights became effective on June 27, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction. Pleadings must be filed with the Commission and served on: Steven A. Brigance, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights— BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino*

Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: July 7, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-16440 Filed 7-13-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31489]

Consolidated Rail Corp.—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc., has agreed to grant overhead trackage rights to Consolidated Rail Corporation: (a) Between milepost 176.5 at or near Terre Haute, IN, and milepost 181.98 at or near Spring Hill, IN, and "head and tail room" on the main track to enter and exit through the crossover at milepost 182.02, a distance of approximately 5.48 miles; and (b) between the point of connection with the main line at milepost 181.98, and the point of connection with the Chinook Coal Mine track at Riley, IN, a distance of approximately 6.77 miles. The total distance of the trackage rights is approximately 12.25 miles. The trackage rights were to become effective on or after June 26, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction. Comments must be filed with the Commission and served on: John J. Paylor, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959, and C.M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: July 6, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-16441 Filed 7-13-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 208X)]

Chicago and North Western Transportation Co—Abandonment Exemption—Dallas, Boone and Greene Counties, IA

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 9.0-mile line of railroad between milepost 275.5 near Perry, IA, and milepost 266.5 near Rippey, IA, in Dallas, Boone, and Greene Counties, IA

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 13, 1989, (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 24, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 3, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert T. Opal, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by July 19, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 7, 1989.

By the Commission, Jane F. MacKall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-16442 Filed 7-13-89; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

[Docket Nos. AB-1; Sub-No. 226X and AB-284; Sub-No. 2X]

Chicago and North Western Transportation Co.—Abandonment Exemption—in Blackhawk County, IA and Iowa Northern Railway Co.—Abandonment and Discontinuance of Trackage Rights Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C.

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

10903, *et seq.*, the abandonment by Chicago and North Western Transportation Company (C&NW) of a 1-mile line of railroad, the discontinuance by Iowa Northern Railway Company (INRC) of trackage rights operations over an 0.8-mile segment of the CNW line, and the abandonment by INRC of a 0.9-mile line of railroad all located in Waterloo, Blackhawk County, IA, subject to standard labor protective conditions.

DATES: This exemption will be effective on July 19, 1989.

ADDRESSES: Send pleadings referring to Docket Nos. AB–1 No. 226X) and AB–284 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representatives:
Myles L. Tobin, One North Western Center, Chicago, IL 60606.
T. Scott Bannister, 1300 Des Moines Building, 6th and Locust, Des Moines, IA 50309.

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, call or pick up in person from: Dynamic Concepts, Inc, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4537/4539. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: July 7, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Andre was absent and did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 89–16562 Filed 7–13–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or ogranizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/ MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Bureau of Labor Statistics
Manual for Developing Local Area Unemployment Statistics,
1220–0017, BLS 3040, LAUS–2, LAUS–3
Monthly and Annually
State Governments
67,680 responses; 137,249 hours; 3 forms

Local Area Unemployment Statistics are used as indicators of local economic conditions, as a mechanism to qualify areas for various economic assistance, and as an allocator for existing job training and economic assistance program funding.

Extension

Employment Standards Administration
Employment Information Forms
1215–0001; WH–3
On occasion
Individuals or households
34,000 respondents; 11,333 total hours; 20 min. per response; 2 forms

Forms WH–2 and WH–3(SP) are used to obtain information (i.e. complaints) from individuals about alleged violations of the various laws enforced by the Wage-Hour Division. It is also used as a screening device to determine whether the Division has jurisdiction in hankling alleged violations.

Extension

Employment and Training Administration
Job Corps Placement and Assistance Record
1205–0035; ETA 678
On occasion
State or local governments; Businesses or other for-profit;
Non-profit institutions
60,000 respondents; 43,800 total hours; 44 minutes; 1 form

This information is used in evaluating overall program effectiveness. It provides placement agencies with basic information regarding terminated corpsmembers and provides the Department of Labor with information on the status of corpsmembers subsequent to termination from the program.

Signed at Washington, DC, this 10th day of July, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–16522 Filed 7–13–89; 8:45 am]

BILLING CODE 4510–24–M

Commission on Workforce Quality and Labor Market Efficiency; Meeting

The Commission on Workforce Quality and Labor Market Efficiency was established under the provisions of the Federal Advisory Committee Act to increase the excellence of the American workforce.

A meeting of the Commission on Workforce Quality and Labor Market

Efficiency will be held on August 1, 1989, commencing at 1:00 p.m., at the National Alliance of Business, 1201 New York Avenue, NW., 7th Floor, Washington, DC. This meeting is open to the public; ample seating is available.

The purpose of the meeting is to review the final report. For additional information, contact: Laurie J. Bassi, Deputy Director, Commission on Workforce Quality and Labor Market Efficiency, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-2313, Washington, DC 20210, telephone (202) 523-6836.

Individuals or organizations wishing to submit written statements to the Commission should send 40 copies to the address given above. Papers will be accepted and included in the record of the meeting if received on or before July 26, 1989.

On September 1, 1989, and thereafter, official records of the meeting will be available for public inspection at: U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-2313, Washington, DC.

Signed at Washington, DC, this 11th day of July 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89-16523 Filed 7-13-89; 8:45 am]

BILLING CODE 4516-23-M

Employment and Training Administration

Pool Well Servicing Co; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the matter of TA-W-21,302, Keene, North Dakota, TA-W-21,302A, All other locations in North Dakota, TA-W-21,302B, All locations in Colorado, TA-W-21,302C, All locations in Wyoming, TA-W-21,302D, All locations in Utah.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 9, 1988 applicable to all workers of Pool Well Servicing Company, Keene, North Dakota.

Based on new information from the company, additional workers were separated from Pool Well Servicing Company in other locations of North Dakota and in the States of Colorado, Wyoming and Utah. The notice for Pool Well Servicing Company, therefore, is amended by including all locations inthe above mentioned States.

The amended notice applicable to TA-W-21,302 is issued as follows:

All workers of Pool Well Servicing Company, Keene, North Dakota and in all other locations of North Dakota and in all locations in the States of Colorado, Wyoming, and Utah who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-16524 Filed 7-13-89; 8:45 am]

BILLING CODE 4510-30-M

Viking Drilling Fluids; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-21,495, Littleton, Colorado, TA-W-21,495A, All other locations in Colorado, TA-W-21,495B, All locations in North Dakota, TA-W-21,495C, All locations in Wyoming, TA-W-21,495D, All locations in Nebraska, TA-W-21,495E, All locations in Washington.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 20, 1988 applicable to all workers of Viking Drilling Fluids, Littleton, Colorado.

Based on new information from the company, additional workers were separated from Viking Drilling Fluids in other locations of Colorado and in the States of North Dakota, Wyoming, Nebraska and Washington. The notice for Viking Drilling Fluids, therefore, is amended by including all locations in the above mentioned States.

The amended notice applicable to TA-W-21,495 is issued as follows:

All workers of Viking Drilling Fluids, Littleton, Colorado, and in all other locations of Colorado and in all locations in the States of North Dakota, Wyoming, Nebraska and Washington who became totally or partially separated from employment on or after January 1, 1986 and before January 31, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of June 1989.

Stephen A. Wander,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-16525 Filed 7-13-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-7-M]

Domtar Industries, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Domtar Industries, Inc., P.O. Box 10, Lydia, Louisiana 70569 has filed a petition to modify the application of 30 CFR 57.22304(b) (approved equipment) (II-A mines) to its Cote Blanche Mine (I.D. No. 16-00358) located in St. Mary Parish, Louisiana. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the pettioner's statements follows:

1. The petition concerns the requirement that while cutting or drilling is in progress, equipment not approved by MSHA should remain at least 100 feet from the face or bench being mined.

2. The steepness of the incline tunnel presents a set of hazards that do not exist in normal operations. If the mining equipment used in this project, weighing up to 10 tons, were to malfunction and "run away" down the slope, serious damage or injury could result. Therefore, the most positive, practical and readily available safeguard would be to position some device behind the drill to stop it, if the power failed and the brakes were overcome.

3. As an alternate method, petitioner proposes to locate a Cat 988 front end loader close enough to the drill to stop it quickly (closer than 100 feet) and substantial enough to handle a 10 ton mass moving downhill.

4. In support of this request, petitioner proposes to:

(a) Select an area for the incline known, by experience, to be "gas-free";

(b) Move the non-permissible Cat into position, crossways in the drift. This presents the rubber tires to the drill;

(c) Turn off the machine, disconnecting the battery and preventing any spark potential;

(d) Allow the Cat to sit for 30 minutes, bringing the engine and exhaust to a point where they are no more than warm to the touch; and

(e) Start the drill.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson

Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 14, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

Date: June 29, 1989.

[FR Doc. 89-16526 Filed 7-13-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Meeting

AGENCY: National Commission to Prevent Infant Mortality.

ACTION: Notice of meeting.

SUMMARY: In accordance with Pub. L. 99-660, notice is hereby given of a meeting of the National Commission to Prevent Infant Mortality. The purpose of the meeting is to discuss the workplan of the Commission. A press conference will be held immediately following the Commission meeting at 11:00 AM for the release of a Commission publication entitled "HOME VISITING: OPENING DOORS FOR AMERICA'S PREGNANT WOMEN AND CHILDREN".

DATE: July 18, 1989.

TIME: 8:30 a.m.–11:00 a.m.

ADDRESS: The Russell Senate Office Bldg., Rm. 385, 1st Street & Constitution Ave., NE., Washington, DC 20510.

FOR FURTHER INFORMATION CONTACT: Betty Plamer at 202–472–1364.

Rae K. Grad,

Executive Director.

[FR Doc. 89-16575 Filed 7-13-89; 8:45 am]

BILLING CODE 6820-SK-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

July 5, 1989.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on August 10–11, 1989.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on August 10–11, 1989, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on August 10, 1989, will be as follows:

Committee Meetings

8:30–9:30 a.m.	Coffee for Council Members—Room 527 (Open to the Public)
9:30–10:30 a.m.	Committee Meetings—Policy Discussion Education Programs—Room M–14 Fellowship Programs—Room 316–2 General Programs—Room 415 Research Programs/Preservation Grants—Room 315 State Programs/Challenge Grants—Room M–07
10:30 a.m. until Adjourned	Consideration of specific applications (Closed to the Public for the reasons stated above)

The morning session on August 11, 1989 will convene at 9:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending the meeting will be served from 8:30–9:00 a.m.)

Minutes of the Previous Meeting

Reports

A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Application Report, Matching Report and Status of Fiscal Year 1989 Funds
E. Status of Fiscal Year 1990 Appropriation Request
F. Reauthorization
G. Committee Reports on Policy and General Matters
   1. Education Programs
   2. Fellowship Programs
   3. General Programs
   4. Preservation Grants
   5. State Programs
   6. Challenge Grants
   7. Jefferson Lecture
   8. Research Programs

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer,

Washington, DC 20506, or call area code (202) 786–0322.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89–16514 Filed 7–13–89; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in San Bernardino, California; Railroad Accident

In connection with the investigation of the derailment of Southern Pacific Transportation Co. Freight Train, May 12, 1989, and subsequent Calnev Petroleum Pipeline Rupture, May 25, 1989, at San Bernardino, California, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (local time), on Monday, August 28, 1989, in the San Bernardino Hilton Hotel, 285 East Hospitality Lane, San Bernardino, California 92408. For more information contact Ted Lopatkiewicz, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202) 382–6605.

Bea Hardesty,

Federal Register Liaison Officer.

July 10, 1989.

[FR Doc. 89–16510 Filed 7–13–89; 8:45 am]

BILLING CODE 1533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–443–OL and 50–444–OL; Offsite Emergency Planning]

Public Service Company of New Hampshire, et al. [Seabrook Station, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for that portion of the offsite emergency planning phase of this operating license proceeding concerned with the New Hampshire Radiological Emergency Response Plan. As reconstituted, this Appeal Board will consist of the following members: G. Paul Bollwerk III, Chairman; Alan S. Rosenthal; Howard A. Wilber.

Dated: July 10, 1989.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 89–16470 Filed 7–13–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 270–322]

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Revision

Rule 144A

Notice is hereby given that pursaunt to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval revised Rule 144A which would provide a safe harbor exemption from the registration requirements of the Securities Act of 1933 for resale of securities of specified qualified institutional investors. The proposed Rule is not a form but would cause reductions in the number of Forms S–1, S–2, S–3, S–4, S–11, S–18, F–1, F–2, F–3, F–4, 10–K, 10–Q, 8–K, 20–F and 6–K filed with the Commission.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commisson's rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0065), Room 3208, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

July 10, 1989.

[FR Doc. 89–16551 Filed 7–13–89; 8:45 am]

BILLING CODE 8010–01–M

[File No. 270–112]

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Revision

Form 144

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval revised amendments to Rule 144 (17 CFR 230.144), which would alter the manner in which the holding period for restricted securities is calculated. The revised amendments should reduce the number of filings on Form 144, which is a notification of resale of securities without registration in reliance on Rule 144. With respect to Form 144, approximately 34,818 respondents are effected at an estimated annual burden of two hours per response. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of the Commission's rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission's rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0101), Room 3208, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

July 10, 1989.

[FR Doc. 89–16549 Filed 7–13–89; 8:45 am]

BILLING CODE 8010–01–M

[New, Form F–7, File No. 270–331 et. al.]

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth Fogash (202) 272–2142.

Upon written request copy available from: Securities and Exchange

Commission, Public Reference Branch, Washington, DC 20549–1002.

In the matter of New, Form F–7, File No. 270–331, New, Form F–8, File No. 270–332, New, Form F–9, File No. 270–333, New, Form F–10, File No. 270–334, New, Form 40–F, File No. 270–335, New, Form F–X, File No. 270–336, New, Form T–5, File No. 270–337, New, Sch. 14D–1F, File No. 270–338, New, Sch. 14D–9F, File No. 270–339, New, Sch. 13E–4F, File No. 270–340.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval new forms and schedules under the Securities Act of 1933 (1933 Act), the Securities Exchange Act of 1934 (1934 Act), and the Trust Indenture Act of 1939, to be adopted as part of the Commission's multijurisdictional disclosure system. The proposed forms and schedules are as follows:

Paperwork project No.	
3235–040G	Form F–7, registration of securities offered upon the exercise of rights granted to existing security holders of the registrant, (1933 Act),
3235–040H	Form F–8, registration of securities to be issued in an exchange offer, (1933 Act),
3235–040I	Form F–9, registration of investment grade non-convertible debt or preferred securities, (1933 Act),
3235–040J	Form F–10, general registration of securities, (1933 Act),
3235–040K	Form F–X, appointment of agent for service of process, (1933 Act),
3235–040L	Form 40–F, registration and reporting form, (1934 Act),
3235–040M	Schedules 14D–1F, third party tender offer form, (1934 Act)
3235–040N	14D–9F, tender offer target response form, (1934 Act)
3235–040P	13E–4F, issuer tender offer form, (1934 Act), and
3235–040Q	Form T–5, application form for exemption filed pursuant to Rule 4d–1 under the Trust Indenture Act of 1939.

The staff estimates that up to 100 Canadian companies may avail themselves of the new forms and schedules per year at an estimated average burden of two hours per response per form or schedule. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

July 10, 1989.

[FR Doc. 89–16550 Filed 7–13–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27010; File No. SR–BSE–89–3]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Amendments to the Fee Schedules for Floor Related Charges

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 June 23, 1989, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The BSE, pursuant to Rule 19b–4 of the Act, has submitted this proposed rule change, effective July 1, 1989, to amend certain fixed and variable fee schedules in order to address a disparity that exists between fixed revenues and fixed expenses by reducing transaction fees for floor members, unbundling the monthly floor post fee into its component parts and passing through Quotron expenses to the member firms. The Exchange proposes to amend the aforementioned floor related charges as indicated in the chart below.

BOSTON STOCK EXCHANGE FLOOR FEES

	Fee Rate	
	Current	Proposed
Variable transaction fees:		
1—Round and odd lot trades:		
Round lot rate	$1.25	
Odd lot rate	.25	
Round & Odd lots		$.75
2—Its fees, rate per outbound share	$.005	$.003
Fixed fees:		
1—Post fees:		
Post fee	$500	
Occupancy (per post)		$400
Technology fee (per BEACON terminal)		
Specialist		200
Floor Broker		50
Members' Dues		133
2—Quotron expense 100% pass-through of all Quotron related costs		

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 BSE included statements concerning the purpose of and statutory 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 place specified in Item IV below. The Exchange 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

(a) The BSE has proposed to amend certain fixed and variable fees to reduce fees for floor members and to encourage members to direct additional order flow to the BSE.

(b) The basis for the proposed change is Section 6(b)(4) of the Act because the proposal facilitates the equitable allocation of reasonable fees among floor Exchange members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were solicited from the Fee Committee and the Executive Committee of the Board of Governors. No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because of the foregoing rule change establishes or changes fees imposed by the Exchange it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the File No. SR–BSE–89–3 and should be submitted by August 4, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 10, 1989.

[FR Doc. 89–16553 Filed 7–13–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27009; File No. SR–PHLX–89–38]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Clocking of Transaction Tickets

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 June 26, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act,[1] hereby proposes to adopt an equity floor procedure advice with respect to the clocking of transaction tickets. The text of the advice is proposed as follows:

[1] 17 CFR 240.19b–4 (1988).

E–5 Clocked Tickets

Floor Brokers are responsible for recording the time of receipt on the front of the ticket for each order received on the floor and the time of execution on the reverse side of the ticket for each order they are representing in the crowd at the time of execution.

Specialists are responsible for recording the time of execution on the reverse side of the ticket for each order executed off their book.

Fine Schedule (Violations compound daily only when they occur within one year of each other.)

1st Occurrence, $50.00
2nd Occurrence, $100.00
3rd Occurrence, $200.00
4th and Thereafter Occurrence—Sanction is Discretionary with Business Conduct Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to set out automatic sanctions for violation by floor brokers and specialists of their existing obligation to time stamp order memoranda and transaction tickets. This proposed rule change was approved by the Exchange's Floor Procedure Committee at its May 25, 1989 meeting and recommended for approval and authority to file as a rule change to the Board of Governors at their regular meeting on June 21, 1989. This is part of an on-going effort started earlier this year to develop a minor disciplinary infraction program to expedite the handling of routine, minor infractions on the Phlx equity floor similar to that of the Floor Procedure Advices in place with respect to the options and foreign currency options floors at the Phlx.

The proposed rule change is based on section 6(b)(5) of the Act in that it is designed to further promote the

mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–89–38 and should be submitted by August 4, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 10, 1989.

[FR Doc. 89–16554 Filed 7–13–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27006; File Nos. SR–GSCC–89–04; SR–GSCC–89–05; SR–GSCC–89–06; SR–GSCC–8907]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes By The Government Securities Clearing Corporation Regarding Its Proposed Netting System

I. Introduction and Summary

The Government Securities Clearing Corporation ("GSCC") has filed, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] proposed rule changes regarding the following matters: membership standards (SR–GSCC–89–04); clearing fund and loss allocation rules (SR–GSCC–89–05); insolvency and ceasing to act rules (SR–GSCC–89–06); and netting system and securities and money settlement rules (SR–GSCC–89–07).[2] The Commission published notice of the proposals in the **Federal Register**.[3] GSCC subsequently amended its proposals.[4] No comments were received regarding these proposals. This Order approves the proposed rule changes.

On December 16, 1987, GSCC filed an application for registration as a clearing agency to provide comparison, clearance and settlement services for members in government and agency securities. On May 24, 1988, the Commission temporarily approved GSCC's application for registration as a clearing agency under Section 17A of the Act,[5] and authorized GSCC to provide trade comparison services to its members in order to assist those members in settling, among themselves and outside GSCC facilities, delivery and payment obligations arising from trades GSCC reported to its members as compared.[6] The proposals under consideration today would authorize GSCC to complete the basic core of its services, establish membership and access restrictions for its netting and settlement systems, and implement a system of safeguards designed to limit foreseeable financial exposure to GSCC and its members that is inherent to the operation of a netting by novation settlement system.[7]

II. Description

A. GSCC's Proposed Netting Service

GSCC proposes to establish a netting and settlement system ("netting system") for member trades in U.S. Treasury and agency securities for settlement of compared trades submitted by GSCC netting members on a next-day basis in same-day funds. To implement this sytem, GSCC proposes to add three new rules, which will set forth operational requirements for the system and the respective rights and obligations of GSCC and its members.[8] New GSCC Rule 11 generally prescribes the netting process, including the calculation of net positions, the allocation of deliver and receive obligations and the novation of obligations. New GSCC Rule 12 contains procedures for the settlement of net positions with GSCC through designated clearing banks. New GSCC Rule 13 contains procedures for the calculation and payment of funds-only obligations arising out of the netting process.

1. Trades Eligible for Netting

Only eligible trades will enter the GSCC netting system. A trade is eligible

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[1] 15 U.S.C. 78s(b)(1) (1981).

[2] GSCC filed GSCC–89–04 on April 27, 1989; GSCC–89–05 and GSCC–89–06 on May 5, 1989; and GSCC–89–07 on May 12, 1989.

[3] For GSCC–89–04, *see* Securities Exchange Act Release No. 26816 (May 12, 1989), 54 FR 21702. For GSCC–89–05, *see* Securities Exchange Act Release No. 26820 (May 15, 1989), 54 FR 21705. For GSCC–89–06, *see* Securities Exchange Act Release No. 26819 (May 15, 1989), 54 FR 21704. For GSCC–89–07, *see* Securities Exchange Act Release No. 26817 (May 12, 1989), 54 FR 21701.

[4] GSCC amended its proposed rule filings on the following dates: June 28, 1989, GSCC–89–04 (proposed Rules 2 & 15, establishing voluntary termination procedures for participants, and making other technical and conforming changes), GSCC–89–05 (proposed Rule 4, clarifying the calculation of a netting member's required fund deposit; elaborating on the conditions that will require the placement of a member on surveillance status; establishing the loss allocation procedures, and proposing other technical and conforming changes), GSCC–89–06 (proposed Rules 18 & 20, setting forth technical and conforming changes regarding the netting system); June 29, 1989, GSCC–89–05 (proposed Rule 4, making changes in order to conform the rule with prior rule amendments); June 29, 1989, GSCC–89–05 (proposed Rules 1 & 4, proposing a new margin factor schedule, *see infra*, at 25).

[5] 15 U.S.C. 78q–1 (1981).

[6] Securities Exchange Act Release No. 25740 (May 31, 1988), 53 FR 19639 ("GSCC Temporary Registration Order").

[7] Netting by novation is the process of replacing a contract between two parties by interposing a third party as an intermediary creditor/debtor between the two parties. The original contractual obligation is satisfied and discharged, and replaced by contracts between the third party and each of the original parties. As applied to GSCC's netting system, this means that after the day's trades are netted, the system will substitute GSCC as the buyer to every seller and the seller to every buyer.

[8] The proposals also will add or modify several definitions that appear in GSCC Rule 1.

for entry into the netting system if it meets all of the following requirements:

(1) The trade data has been compared by GSCC and listed on a comparison report made available to GSCC netting members,

(2) Netting of the trade will occur on or before its contractual settlement date,

(3) Both parties to the trade are netting members [9] ("members"), and

(4) The security is an eligible security [10] for netting purposes.

Netting members must submit each eligible trade for comparison and netting.

2. The Netting Process

GSCC will net member trades, for each eligible security with a separate CUSIP number,[11] by adding together the par amount of each purchase of that security and the par amount of each sale of that security by a member, resulting in a net long position, if purchases exceed sales; a net short position, if sales exceed purchases; and a net flat position, if purchases equal sales. Once GSCC has calculated each member's delivery obligations on a CUSIP-number by CUSIP-number basis, GSCC will match all net long and short positions of members on a CUSIP-number by CUSIP-number basis into sets of receive and deliver instructions. Because there may not always be a net long and short position of equal size, the matching process may result in the creation of more than one receive or deliver obligation for each security with a separate CUSIP number.

On the morning after trade date, members will receive a Funds-Only Settlement Report, a Netted Trade Summary Report and an Open Receive/Deliver Orders Report. The Funds-Only Settlement Report will show the trade adjustment [12] for settling positions, any marks-to-the-market owed for failed positions, [13] and adjustments for coupon, [14] margin, [15] and redemption payments.[16] The Netted Trade Summary Report will inform members what trades entered the netting system and what the resulting net is, including open positions, and provide them with deliver and receive instructions. The Open Receive/Deliver Orders Report will reflect the novation of the trades [17] and the substitution of GSCC as the contra-party to all open netted positions.[18]

3. Settlement of Securities and Money Obligations

a. *Settlement of Funds-Only Obligations.* GSCC's proposed rules will require each member to pay any money obligations, known as "funds-only obligations," reflecting trade adjustments for settling positions, marks-to-the-market for any fail positions and adjustments necessary to account for interest and redemption payments. Under GSCC's proposed rules, a netting member must pay GSCC its funds-only settlement obligations, through the funds wire transfer service maintained by the Federal Reserve Banks ("Fed Funds"), by the later of 10:00 a.m. (e.s.t.) on the business day the payment is due or within two hours after GSCC issues to the member a report detailing the member's payment obligation. A netting member entitled to collect a funds-only settlement amount will receive Fed Funds by the later of 11:00 a.m. (e.s.t.) on the business day when such payment is due or three hours after the report listing such obligation is made available to the member. GSCC is required to pay such amount whether or not it collects payments owing from any other member. GSCC expects to make the reports available at or before 7:00 a.m. (e.s.t.) each day.

If a netting member fails to pay a funds-only settlement amount in a timely manner, GSCC may apply to payment of the unpaid balance: (1) All or a portion of any monies owing by GSCC to the member, and (2) all or a portion of the member's clearing fund deposit or other collateral. The member will be liable to GSCC for costs for any borrowing until the unpaid balance is paid. In addition, GSCC's Board of Directors ("Board") may discipline (*e.g.*, censure or fine) the member, if the Board determines that the failure to pay was done without good cause.[19]

b. *Settlement of Delivery Obligations.* Settlement of securities obligations in GSCC's netting system is designed to operate in harmony with current methods for safekeeping and transferring Government securities. U.S. Treasury securities (bonds, bills, notes and STRIPS [20]) and several U.S. Government agency securities are issued exclusively in book-entry form and are recorded in accounts at Federal Reserve Banks and member depository institutions. These securities can be transferred between member depository institutions (free or against payment) through the wire transfer service operated by Federal Reserve Banks ("Fedwire"). Thus, GSCC has decided that settlement of net obligations between GSCC and its members in GSCC's system will occur through the movement of securities and funds over the Fedwire.

Consistent with industry practice in the government securities market, settlement of net delivery obligations

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[9] A netting member is a GSCC participant who is a member of both the comparison and netting systems.

[10] An eligible netting security is a security that GSCC has designated as eligible for netting. Initially, GSCC will designate certain Treasury notes as eligible netting securities. Subsequently, GSCC expects to make eligible U.S. Treasury bonds and bills, and securities issued by agencies of the U.S. Government. In addition, following various system enhancements (*see infra*, section IV.B.3), GSCC also expects to make eligible when-issued trades and Separate Trading of Registered Interest and Principal of Securities ("STRIPS"), which are separate interests in the interest payments and principal on designated U.S. Treasury long-term bonds and notes.

[11] "CUSIP" is an acronym for the Committee on Uniform Securities Identification Procedures. The CUSIP numbering system was developed by a committee of the American Bankers Association bearing the same name and was created to identify specific securities issues. Each eligible netting security issue has its own separate CUSIP number that GSCC uses in its netting system to group trades for the net.

[12] The trade adjustment is the dollar difference between the contract value and the system value of the securities that comprise a net settlement position on settlement date. *See infra*, section IV.B.3, for a description of system value.

[13] *See infra*, section II.A.4.

[14] The coupon adjustment reflects interest payments a member either owes or is entitled to receive for securities that comprise a fail net settlement position that remains unsettled over an interest payment date.

[15] The margin adjustment reflects money due to or owed by GSCC with regard to the cash portion of a member's clearing fund deposit or cash collateral deposited by the member with GSCC or a third party custodian acting on behalf of GSCC.

[16] The redemption adjustment reflects the difference between the system value and maturity value for securities that comprise a fail net settlement position that remains unsettled over a maturity date.

[17] Novation will occur at the time GSCC makes reports available to GSCC members. Upon novation each member's receive and deliver obligations will be from or to GSCC. The reports will be available when GSCC has completed its processing cycle for the preparation of such reports and has released such reports to GSCC's data output facility, generally between 4 a.m. (Eastern Standard Time ["e.s.t."]) and 7 a.m. (e.s.t.) on the morning after trade date.

[18] During the course of its netting program and for GSCC's use only, GSCC will allocate each member's net delivery obligation to another member's obligation to receive securities. The allocation process will permit GSCC to issue precise instructions to its members and its clearing agent bank concerning the delivery and receipt of securities that the clearing agent bank will receive later in the day during the delivery and payment process. Under GSCC's rules, the allocation process does not modify GSCC' obligation to deliver or receive securities to a netting member or alter the novation of trades that comprise the net settlement position.

[19] GSCC proposed Rule 12 defines "good cause" in this context to mean a casual event or occurrence that the GSCC Board, in its sole discretion, determines was beyond the reasonable control of the netting member. Depending upon the specific circumstances, this may include an extended failure of Fedwire or the inability to gain access to Fedwire by a depository institution acting on behalf of a netting member or GSCC.

between each member and GSCC will be made over Fedwire on the day after trade date. Because GSCC is not, and does not plan to become, a depository institution eligible for direct access to Fedwire facilities, GSCC will obtain access to Fedwire indirectly through designated clearing agent banks acting on its behalf. Members that do not have direct access to Fedwire also will use clearing agent banks to hold their book-entry securities and to effect Fedwire deliveries and payments on their behalf. Settlement will be accomplished through GSCC's designated clearing agent bank, against payment of GSCC's assigned system value for the securities that constitute the net settlement position.[21] Once reports are made available, each member must provide settlement instructions to its clearing agent bank promptly. The member's clearing agent bank will then complete settlement with GSCC's designated clearing agent bank through the simultaneous payment or receipt in Federal Funds at the system value for the eligible netting securities. GSCC will not be obligated to deliver securities to a net long member until GSCC receives from a net short member securities with the same CUSIP number that are at least equal in quantity to the net long position and that have not been allocated for delivery to another member.[22]

GSCC may require netting members to pay or reimburse GSCC for certain financing and other costs that GSCC incurs in operating the netting system. If GSCC is unable to redeliver securities (that GSCC received from a netting member with a net short position) to a netting member with a net long position (*e.g.*, because the securities were delivered to GSCC too late in the day to be redelivered), GSCC may require netting members (*pro rata* based on netting member use of GSCC services) to reimburse GSCC for any costs GSCC incurs as a result of holding the position overnight. GSCC's Board, however, may require a netting member to pay all costs related to financing securities held by GSCC overnight if the Board determines that the member, without good cause, frequently delivered securities to GSCC within time frames that prevented GSCC from redelivering those securities (*e.g.*, within the last few minutes of the day).[23] In addition, GSCC may require a netting member to pay all costs incurred by GSCC where the member has a net long position and fails to take delivery without good cause.[24] Finally, GSCC may require a member to pay all costs for the delivery of securities not at the appropriate system value or securities that have not been designated to be delivered to GSCC.

4. Fails to Deliver and Buy-ins

A net settlement position that does not settle on settlement date will become a fail ("fail net settlement position"). The fail net settlement position will be reported daily to the appropriate member in a fail report until the position is settled. Except in the case of an insolvent member,[25] fail net settlement positions will not be netted with any other deliver or receive obligations; rather, GSCC will maintain the fail net settlement position until its actual settlement.[26]

GSCC will mark-to-the-market fail net settlement positions[27] and will include the mark-to-the-market amount[28] in computing the funds-only payment obligations of netting members (other than inter-dealer brokers).[29] GSCC will mark fail net settlement positions on a daily basis, using that day's system value.[30] GSCC will have the discretion, however, not to collect a mark-to-the-market for a fail net settlement position where the eligible netting securities have been delivered to GSCC but could not be delivered to another member (*i.e.*, GSCC is holding the securities overnight).[31]

GSCC's netting system design assumes netting members will complete their delivery obligations on a timely basis. GSCC's proposed rules anticipate, however, that circumstances may prevent members from completing their delivery obligations on a timely basis and that a member who is entitled to receive securities might seek to compel delivery from GSCC through delivery of a buy-in notice not sooner than 30 calendar days after such member has failed to receive the securities.[32] Because GSCC will not maintain an inventory of eligible securities (indeed, GSCC's system is designed to avoid any such positions), GSCC's proposed rules authorize GSCC to allocate any buy-in notices it receives from a member ("submitting member") to a netting member (or members) who has failed to deliver securities to GSCC. Generally, GSCC will allocate the buy-in notice to the netting member or members ("allocated member") with an open net short position in that CUSIP number equal to or greater in size than the buy-in position that remains unsettled for the longest period of time. Under GSCC's

[21] Settlement of netted positions will be based on the system value of the eligible netting securities. The system value is the product of the amount in dollars equal to the par value of each eligible netting security in the position multiplied by its system price plus any interest that has accrued. The system price is determined for each eligible netting security with a separate CUSIP number and is a uniform price, expressed in dollars per unit of par value, not including accrued interest, based on current market information. Initially, GSCC will calculate the system price as the average price of the trades for the day in each separate CUSIP number security, taking into account the volume of trades at different times during the trading day. In calculating the system price, GSCC may exclude trades executed at prices that are far away from the price of most trades in that CUSIP number security on the particular trading day.

[22] *See supra* note 18 for a description of GSCC's system for allocating deliveries. GSCC may accept a partial delivery of eligible netting securities from a member with a net short position. GSCC will do so only upon the consent of a netting member with a net long position with a like amount of such securities. If a partial delivery is accepted, the remaining undelivered securities will constitute a fail net settlement position.

[23] *See supra* note 19 for GSCC's proposed definition of "good cause."

[24] *Id.*

[25] *See infra* section II.B.4 for discussion regarding insolvent members.

[26] GSCC's netting system differs from a continuous net settlement ("CNS") system, whereby each member's net position is recalculated daily, using current net open positions and previous days' fails.

[27] GSCC will mark each fail net settlement position by determining the dollar difference between the fail net settlement position's system value on the current day and its system value on the immediately previous business day. GSCC will calculate the mark each business day in this manner until the fail net settlement position settles.

[28] GSCC will match or "pair-off" members' net long fail positions and net short fail positions, similar to what is done today by government securities brokers and dealers. Once GSCC has calculated each member's receive and deliver obligations on a CUSIP-number by CUSIP-number basis, GSCC will then look at each member's fail positions and that day's receive and deliver obligations to see if any fails may off-set each other or if that day's receive or deliver obligations may be paired-off with previously failed positions. GSCC will issue a paired-off report to its members and extinguish a member's obligation to deliver or receive such securities.

[29] Under proposed GSCC Rule 1, in order to qualify as an inter-dealer broker, the firm must limit its business *exclusively* to acting as a broker on behalf of other netting members or persons who could qualify as eligible netting members (*i.e.*, persons who are government securities dealers). GSCC's Board may, at any time, review the qualifications of an inter-dealer broker. An inter-dealer broker is a broker that arranges trades among primary and some aspiring primary dealers. In some cases an inter-dealer broker also may trade with dealers.

[30] *See infra*, section IV.B.3.

[31] This situation may arise when securities are delivered to GSCC by a member just before the close of the Fedwire and GSCC can not redeliver the securities prior to the Fedwire closing.

[32] Under industry custom, a purchaser who has failed to receive securities from a seller for 30 calendar days following settlement day, may send the seller notice of its intention to close out the position by buying-in securities. If the seller has not yet delivered securities because it is waiting for delivery from another party, the seller may retransmit this buy-in notice to that party. *See* Public Securities Association Guidelines as published in "Government Securities Newsletter" (December 21, 1987).

proposed rules, the failure of the allocated member to deliver the securities that are subject to a buy-in notice will not obligate GSCC to execute the buy-in notice (*i.e.*, buy securities to satisfy the delivery obligation); the submitting member must buy-in securities. If the submitting member buys securities in accordance with its notice, the submitting member must report its purchase to GSCC and, if requested, document the price it paid for those securities. Thereafter, GSCC will charge the allocated member for the price of the securities and will terminate both the submitting member's and the allocated member's obligations to GSCC with respect to the subject securities.

5. Special Provisions for Inter-Dealer Brokers

The netting system and GSCC proposed rules will allow inter-dealer brokers [33] the choice to exclude, in writing, a trade from the netting system if the trade would result in a net settlement position other than zero for the inter-dealer broker.[34] The notice must be submitted to GSCC no less than two business days prior to the execution of such trade or trades. Even so, in order to encourage inter-dealer brokers to leave trades within GSCC's netting system (including trades that may cause an inter-dealer broker not to have a zero net position), GSCC's proposed rules provide that inter-dealer brokers will not be obligated until the actual settlement of a net settlement position to pay to GSCC or receive from GSCC the net transaction adjustment payment,[35] the net fail mark adjustment payment,[36] and the coupon adjustment payment.[37] Under GSCC's shareholder's agreement and proposed rules, GSCC netting members are obligated to reimburse GSCC, *pro rata*, based upon usage for GSCC's financing and other costs.

[33] *See supra* note 29.

[34] This provision is included to cover instances, for example, where one of the two dealers involved in the trade is not a netting member and the inter-dealer broker's position, if left in the netting system, would not net down to zero.

[35] The net transaction adjustment payment is the net difference between the amounts a member is entitled to collect from or deliver to GSCC.

[36] The net fail mark adjustment payment is the net difference between the dollar amount of all fail mark adjustment payments a member is entitled to collect from or deliver to GSCC on a particular business day. The fail mark adjustment payment is the absolute value of the dollar difference between the system value of a fail net settlement position on the current business day and the system value of such fail net settlement position on the immediately previous business day.

[37] *See supra* note 14.

6. Facilities for Delivery of Securities and Payment of Funds

Netting members will be required to maintain arrangements with a clearing agent bank to settle their net settlement obligations. A member must notify GSCC, at least ten business days prior to becoming a netting member, which clearing agent bank(s) it has designated to act on its behalf to receive and deliver eligible netting securities. Any subsequent change in the designation also must be made at least ten business days in advance. Clearing agent bank designation is subject to GSCC's determination that the clearing agent bank will: (1) Have and maintain Fedwire access, (2) have and maintain the operational capability to interact satisfactorily with GSCC's clearing bank(s), and (3) agree to act on behalf of the netting member in accordance with proposed GSCC Rule 12.[38] A member with direct access to Fedwire may act as its own clearing agent bank.

GSCC will maintain arrangements with several clearing agent banks to obtain access to Fedwire and complete settlement of member's net settlement obligations. Those arrangements will be governed by a Uniform Clearing Agent Bank Agreement, which GSCC will execute with its clearing agent banks. Under that agreement, the clearing agent bank will deliver and receive securities and funds into and out of an account maintained for GSCC according to settlement instructions issued by GSCC. The agreement also obligates the clearing agent bank to guarantee tender of delivery of securities pursuant to GSCC's delivery instructions within two minutes after securities have been delivered to GSCC's account. The agreement also provides an undertaking by the clearing agent bank to lend GSCC funds to finance GSCC's intra-day securities delivery and related payment obligations, as necessary, and to make overnight demand loans to GSCC to finance securities the clearing agent bank received on GSCC's behalf that could not be delivered to a GSCC member before Fedwire closed. As collateral for such loans, GSCC will grant the clearing agent bank a security interest in the securities and proceeds with respect to which each loan is made.[39] The agreement limits the clearing agent bank's liability for errors, acts and omissions in good faith not due to the clearing agent bank's gross negligence or willful misconduct.

[38] GSCC proposed Rule 12 sets forth a netting member's securities settlement procedures and obligations.

[39] Under GSCC proposed Rule 4, each member will grant to GSCC a first priority perfected security interest in all assets and property placed by a member in the possession of GSCC (or its agents acting on its behalf), including all securities and cash on deposit with GSCC in satisfaction of a netting member's required fund deposit or additional fund deposit as security for any and all of its obligations and liabilities. GSCC is entitled to its rights as a pledgee under common law and as a secured party under Articles 8 and 9 of the New York Uniform Commercial Code with respect to such collateral. GSCC maintains a lien on securities that have been delivered to it by the selling side of each trade until it receives payment via Fedwire from the buying side. After GSCC receives payment, it releases the securities to the receiving member.

B. Financial Safeguards

GSCC's proposed netting service presents credit and liquidity exposure to GSCC and other members utilizing the system. GSCC will implement a wide array of safeguards, including specific financial and operational standards for access to the netting system and clearing fund contribution requirements. In addition, GSCC will monitor the financial condition of its netting members and will have authority to restrict member access to the netting system.

1. Membership Standards for Access to Netting

Under the proposed rules, GSCC will establish a new category of membership for persons using the netting service.[40] GSCC will require that an applicant for access to the netting service be an existing GSCC member who has used GSCC comparison service for at least six months prior to applying for access to the netting service.[41] An applicant for

[40] GSCC's proposal will establish new membership categories to designate those members using only the comparison service ("comparison-only members,") members that only provide clearing agent bank services ("clearing agent bank members") and members that are eligible to use the comparison and netting services ("netting members"). A clearing agent bank member may become a netting member if it participates in the netting system on its own behalf or on behalf of a non-member who would be eligible to become a comparison-only member. Under these circumstances, GSCC will consider the clearing agent bank member a netting member for purposes of netting and settling any transactions submitted by the clearing agent bank and will expect it to satisfy the requirements applicable to any other bank applicant seeking access to the netting system.

[41] Under GSCC's proposed rules a person may become a comparison-only member if: (1) It is a government securities broker or dealer in compliance with either Section 15, 15 U.S.C. 780 (1981), or Section 15C, 15 U.S.C. 780-5 (supp. 1989) of the Act, or (2) it is a clearing agent bank who is obligated to GSCC on behalf of a non-member, or (3) it demonstrates to GSCC's Board that its business and capabilities would allow it to materially benefit from direct access to GSCC's services.

access to the netting service must comply with the operational and financial standards set forth in proposed Rule 15. Under this rule, an applicant must possess sufficient personnel and physical facilities to handle transactions, communicate with GSCC and fulfill its commitments to GSCC. The applicant also must not be subject to a statutory disqualification [42] or an order of similar effect issued by a federal or state banking authority.[43]

An applicant for access to the netting service must meet the following financial requirements as of the end of the calendar month prior to the effective date of its membership:

(1) An applicant who is registered with the Commission as a broker or a dealer pursuant to Section 15 of the Act (other than an inter-dealer broker) [44] must have a net worth of at least $50 million and excess net capital of at least $10 million;

(2) An applicant who is registered as a government securities broker or government securities dealer pursuant to Section 15C of the Act (other than an inter-dealer broker) must have a net worth of at least $50 million and excess liquid capital of at least $10 million;

(3) An applicant that is a bank chartered under federal or State law must have a level of equity capital of at least $250 million; and

(4) Any other type of entity must meet minimum capital requirements as determined by GSCC on an individual basis.

An application for membership in the netting system will be reviewed by the Membership and Standards Committee of the Board ("Committee"). This Committee will make a recommendation to the Board based on a questionnaire and the financial reports and information submitted by the applicant to GSCC. If the Committee issues a recommendation that the Board deny the application, GSCC will furnish the applicant with a concise written statement setting forth the specific grounds for the denial. The applicant may request a hearing before the Board, which is responsible for determining whether to approve or disapprove the application.

Once an applicant becomes a netting member, it must remain in compliance with the relevant qualifications or standards for admission to such membership. A failure to meet such standards will prompt a review by the Board of the financial condition and operational capacity of the member.[45]

If the Board finds that a member has ceased to maintain the relevant standards established by proposed Rule 15, GSCC will notify the member and specify a time period within which the member must comply with such standards. If the member fails to comply within the specified time period, the Board will determine whether its membership should continue and, if so, under what conditions.

2. Clearing Fund

a. *Required Clearing Fund Contributions.* GSCC's proposed Rule 4, "Clearing Fund and Loss Allocation", authorizes GSCC to establish a clearing fund and to collect clearing fund contributions from its netting members (except inter-dealer brokers). GSCC will calculate a member's clearing fund contribution requirement based upon the risk to GSCC resulting from the member's daily settlement activities. GSCC will require netting members, except inter-dealer brokers, to maintain a minimum clearing fund deposit of $100,000 in cash. This deposit must be made by the close of business on the business day immediately prior to the business day on which they become netting members.[46]

Inter-dealer brokers will not be required to make clearing fund contributions to GSCC. Instead, the shareholder's agreement and GSCC's rules require each inter-dealer broker to submit a collateral deposit of $100,000 in cash and an additional deposit of $1.5 million in U.S. Treasury securities or letters of credit issued in favor of GSCC.[47]

GSCC will calculate daily each netting member's clearing fund contribution requirement and determine whether the netting member's deposit exceeds its required clearing fund contribution. Although complex, the formula measures a netting member's payment and delivery and receive obligations due later in the day against the netting member's average payment and delivery and receive obligations during the previous 20 business days. Accordingly, the formula contains two components—payment obligations and securities net settlement obligations—and each of those components in turn contains two subcomponents—one subcomponent measures the netting member's average obligations during the previous 20 business days and the second subcomponent reflects the netting member's obligations to be settled later that day. In general, GSCC uses the largest figure as each member's clearing fund requirement to address the risk posed by the member's activities. A full discussion of the clearing fund calculation follows.

The first component ("funds-only settlement") measures all of the netting member's funds-only settlement obligations to GSCC. This includes, among other things, securities clearing differences, transactions adjustment payments, coupon adjustment payments and marks-to-the market. The first subcomponent ("weighted rolling average") [48] is equal to 125% of the

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[42] *See* section 3(a)(39) of the Act, 15 U.S.C. 78c(a)(39) (1981).

[43] In addition, an applicant to the netting membership must continue to meet the standards for becoming a comparison-only member. Such standards establish that a person may be disqualified from admission into the comparison-only membership if the Board of GSCC has reasonable grounds to believe that the applicant (or any person associated with the applicant): (1) Is subject to special or closer than normal surveillance by its designated examining authority, regulatory agency or self-regulatory organization ("SRO"); (2) is subject to an action or condition which would subject the applicant, if already a member, to be placed on surveillance status by GSCC; (3) has misstated or omitted a material fact in connection with its application to become a member; (4) has violated any of the laws or rules regulating the securities markets or, within the ten years preceding the filing of the application, has been convicted of certain enumerated felonies or misdemeanors; (5) has been permanently enjoined or prohibited through an administrative or judicial order from participating in the securities markets or has been expelled or suspended from a national securities association, exchange, SRO or clearance and settlement corporation.

[44] Applicants who demonstrate to the Board's satisfaction that they limit their business to acting exclusively as brokers on behalf of persons that potentially meet the standards for netting membership will be exempt from these capital requirements. Such inter-dealer brokers, however, must each deposit with GSCC $1.6 million to collateralize their potential liabilities.

[45] The Board also may institute such a review whenever a member violates any GSCC rule or procedure or any agreement with GSCC, fails to satisfy in a timely manner any obligation to GSCC, or incurs a material change in control or financial condition. Moreover, the Board may institute a review of a member upon the occurrence of an event which, in the Board's judgment, adversely affects the investing public, the clearance and settlement process, GSCC, members, or creditors.

[46] *See* GSCC proposed Rule 4, sections 2 and 9, "Clearing Fund and Loss Allocation" and "Required Fund Deposit and Timing of Payment of Required Fund Deposit."

[47] As discussed *infra*, at section II.B.6, GSCC will use the collateral deposits from inter-dealer brokers and other clearing fund contributions to satisfy losses GSCC incurs. The shareholder's agreement, however, limits inter-dealer brokers' required contributions to $1.6 million. *See* GSCC proposed Rule 4 section 8, "Clearing Fund and Loss Allocation, Allocation of Loss or Liability Incurred by the Corporation" and *infra*, at section II.B.5. "Loss Allocation and Pro-Rata Assessments."

[48] GSCC's proposed rules authorize GSCC to place greater weight on more recent days within the 20 business days. Initially, GSCC will use a weighting factor of one for each day but plans to monitor the 20 day average to determine if and what

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absolute value of the netting member's [49] average funds-only settlement obligation for the previous 20 business days. The second subcomponent ("anticipated funds-only settlement obligation") is the netting member's funds-only settlement obligation due at 10 AM (EST) that day. If the second subcomponent (the netting member's anticipated funds-only settlement obligation) exceeds the first subcomponent (the netting member's weighted rolling average) by 25% or more, GSCC will use the second subcomponent (the anticipated funds-only settlement obligation) as the funds-only settlement component in the clearing fund deposit calculation.

The second component ("securities settlement") measures the netting member's securities settlement obligations to GSCC. This includes the absolute value of the total dollar amount of the netting member's daily net settlement (delivery and receive) obligation in each security issue eligible for GSCC's netting system, grouped by product and within each product, by maturity ranges. It also is composed of two subcomponents. The first subcomponent ("weighted rolling average securities settlement") is the average absolute value of the total dollar amount of the netting member's securities settlement position in each security issue (deliver and receive) during the previous 20 business days in each maturity range within each product group. GSCC will not net securities positions within maturity ranges or product groups. GSCC will then multiply the weighted rolling average securities settlement times a margin factor (described below) to obtain the total figure for the first subcomponent.

GSCC has established a margin factor for each maturity range within each product group. That factor is a percentage, which is generally designed to measure the potential volatility of prices in that maturity range, among other things, based on GSCC's review of average daily government securities price volatility data for the period encompassing the first quarter of 1988 through the first quarter of 1989. In addition, on June 30, 1989, GSCC amended the proposed rule change (SR-GSCC-89-5) to specify the current margin factors, as follows:

MARGIN FACTORS FOR BILLS, NOTES AND THE 30-YEAR BOND

Time to maturity	Percentage factor
1 day through 3 months	0.040
3 months plus 1 day through 6 months	0.080
6 months plus 1 day through 1 year	0.125
1 year plus 1 day through 2 years	0.250
2 years plus 1 day through 4 years	0.500
4 years plus 1 day through 5 years	0.625
5 years plus 1 day through 7 years	0.750
7 years plus 1 day through 10 years	0.935
10 years plus 1 day through 30 years	1.450

GSCC's proposed rules authorize GSCC to change, among other things, the margin factor for any maturity range, to change the maturity ranges, and to use a revised factor after 10 days notice to netting members.[50]

The second subcomponent ("current securities settlement position") is the absolute value of the total dollar amount of the netting member's position in each security issue that is due to settle later that day. GSCC will multiply the absolute value of the total dollar amount of the anticipated net securities settlement position in each maturity range within each product group by the same margin factors as applied to the weighted rolling average securities settlement subcomponent. GSCC will use the current securities settlement position if the total absolute dollar value of current securities settlement positions exceeds, by 25% or more, the total absolute dollar value of the netting member's weighted rolling average net settlement positions.

In addition, a separate further calculation of a netting member's clearing fund contribution requirement will compare the sum of the funds-only settlement component and the securities settlement component, as determined above, to the result if the anticipated funds-only settlement obligation subcomponent and the current securities settlement position subcomponent were used to calculate the required clearing fund contribution. If the netting member's payment and delivery obligations resulting from trades in the netting system for settlement later in the day are substantially greater than the netting member's average settlement activity during the previous 20 business days (*i.e.*, the sum of the anticipated funds-only settlement obligation subcomponent and the current securities settlement position subcomponent is more than 125% of the sum of the funds-only settlement component and the securities settlement component as calculated above), the netting member's clearing fund requirement will be based on the netting member's current settlement and payment obligations (*i.e.*, the sum of the anticipated funds-only settlement obligation subcomponent and the current securities settlement position subcomponent).[51]

Having calculated each netting member's clearing fund contribution requirement,[52] GSCC then will determine whether the netting member's clearing fund requirement exceeds its current deposit.[53] GSCC's rules specify

type of weighting factor is necessary to better reflect the risk to GSCC with regard to funds-only settlements.

[49] The absolute value is used to reflect the fact that GSCC is at risk both when it is owed funds by a member and when it has paid out funds to a member that are required to be returned when settlement of the trade to which the funds movement is related is made.

[50] As amended on June 29, 1989, GSCC's proposed rules would authorize GSCC's Board of Directors to increase one or more percentages comprising the margin factor upon a determination that such an increase is appropriate in view of market experience and conditions. The amended rules also would authorize GSCC to decrease one or more percentages comprising the margin factor upon submission and review of a proposed rule change pursuant to section 9(b)(2) of the Act. The amended proposed rules also would authorize the Board to waive the requirement that members must receive 10 days notice before the effective date of a change in margin factors if the Board determines market conditions warrant such action.

[51] In other words, for example, even if the anticipated funds-only settlement obligation subcomponent only was 15% greater than the weighted rolling average subcomponent (and, therefore, normally the weighted rolling averge would be used in computing the funds-only settlement component), but the current securities settlement position subcomponent substantially exceeded the weighted rolling average securities settlement subcomponent (*e.g.*, 45%) such that the sum of anticipated funds-only settlement subcomponent and the current net securities settlement subcomponent would exceed by 125% the contribution otherwise required, than the anticipated funds-only settlement subcomponent (rather than the weighted rolling average subcomponent) will be used to calculate the funds-only settlement component.

[52] GSCC's proposed rules provide GSCC with the discretion to require members, excluding inter-dealer broker members, who are placed on surveillance status to make and maintain an additional deposit to the clearing fund of up to 200% of its highest single business day's required clearing fund deposit during the most recent 20 business days, or such higher amount as the Board may deem necessary for the protection of GSCC and its members.

[53] A netting member's clearing fund deposit may exceed its required contribution. Within five business days after the end of each calendar month, GSCC will make available to each netting member a clearing fund detail report that lists the form and dollar value of such member's deposits to the clearing fund and the amount of the member's required fund deposit and the amount of any additional fund deposit requirement. If GSCC determines at the end of any calendar quarter that the amount deposited in the clearing fund is in excess of its required fund deposit, GSCC shall, within 15 business days after such determination, notify the member of its excess clearing fund contribution. Upon the member's request, GSCC will return the excess, unless returning the excess would produce the result that letters of credit would constitute more than 70% of the member's fund deposit. If the member has an outstanding payment obligation to GSCC, however, GSCC may elect not to return the excess. GSCC also may retain the excess if it determines that the member's anticipated funds-only settlement amounts or net

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a wide range of time frames within which a netting member must satisfy a deficient deposit, depending on the amount of the deficiency and whether GSCC has placed the netting member on surveillance status. If the deficiency exceeds 25% of the netting member's current deposit, the netting member must increase its deposit to eliminate the deficiency by the close of business on the day after GSCC notifies the netting member of the deficiency. If the deficiency is more than 10%, but less than 25% of the netting member's current deposit, the netting member must increase its deposit, to eliminate the deficiency, by the close on the third business day after GSCC notifies the netting member of the deficiency. Finally, if the netting member has been placed on surveillance status, any deficiency must be cured by the close of business on the same day GSCC notifies the netting member of a deficiency.

b. *Assets That May be Deposited to Meet Clearing Fund Requirements and Use of Clearing Fund Assets.* The proposal allows each member to meet its clearing fund contribution through deposits of a combination of cash, securities, and letters of credit. Each netting member must deposit a minimum cash contribution of the greater of $100,000 or 10% of the total amount of the required clearing fund deposit, up to a maximum of $500,000.[54] To satisfy the remainder of the required clearing fund contribution, each member may deposit U.S. Treasury securities (bonds, bills and notes) with dates to maturity of less than one year.[55] Each member also may deposit irrevocable letters of credit from an issuer acceptable to GSCC,[56] payable to the order of GSCC to meet the remainder of the required clearing fund deposit. Letters of credit, however, may not comprise more than 70% of a netting member's clearing fund requirement.[57]

GSCC will value member deposits of securities daily, based on their current market value, as determined by GSCC's system price. Any interest on these securities GSCC receives will be credited to the member's cash deposits to the clearing fund, unless the member has defaulted on its payment obligations to GSCC. In such cases, GSCC may liquidate the securities and apply the proceeds and the interest to satisfy the member's obligations to GSCC.

GSCC's proposed rules will limit the use of the clearing fund to satisfying GSCC's losses or liabilities arising from the failure of a netting member to satisfy an obligation to GSCC or any other loss or liability GSCC incurs incident to GSCC's clearance and settlement activities. GSCC's proposed rules authorize GSCC to use clearing fund deposits as a source of collateral to meet its temporary financing needs,[58] including, among other things, financing funds-only payment defaults and GSCC's overnight inventory resulting from end-of-day deliveries that could not be turned-around.[59]

If a GSCC loss or liability is allocated to a member pursuant to proposed Rule 4, section 8 (Allocation of Loss or Liability Incurred by the Corporation), GSCC may apply the portion of that member's deposit to the clearing fund necessary to satisfy the allocation. GSCC may use any cash, draw against any letters of credit, and liquidate any securities deposited by the member in the clearing fund. If the defaulting member's clearing fund contribution is insufficient to satisfy the loss, GSCC may use the remainder of the clearing fund (which is comprised of the other members' clearing fund contributions) as collateral for a loan to satisfy the loss or may use it directly to satisfy the loss.

3. Monitoring of Member's Financial Condition

As discussed above, members must remain in compliance with GSCC's financial and operational membership standards. GSCC will require its members to submit certain financial reports.[60] In addition, GSCC through NSCC's surveillance department, has developed a number of analytical reports which will allow GSCC to monitor members' possession and dollar exposure to GSCC. GSCC will perform daily surveillance based on its own records of the member's activity to obtain a snapshot of the member's financial position. For example, GSCC aggregates the member's positions to determine the member's total exposure, before and after netting, and compares its exposure with its prior exposures to determine whether its current total exposure is consistent with its past exposure or is significantly higher, thus indicating potentially increased risks. GSCC also will monitor changes in the mix of a member's securities portfolio as well as its trade adjustment payments and will compare those changes to its prior securities portfolio and prior trade adjustment payments for significant increases that may indicate potentially increased risks to GSCC. Moreover, GSCC monitors a member's fails by size age and the net dollar amount of those fails to determine if the fails pose a risk to the system. Further, GSCC has established informal relationships with other clearing agencies, SROs, and appropriate banking regulatory authorities, through its relationship with NSCC, in order to obtain relevant financial information concerning its members.

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settlement positions over the next 90 calendar days reasonably may be expected to be materially different than during the prior 90 calendar days, or if the member is on surveillance status.

[54] GSCC proposed Rule 4, section 2(a)(ii).

[55] The proposal authorizes GSCC's Board to designate other issues of securities as acceptable collateral to satisfy a member clearing fund obligations and to establish a haircut for valuation purposes. GSCC will file such proposals to expand the list of eligible securities and the associated haircuts with the Commission as proposed rule changes under section 19(b)(2) of the Act.

[56] GSCC has established standards for letters of credit issuers that are essentially the same as the National Securities Clearing Corporation's ("NSCC") standards. Like NSCC, GSCC has established qualification standards which potential letters of credit issuers must meet; standard letters of credit agreements between GSCC and the potential issuer; standard letters of credit forms setting forth the terms of each letter of credit; limits on the total amount of funds represented by letters of credit which NSCC will accept from any one issuer, and standards for the expiration or revocation of letters of credit. GSCC also will establish a list of approved banks and trust companies that GSCC will accept as letters of credit issuers.

[57] GSCC will deduct 1% from the stated value of letters of credit in calculating the current value of clearing fund deposits. In addition, GSCC only will accept letters of credit from issuers that meet its financial standards.

[58] As amended on June 29, 1989, GSCC will allocate, *pro rata*, the amount of any pledge, loan or use of clearing fund assets outstanding for more than thirty days according to the allocation scheme in GSCC proposed Rule 4, section 8.

[59] Cash in the clearing fund may be partially or wholly invested in securities issued or guaranteed as to principal or interest by the U.S., or U.S. agencies or instrumentalities, repurchase agreements relating to such securities, or certificates of deposit or accounts in banks insured by the Federal Deposit Insurance Corporation, or otherwise pursuant to the investment policy adopted by GSCC. Investment income from cash deposits will accrue to GSCC, until and unless the Board permits payments of such investment income to netting members. Upon such a determination, investment income from cash deposits, if any, less an amount to compensate GSCC for its handling costs, will be paid to members no less frequently than quarterly. Any securities, repurchase agreements, cash deposits, or other instruments involving the investment of cash deposits, and any securities or letters of credit pledged or deposited by any member to secure an open account indebtedness to the clearing fund, may be pledged by GSCC as security for loans made to it.

[60] *See*, GSCC proposed Rule 2, section 4.

GSCC has developed mandatory[61] and non-mandatory[62] factors to determine the circumstances under which GSCC may place a member on surveillance. Once GSCC has determined to place a member on surveillance, GSCC may impose certain restrictions. These restrictions include, among others, the ability to restrict a member's access to netting, for certain products or for all netting services, if upon review of the member's financial position GSCC believes that such restrictions are necessary to protect GSCC and its members. GSCC may require a member on surveillance, other than inter-dealer brokers, to make additional clearing fund deposits of up to 200% of its required clearing fund contribution.

[61] The mandatory factors which require GSCC to place a member, including an inter-dealer broker, under surveillance are as follows. GSCC will examine each member's capital position and place a member under surveillance status if any element of a member's capital position falls below that which would be required in Rule 15 if it were applying to become a netting member. GSCC will place a broker, dealer, government securities broker or government securities dealer on surveillance status if it incurs a net loss for (1) the prior calendar month equal to 15% or more of its excess net capital or excess liquid capital, calculated as of the last day of the immediately preceding calendar month period, (2) the prior two-calendar month period equal to 25% or more of its excess net capital or excess liquid capital, calculated as of the last day of the next prior calendar month, or (3) the prior three-calendar month period equal to 30% or more of its excess net capital or excess liquid capital, calculated as of the last day of the immediately preceding calendar month.

GSCC also will place a member on surveillance: (1) If the member temporarily experiences either an inability to meet its money settlement obligations to GSCC in a timely fashion or another significant cash flow problem; (2) if the member temporarily experiences an inability to meet its securities settlement obligations in a timely fashion; (3) if the member experiences a significant reorganization or change in control or management of the member that, in the judgment of the Board, is likely to impair the member's ability to meet its money settlement obligations or securities settlement obligations to GSCC; (4) or if the member has been placed on a special surveillance status by another self-regulatory organization ("SRO").

[62] The non-mandatory factors which GSCC uses to determine whether to place a member on surveillance status are as follows: (1) If the member temporarily experiences a significant operational problem; (2) if any member's daily funds-only settlement amount or net settlement position is significantly disproportionate to its usual activity, in light of current industry conditions; (3) if it is a depository institution which incurs a loss for any of the prior three fiscal quarters; (4) if GSCC receives a notification from a member's designated examining authority or appropriate regulatory agency of a pending administrative action regarding, or investigation of, the member that could call into question the member's ability to meet its obligations to the corporation; (5) if it experiences any condition that could materially affect its financial or operational capability so as to potentially increase GSCC's exposure to loss or liability.

4. Authority to Restrict Access to Netting, Ceasing To Act for Members and Member Insolvencies

The proposal authorizes GSCC to act for a member under certain enumerated circumstances [63] and requires GSCC to cease to act for a member who is insolvent.[64] Under proposed Rule 18, GSCC may cease to provide any member with any service provided by GSCC or cease to act for any member with respect to a particular transaction, or transactions, or with respect to all of a member's transactions.[65] Proposed Rule 18 also provides that members will be notified of GSCC's decision to cease to act for them, and of their right to appeal such a decision.

When GSCC ceases to act for a member, GSCC's rules require GSCC to notify the member promptly of its decision to cease to act and provide the member with a statement of the grounds for its decision and notice of the member's right to request a hearing, pursuant to GSCC Rule 37. If the member so requests, GSCC must hold a hearing as promptly as possible. GSCC will promptly prepare a written report of any action taken pursuant to proposed GSCC Rule 18 and will file the report as part of GSCC's records and with the Commission.

GSCC will notify all members promptly that it has ceased to act for a member.[66] This notice will identify the transaction or transactions concerned and will state how the transaction(s) will be affected and what steps GSCC will take in view of its ceasing to act. When GSCC has ceased to act for a member with respect to a particular transaction or transactions, or with respect to all transactions, it will decline to accept or process data from that member, or from other members with regard to that particular transaction or transactions, or any transactions with which the member is a party, unless the Board determines otherwise in order to promote an orderly settlement process.

Generally, GSCC will take the following actions with respect to an insolvent member. GSCC will delete all trade data it receives from the insolvent member with regard to transactions to

[63] The Board may cease to act for a member if, in its sole discretion, it has reasonable grounds to believe that ceasing to act is appropriate either for the protection of itself or other members to facilitate the orderly and continuous performance of GSCC's services. Proposed Rule 18 also states that GSCC may cease to act for a member if the Board determines that the member: (1) Has failed to perform any of its obligations to GSCC arising under these rules or under the procedures or has materially violated any rule, procedure, or agreement with GSCC; (2) has failed to make any required payment or deposit provided for in the rules or procedures, including any fee, fine, or other charge to GSCC in a timely manner; (3) is no longer in compliance with any provision of the admission standards provided in proposed Rule 15 that would be applicable to it, if it were an applicant for membership, or the continuance standards provided in proposed Rule 15 applicable to it. Further, the Board may cease to act for a member if it has determined that it has reasonable grounds to believe that: (1) The member, or any associated person, has been responsible for fraudulent or dishonest conduct or breach of fiduciary duty or has made a material misstatement or omitted to state a material fact in any statement to GSCC or to any officer or employee of GSCC in connection with its application to become a member, or thereafter, in connection with any transaction processed or service furnished by GSCC; or (2) the member is currently experiencing, or is approaching significant financial or operational difficulty or otherwise will be unable to meet its obligations to GSCC. In determining whether to cease to act for a member, the Board may determine that adequate cause for ceasing to act does not exist, that such standards, as applied to a member or associated person, are unduly or disproportionately severe; or that the conduct of the member or associated person has been such as not to make it against the interests of GSCC, other members, or the public for GSCC to continue to act for such member, and thus, may allow such member access to GSCC services either unconditionally or on an appropriate temporary or other conditional basis.

[64] GSCC's proposed Rule 20 specifies five events that would require GSCC to treat such a member as if it were insolvent: (1) Receipt of notification of insolvency renders a member insolvent, unless it posts an appropriate guarantee; (2) The member is determined to be insolvent by the Board, or by any Designated Examining Authority or Appropriate Regulatory Agency with jurisdiction over such member or any SRO; (3) If the member is a member of the Securities Investor Protection Corporation, and a court finds that it meets any one of the conditions for insolvency set forth in the Securities Investor Protection Act of 1970 (15 U.S.C. § 78aaa *et seq.* (1981)); (4) If the member receives a decree or order by a court adjudging the member as bankrupt or insolvent; approving a petition seeking reorganization, liquidation, or dissolution under the Bankruptcy Code or any other applicable federal or state law; appointing a receiver, liquidator, or trustee for the member, or ordering the winding up or liquidation of its affairs; (5) If the member files a petition seeking reorganization or relief under the Bankruptcy Code or other federal or state law, or consents to the filing of such a bankruptcy petition, or to the appointment of a receiver, liquidator, or trustee, or makes an assignment for the benefit of its creditors, or if it admits in writing that it is unable to pay its debts.

[65] For example, GSCC has stated that it generally expects to use its ability to exclude a particular transaction from netting when a participant has attempted to submit non-GSCC-eligible trades for settlement, (*e.g.*, the redelivery of securities to satisfy a repurchase agreement or to satisfy a securities delivery obligation resulting from the exercise of an option agreement). GSCC generally expects to use its authority to cease to act for a particular transaction to remove a trade from netting in the event a member, whose business is being closed-out and who only is permitted to submit trades through GSCC to become "flat" (*i.e.*, purchasing securities to eliminate short positions and selling securities to eliminate long positions) submits trades which are made for other purposes.

[66] After GSCC has ceased to act for a member, GSCC will nevertheless retain the same rights and remedies with respect to any monies or securities due from the member, or any liability incurred as the result of such member's action, or on behalf of the member, as though GSCC had not ceased to act for it.

which it is a party that have not been reported by GSCC as compared from the comparison system; and GSCC will exclude from netting any trades made by the insolvent member which have been reported as compared, but which have not been reported by GSCC as included in a net settlement position, unless the Board determines that these trades should be included in order to promote an orderly settlement process. All long and short net settlement positions of the insolvent member, outstanding at the time of insolvency, will be closed out by establishing a final net settlement position for each security that will be equal to the net of all outstanding deliver and receive obligations of the insolvent member in each security, including those that arise from net settlement positions that have failed to settle on their scheduled settlement date, and by buying-in or selling out the securities deliverable by or to the insolvent member in order to close out the final net settlement position established for each security. GSCC will complete the close out procedure within 30 calendar days after GSCC has given its members notice that it will treat the member as an insolvent member, unless the Board determines that the immediate close out of positions in a security may be disadvantageous to GSCC or may promote a disorderly market in that security, in which case GSCC must obtain Commission approval to suspend the operation of the close-out provision for more than 30 days.[67]

If GSCC incurs a loss or liability as a result of closing out an insolvent member's final net settlement positions, the loss or liability will be allocated as provided in GSCC Rule 4. If GSCC makes a profit as a result of closing-out an insolvent member's final net settlement positions, this profit will be credited to the insolvent member, or his appointed legal representative.

5. Loss Allocation and Assessment Provisions

GSCC will employ a variety of loss allocation schemes depending on the source and the amount of the loss or liability it incurs. As discussed below, GSCC's loss allocation methods vary according to the nature of the event giving rise to the loss.

If GSCC incurs a loss or liability resulting from one or more netting members' failure to fulfill their obligations to GSCC, GSCC will look to those members' clearing fund deposits and other collateral held by GSCC to satisfy the loss. If the value of the defaulting members' deposits and other collateral is insufficient to satisfy the loss, GSCC will allocate the remaining amount of the loss ("Remaining Loss") among the netting members in accordance with proposed GSCC Rule 4, section 8.

In allocating any Remaining Loss, GSCC will determine the amount of the Remaining Loss attributable to direct transactions[68] and the amount of the Remaining Loss attributable to brokered transactions.[69] The Remaining Loss attributable to direct transactions will be allocated to the netting members (except for inter-dealer brokers) that had trading activity with the defaulting member for settlement on the day of default,[70] on a *pro rata* basis, based on the dollar value of such trading activity of each netting member with the defaulting member.

The Remaining Loss attributable to brokered transactions will be allocated in the following manner. GSCC will allocate to inter-dealer brokers, as a group, 10% of such Remaining Loss, regardless of the level of activity each inter-dealer broker had with the defaulting member for settlement on the day of default. This allocation, however, is subject to a $1.6 million per broker, per calendar year, cap. The balance of such Remaining Loss will be allocated among other netting members on a *pro rata* basis according to the dollar value of each members' trading activity through inter-dealer brokers for settlement on the day of default with the defaulting member.

Where a netting member defaults on a required allocation assessment or where GSCC suffers a loss arising out of events unrelated to a member failure, GSCC will employ a separate allocation procedure. To satisfy such a loss, GSCC first will apply 25% of its retained earnings, or such greater percentage thereof as the Board determines to be appropriate, to satisfy the loss. If such amount is insufficient to satisfy the loss, GSCC will apply up to $50,000 from each netting member's required cash deposit (or, in the case of an inter-dealer broker, the cash deposit required to be maintained by such broker with GSCC) equally among all netting members. If the loss still remains unsatisfied, GSCC will apply the remainder of each netting member's required clearing fund deposit (or, in the case of an inter-dealer broker, of the collateral deposit, including securities and letters of credit maintained by such broker with GSCC) on a *pro rata* basis in accordance with the average daily level of such deposits or collateral over the prior 12 calendar months.[71]

[67] *See* Letter to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, SEC, from Jeffrey F. Ingber, Associate General Counsel, GSCC, dated June 29, 1989, amending GSCC proposed Rule 20, section 4(c).

[68] A direct transaction is a transaction submitted to GSCC for settlement by the parties to the trade.

[69] A brokered transaction is a transaction which an inter-dealer broker has submitted to GSCC for comparison and/or settlement that involves both a netting member (or eligible applicant) on the buy side and a netting member (or eligible applicant) on the sell side regardless of whether or not such netting members have submitted data that compares with the data submitted by such inter-dealer broker.

[70] The term "activity for settlement on the day of default" used above will mean trading activity with a defaulting member transacted by a netting member on the business day immediately prior to the business day on which the failure of the defaulting member to fulfill its obligations to GSCC occurred, except that, if the level of trading activity of netting members with a defaulting member for settlement on the day of default, measured by the dollar value of securities traded, is less than the dollar value amount of the securities of the defaulting member that are liquidated pursuant to GSCC's close-out procedures, "activity for settlement on the day of default" will mean trading activity with a defaulting member transacted on that number of business days immediately prior to the business day on which the failure of the defaulting member to fulfill its obligations to GSCC occurred such that the dollar value amount of such trading activity is equal to or greater than the dollar value amount of such liquidated securities.

[71] To illustrate how GSCC's loss allocation provisions operate, assume that GSCC suffered a $10,500,000 loss or liability as a result of a member's insolvency. Assume also that the member had $500,000 on deposit in GSCC's clearing fund and the member had no other assets that were available to meet its obligations to GSCC. GSCC will apply the members' clearing fund deposit to satisfy a portion of the loss. GSCC will allocate the remaining $10,000,000 loss not covered by the defaulting member's assets, including the member's clearing fund deposit and other collateral at GSCC in the following manner. Assuming that the loss resulted entirely from brokered transactions, the inter-dealer brokers, as a group, would be responsible for 10% or $1,000,000 of the loss. If there were only two inter-dealer broker netting members, and even if only one of the two had trading activity with the insolvent member for settlement on the day of default, each inter-dealer broker would be equally responsible for the portion of the loss allocated to the inter-dealer brokers and would pay $500,000 to GSCC.

The remaining $9,000,000 loss will be allocated among the non-inter-dealer broker netting members who traded with the insolvent member based on their level of activity with the insolvent member. Assume that member *Y*, with a clearing fund deposit of $6,400,000, was the *contra* party to half the trades and that member *Z*, with a clearing fund deposit of $2,500,000, was the *contra* party to the other half of the trades. Each member will owe GSCC $4,500,000. Assuming that each member will satisfy its obligation out of its clearing fund deposit, *Z* will still owe GSCC $2,000,000. If *Z* refuses to pay or is unable to pay, GSCC will cease to act for *Z*, will treat *Z* as if it elected to terminate its membership and sue *Z* to recover the $2,000,000.

GSCC will allocate the $2,000,000 loss resulting from *Z*'s allocation default by first applying 25% of its existing retained earnings (or a greater percentage, as the Board may decide) toward such loss. Assuming that GSCC has $400,000 of existing retained earnings and applies 25% of such earnings

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6. Member Liability for Loss Allocations

GSCC's proposed rules provide that the entire amount of a netting member's required fund deposit may be used to satisfy the amount of any loss allocated to any such member. If such amount is not sufficient to satisfy the full amount of any such loss allocation, GSCC's rules provide that such member must promptly deliver the amount necessary to eliminate any such deficiency. A netting member (other than an inter-dealer broker, whose liability is capped at $1.6 million per calendar year) who actively traded with the defaulting member for settlement on the day of default is liable for the full amount of its allocated portion of GSCC's losses. A member who had no trading activity with the defaulting member for settlement on the day of default, however, may limit its liability for the losses allocated to it by GSCC to the amount of its required fund deposit by electing to withdraw from GSCC in a timely manner.

Once GSCC has notified a netting member that a loss has been allocated to such member, and that the amount of such member's required fund deposit is not sufficient to cover such allocation, such member must deliver to GSCC by the close of the next business day, or, if the Board so determines, by the close of the business day of issuance of such notification, the amount necessary to eliminate such deficiency. With respect to an allocation arising from a loss where the netting member had no trading activity with the defaulting member for settlement on the day of default, a member may avoid further liability for such an allocation by providing GSCC, by the close of business on the business day on which its payment is due, a written notice of the member's election to terminate its membership in GSCC.[12]

GSCC's proposed rules permit it to impose sanctions against members who fail to act in accordance with the allocation rules. If a member fails to deliver funds or fails to notify GSCC of its intent to terminate its membership, GSCC will cease to act on behalf of such member pursuant to proposed Rule 18 and may take appropriate action, including initiating legal action to recover any funds owed or imposing disciplinary action against the member pursuant to GSCC Rule 48. Moreover, a member that elects to terminate its membership will not be eligible to re-apply to become a comparison-only member or a netting member of GSCC unless it pays GSCC the amount previously allocated to it plus interest on such amount at the Federal Funds rate plus one percent, calculated from the date on which the loss was incurred until the date of payment.

In the event GSCC suffers a loss resulting in an assessment to members, GSCC will promptly notify the Commission of the amount of such loss and the reasons for the loss. If GSCC later recovers all or part of the loss, such amount shall be credited or paid to the members against whom the loss was charged in proportion to the amounts they paid, regardless of whether they are still members of GSCC.

7. Ceasing to be a Member

If a netting member, including an inter-dealer broker, notifies GSCC of its intention to terminate its membership in GSCC, the member's deposits to the clearing fund in the form of cash and securities will be returned to it within 30 calendar days and its deposits in the form of letters of credit will be returned within 90 calendar days, unless the member has an outstanding unpaid obligation to GSCC or an open net settlement position. The termination of membership will not affect any outstanding obligation of a member to GSCC.

III. GSCC's Rationale for the Proposed Rule Changes

GSCC believes that the proposal is consistent with the purposes and requirements of Section 17A of the Act. Specifically, GSCC believes that its netting system will promote the prompt and accurate settlement of government securities by reducing money payment and securities receive and delivery obligations of compared trades among GSCC members. In addition, GSCC states that netting will substantially reduce the number of Fedwire payment and securities movements by GSCC members. Moreover, the proposed system would reduce costs and promote the efficient utilization of the market's resources by facilitating the timely collection and processing of data.

GSCC also believes that the netting process and the associated financial and operational safeguards provide GSCC with the capacity to safeguard securities and funds in its custody or control or for which it has responsibility. GSCC also believes that the proposal would help ensure an orderly clearance and settlement process by providing the level of surveillance necessary to ensure that members adhere to its rules and by pointing out any financial or operational problems among its members that could create an unreasonable risk for the rest of the membership. In addition, GSCC stated that the marks-to-the-market and the clearing fund provide additional safeguards that minimize the risk to market participants and promote stability in the government securities market. GSCC notes that the proposed system would enable it to keep track, on a daily basis, of each net position that fails to settle and would assist its members' efforts to assess their position within the government securities market by automatically revaluing a member's net fail positions each business day to a price that is current as of the end of the prior business day. Finally, GSCC notes that it does not believe that the proposed rule changes will have an impact on, or impose a burden on competition.

IV. Discussion

Sections 17A(3) (A) and (F) of the Act require that a clearing agency be so organized and that its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible. GSCC's netting system provides an effective means to reduce member's settlement obligations, thereby, offering a significant reduction in risk to the market place. GSCC also has designed a number of safeguards, including marks-to-the-market, securities against payment through the Fedwire, the clearing fund, and a required deposit by inter-deale2 brokers, that are designed to reduce the risk associated with netting and settlement to GSCC and its members.

A. Prompt and Accurate Clearance and Settlement

Section 17A(b)(3)(F) requires that a clearing agency be so organized and that its rules be designed to promote the prompt and accurate clearance and

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to cover the loss, GSCC will still have a $1,900,000 loss outstanding. GSCC then will apply up to $50,000 of each remaining netting member's required cash deposit equally among all such members. Assuming that there are a total of ten remaining netting members, GSCC will collect $500,000 from such members. To satisfy the remaining $1,400,000 loss, GSCC will look to the aggregate deposits of all netting members, including inter-dealer brokers, *pro rata*, based on the average daily level of each member's deposits over the prior twelve calendar months.

[12] After a member terminates its membership, or if the member fails to take any action, GSCC will make an additional assessment against the remaining netting members on a *pro rata* basis, according to the size of the initial assessment, to cover the amount not paid by the netting member who terminated its GSCC membership. After the loss has been satisfied, if the amount of funds deposited to fulfill any remaining netting member's clearing fund requirement is insufficient, GSCC will request the member to deposit the appropriate amount with GSCC.

settlement of securities transactions for which it is responsible. As discussed below, the Commission believes that GSCC meets the requirements of section 17A(b)(3)(F).

The market for government securities is the largest by dollar volume in the U.S. Outstanding U.S. Treasury Securities issues exceeded $1.8 trillion, with the daily average trading volume in excess of $100 billion by the end of 1988. The size and value of the trading in government securities creates potential exposure for market participants if a delivery of securities is late or if the Fedwire is temporarily non-operational. Thus, providing effective means to reduce government securities participants' settlement obligations may offer significant reductions in risks to the marketplace.

The benefits of GSCC's centralized, automated netting facilities in the government securities market will include reduction of both counterparty credit risk [73] and increased efficiency and cost savings, benefits already enjoyed by broker-dealers and banks in the corporate, municipal and mortgage-backed securities markets. First, trade netting will reduce delivery and payment obligations for dealers. Testing of GSCC's netting system indicates that both the size and number of delivery and payment obligations will be reduced by up to 90%.[74] Thus neeting will reduce both exposure and settlement costs for GSCC members. Second, GSCC's facilities will reduce member exposure to the risk that the party it trades with will be unable to settle that transaction. GSCC will interpose itself between parties to a trade and guarantee settlement. If a member fails to satisfy a settlement obligation, GSCC's mechanisms, including marks-to-the-market of fail positions, clearing fund deposits, and insolvency procedures, will reduce the likelihood of loss to its counter-parties and GSCC. Finally, the netting system will reduce daylight overdrafts on Fedwire and the risk that the failure of one institution to settle may cause losses or the failure of other institutions. The staff of the Board of Governors of the Federal Reserve System ("FRB"), in a recent proposal, estimated that GSCC would directly reduce book-entry overdrafts of government securities over Fedwire by about 5%.[75] The proposal also stated that GSCC would provide other risk control advantages to market participants, and indirectly to the FRB.[76]

The Commission believes GSCC has the capacity to operate a central netting service for government securities. First, GSCC's facilities manager, NSCC, has operated a netting system for corporate securities since the 1970s that accounts for approximately 90% of the number and dollar value of all trades executed on national securities exchanges and in over-the-counter markets. Although the dollar value of daily transactions in government securities is substantially greater, NSCC's experience in operating a netting system by novation is nonetheless invaluable to the smooth operation of GSCC's netting system.

Because of the volume of daily trading activity, the short settlement time frame and the importance of the government securities market, GSCC must be able to perform both its comparison and netting system accurately and on a timely basis even during severe market conditions. GSCC has represented to the Commisson that it will be able to operate its entire trade processing system accurately and within time frames established by GSCC during current and reasonably anticipated future average daily and peak volume processing days.[77]

GSCC expects that the comparison and netting process will require only several hours and will be completed during the early morning hours. Accordingly, the Commission believes GSCC will have sufficient flexibility to handle brief interruptions or delays without compromising smooth and efficient settlement during the day.

GSCC recently completed arrangements for, and tested the operational capability of, a back-up facility in the event a power failure or disaster prevented GSCC's operations at its main facility. GSCC has contracted with Security Pacific National Trust Co. ("Security Pacific") to provide GSCC with an off-site computer backup facility in the event of a disaster at GSCC's main facility. The agreement provides that Security Pacific's backup computer facility will become available within two hours of notification of a disaster, and Security Pacific will provide the facility on a continuous basis until GSCC's main facility can resume operations.

GSCC's payment and delivery functions will be assigned to banks with an established history and reputation for providing clearing and payment services to government securities brokers and dealers, many of whom will be GSCC netting members. Those banks will operate in accordance with GSCC's instructions, which GSCC will generate during the netting process before the business day begins.[78]

The Commission believes, after examination of GSCC's agreement with its clearing agent banks, and with the knowledge of those banks' experience with government securities clearing and payment services, that GSCC has the capacity to handle its payment and receipt obligations, arising out of the netting process.

B. Safeguarding Funds and Securities

Section 17A(b)(3)(A) of the Act requires that the rules of a clearing agency be designed to, among other things, assure the safeguarding of securities and funds which are in its custody or control. Clearing agencies must assess the risks to the clearing agency and its participants and develop a scheme to satisfy those risks on a uniform, non-discriminatory basis. GSCC has devised a variety of ways to reduce the risk to itself and its participants, including membership standards, member monitoring, the authority to restrict a member's access to netting, the clearing fund and the loss allocation scheme.

1. Participation Standards

In the Order granting GSCC temporary registration as a clearing agency, the Commission temporarily exempted GSCC from section 17A(b)(3)(B) and 17A(b)(4)(B), on the basis of GSCC's representation that it would "develop appropriate member financial and operational standards in the near future, before it expand[ed] its range of services, and, in any event, before it offer[ed] trade accounting or

[73] "Counterparty credit risk" is the risk to one party to a trade that the other party to the trade will default on its payment or delivery obligations.

[74] Netting may not reduce a member's delivery or receipt obligation to a single Fedwire movement. The Fedwire $50 million cap on each Fedwire securities movement may require more than one Fedwire delivery to satisfy a large net obligation. The reduction of the number of Fedwire movements, however, still will be substantial despite the cap.

[75] *See* Proposals for Modifying the Payments System Risk Reduction Policy Proposal, Staff of the Federal Reserve System, May 1989 ("Federal Reserve Staff Proposals").

[76] The other risk control advantages stated are:

(1) Controlling and reducing resettlement credit risks, especially through the broker's market, and

(2) Accelerating and strengthening the "pair-off" process to eliminate one of several obstacles to earlier releases of securities transfers. *Id.* at 29.

[77] *See* GSCC Temporary Registration Order, *supra* note 6, at n. 33.

[78] GSCC's relationship with the clearing agent banks is somewhat analogous to NSCC's relationship with DTC. NSCC maintains an account at DTC and issues instructions to DTC to move securities from and to the DTC accounts of NSCC and NSCC's clearing members. NSCC then delivers securities out of its account and into the DTC account of NSCC participants with net long positions. NSCC, however, does not rely on DTC to settle funds-only obligations; rather those obligations are settled directly through NSCC.

netting services." [79] The Commission believes that GSCC's participant standards should be based on the anticipated credit risk associated with clearing agency admission. In the GSCC Temporary Registration Order, the Commission recognized that minimum capital requirements may not adequately cover such credit risk and encouraged GSCC to use its experience as guidance in establishing financial responsiblity standards for membership.[80]

GSCC has developed operational and financial responsibility standards based on its experience as a clearing agency engaging in comparison-only activities over the past year. GSCC's capital requirements are substantially higher than the minimum capital requirements for government securities brokers and dealers established by the Treasury Department.[81] GSCC believes that these membership standards for broker, dealer, and bank applicants are fair and appropriate in light of the risk posed by a member of GSCC.

The Commission believes that GSCC has established reasonable financial and operational requirements for the admission of brokers, dealers and bank applicants. The Commission recognizes that GSCC only has one year's experience as a clearing agency and that the experience GSCC will gain from the netting of Government securities will provide GSCC with the further experience to more appropriately evaluate the credit risk associated with clearing agency admission.

Thus, the Commission expects GSCC to review its financial and operational standards in light of the experience it gains from netting, prior to the Commission's consideration of GSCC's full registration (*i.e.*, before May 24, 1991, the expiration date of the Order temporarily approving GSCC's application for registration as a clearing agency.[82]

2. Member Monitoring

The Commission believes that it is important that GSCC carefully monitor each member's activities, financial condition and compliance with GSCC's rules, consistent with GSCC's obligations under section 19(g) of the Act.[83] GSCC should pay close attention daily to each member's settlement position, the number of aging fails each member is responsible for, and the changes in the mix of each member's securities portfolio, particularly when a member changes its aggregate portfolio to assume a more risky position. GSCC's rules have established adequate early warning requirements to inform it when a member is beginning to have difficulties, but GSCC should develop further sources of information to verify a member's financial and operational capabilities. For this reason, the Commission believes that GSCC must coordinate closely with other SROs, the Commission, and relevant bank regulatory authorities concerning the financial and operational capabilities of its members.[84]

Section 17A(b)(3)(A) of the Act requires that the rules of a clearing agency be designed to, among other things, assure the safeguarding of securities and funds which are in its custody or control. Clearing agencies must assess the risks to the clearing agency and its participants and develop a scheme to satisfy those risks on a uniform, non-discriminatory basis. GSCC has devised a variety of ways to reduce the risk to itself and its participants, including membership standards, member monitoring, the authority to restrict a member's access to netting, the clearing fund and the loss allocation scheme.[85]

3. System Price and Mark-to-the-Market

GSCC proposes to collect and pay marks-to-the-market from or to netting members with fail net settlement positions based on the par weighted average price of member trades for those securities during the day. The Commission believes that GSCC's use of a par weighted average price during falling or rising intra-day markets could weaken GSCC's marking-to-the-market of failed net open positions and expose GSCC to unnecessary risk. Specifically, the Commission is concerned that the par weighted average price may not accurately reflect the end of the day value of securities positions where substantial intra-day price volatility has occurred. Because government securities transactions are not time-stamped and dealers and brokers do not report their end-of-day trade prices, there is currently no completely reliable method to determine an accurate closing price. In order to address this concern, GSCC has represented that it will compare the prices established for seven Treasury securities of varying maturities [86] through its par weighted average system with prices from other sources, including price made available by the Federal Reserve, inter-dealer brokers and other public sources.[87]

GSCC has represented that in establishing a system price, GSCC will compare its par weighted average price with other available prices and if, in GSCC's judgment it would be prudent to do so, it will use another price as the system price. GSCC will provide the Commission with a monthly report comparing the par weighted average price with available end-of-day prices. The Commission believes that GSCC's proposed procedures provide an appropriate means to determine the marking price, at least on an interim basis. The Commission, however will revisit with GSCC the issue of possible changes to its marking of prices after reviewing the data provided.

GSCC's proposed rules provide that it may not mark-to-the-market a fail long position where the securities have been delivered to GSCC but are held overnight because GSCC's clearing agent bank could not redeliver them before the Fedwire closed. This situation will arise when a member makes a late-day Fedwire delivery. GSCC will be at risk that the value of the securities it holds overnight will decrease, exposing GSCC to risk of loss if the receiving member defaults before delivery the next morning. The Commission is concerned about whether this marking exception may expose GSCC to an unnecessary financial risk. In this connection, the Commission notes that

[79] GSCC Temporary Registration Order, *supra* note 6.

[80] *Id.*

[81] *See* 17 CFR 400.1 through 402.2d, 52 FR 27910 (July 24, 1987). *See also* 17 CFR 240.15c3-1.

[82] The Commission is continuing GSCC's exemption from sections 17A(b)(3)(B) and 17A(b)(4)(B) of the Act. GSCC rules do not specifically enumerate other clearing agencies, investment companies and insurance companies within its categories for membership and do not have appropriate standards for these categories and members. GSCC has represented that it will amend its rules prior to full registration of GSCC (*i.e.*, May 24, 1991, the expiration date of the GSCC Temporary Registration Order) in order to provide explicitly for the admission of all statutorily enumerated categories of members into the comparison-only and netting systems. In addition, GSCC has agreed to develop appropriate operational and financial standards for other registered clearing agencies, investment companies and insurance companies if any seek to join GSCC. *See* GSCC Temporary Registration Order, *supra* note 6.

[83] Section 19(g) of the Act requires a clearing agency to comply with and to enforce compliance by members of its own rules.

[84] *Cf.* Interim Report of the Working Group on Financial Markets, Appendix D, May 1988.

[85] Thus, the Commission believes that GSCC's netting and settlement system and the rules thereof are designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

[86] The securities are: one-year Treasury Bill, two-year, four-year, five-year, seven-year and ten-year Treasury Notes, and the 30-year Treasury Bond. *See* Letter to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, SEC, from Jeffrey F. Ingber, Associate General Counsel, GSCC, dated June 29, 1989.

[87] *Id.*

GSCC's rules provide GSCC with the authority to fine a member who regularly effects deliveries which can not be redelivered prior to Fedwire closure. In addition, GSCC has represented that it will provide the Commission with a monthly report stating: (1) Each occurrence of an overnight "box" position experienced by GSCC's clearing agent bank, (2) the member(s) involved, (3) what, if any, action GSCC's Board takes, and (4) the amount of GSCC financing as a result of the late delivery.[88] After GSCC compiles and reviews the data, the Commission expects that GSCC will examine methods of reducing their overnight risk exposure, including the collection of a mark.

4. Clearing Fund Requirements

The Act does not require clearing agencies to establish and maintain clearing funds; however, the Standards Release counsels that "it is appropriate for a clearing agency to establish by rule an appropriate level of clearing fund contributions based, among other things, on its assessment of the risks to which it is subject."[89] Clearing funds may provide, among other things, a defense against financial loss due to participant defaults; a ready source of liquid funds in that event; and a vehicle to facilitate risk mutualization among participants. The Commission believes that it is essential that a clearing agency have a liquid source of funds available to meet its liquidity needs independent of its loss allocation rules.[90] GSCC's major source of liquidity is its clearing fund.[91]

GSCC plans to use its clearing fund as source of immediate liquidity, to meet its temporary financing needs[92] by pledging its required member deposits at one of two banks with which it has an agreement to provide such financing.[93] The Commission believes that it is vital that GSCC continue to maintain sufficient sources of credit to obtain immediate financing to meet its liquidity needs and to continue evaluating its credit needs to ensure that it has sufficient sources of temporary financing to meet such needs.

GSCC's clearing fund formula has been properly constructed to serve as a mechanism for GSCC to measure the risk profile of its members' securities settlement obligations for yesterday's trades, standing alone, and against the backdrop of a member's settlement obligations for the previous month. Initially, GSCC will use a schedule of margin factors for use in calculating clearing fund contribution requirements.[94] GSCC believes, based on its review of average daily government securities price volatility data from the period from the first quarter of 1988 through the first quarter of 1989, that the margin factors contained in its proposed schedule, which reflect calculation of the mean of the price volatility data plus two standard deviations, cover approximately 95% of the historical one-day market movements in each such security and, thus, that the schedule is a prudent and appropriate one.[95]

While the Commission believes that GSCC's proposed schedule is satisfactory for the start-up of netting, the Commission believes that GSCC should develop the ability to assess, on an automated, daily basis, historical and potential price movements and the implications that those price movements could have for the risk profile of GSCC members. In the event of a member default or insolvency, GSCC will be obligated to close-out and buy-in securities at prices that may bear no relation to yesterday's prices. In this connection, because of the potential financial exposure associated with such liquidations, an insufficient margin factor could result in significant losses to GSCC, particularly if a GSCC member determines to concentrate its trading activity in a limited range of maturities or on the same side of the market. Accordingly, GSCC should be in a position to continuously review the adequacy of its margin schedule.

In this connection, GSCC has undertaken that it will not make eligible for netting, and will not net through the Netting System, U.S. agency securities, STRIPS, and U.S. Treasury Bonds (other than the 30-year Treasury Bond), until it has provided the Commission staff with a design plan and schedule for the implementation of an automated system for the assessment, based on maturity ranges, of price volatility that satisfactorily takes into account historical and implied volatility.

GSCC has taken the additional step of imposing a 1% haircut on letters of credit which members submit to meet their clearing fund requirements to ensure that in the aggregate the clearing fund will be sufficient to meet its needs and to account for possible delays in drawing down on letters of credit. The Commission believes that imposing the 1% haircut is a prudent step because it will ensure that GSCC will have the full amount it requires after GSCC pays the costs of pledging the letters of credit and offsets the financing costs which banks will impose on GSCC because the funds provided pursuant to the letters of credit which GSCC received from its members are not immediately available.

5. Loss Allocation

The Commission notes that the Act does not require a clearing agency to mutualize the risk of loss among its members. Although some clearing agencies registered with the Commission, such as NSCC, [96] employ some form of risk mutualization for netting by novation systems, others, such as the Participants Trust Corporation, have a more limited system of risk mutualization.[97] The Commission believes that while risk mutualization has certain benefits, including the provision of liquidity from within the clearing agency environment that otherwise must be provided by outside sources, full risk mutualization is not required. The Commission will examine each clearing agency's risk management system, including its clearing fund formula and the amount, if any, of risk mutualization, to determine whether its risk management procedures are appropriately tailored to the markets served by the clearing agency and otherwise satisfy the requirements of the Act. The Commission has examined GSCC's risk management system and

[88] GSCC may request confidential treatment of the information contained in this report.

[89] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release").

[90] *See also* Federal Reserve Staff Proposals, *supra* note 75, which states that clearing agencies should have an independent source of liquidity to meet its needs and not rely solely on reversals to shift the loss to its members.

[91] The collateral which it holds as a result of late deliveries also could be used to provide liquidity, but the amount of this collateral in many cases will be too small to meet potential losses from participant defaults.

[92] An example of a situation when GSCC may need to obtain temporary financing would occur if a member failed to make his 10:00 a.m. (e.s.t.) funds-only settlement obligation to GSCC, yet GSCC was required to pay out those funds as part of GSCC's 11:00 a.m. (e.s.t.) settlement with its members. GSCC would need to obtain temporary financing by 11: a.m. (e.s.t.) to pay its members until GSCC was able to recover the funds from the defaulting member or through the use of its loss allocation procedures.

[93] GSCC currently maintains these agreements with the Security Pacific Bank and the Bank of New York.

[94] As discussed above, GSCC has amended its proposed rules to authorize GSCC to revise the margin factors to address changing market conditions.

[95] *See* Letter to Ester Saverson, Jr., *supra* note 86.

[96] *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167.

[97] *See* Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

believes that it is an acceptable method of allocating losses among its participants and appropriately balances the statutory goals of promoting prompt and accurate clearance and settlement (by encouraging broker participation in central clearing facilities) and equitable allocation of dues, fees, and other charges.

In this connection, GSCC's proposal provides for differential treatment between broker and dealer netting members and inter-dealer brokers, with regard to particular aspects of the netting system. For example, the proposal excludes inter-dealer brokers from having to pay marks-to-the market on net fail positions. The proposal also limits an inter-dealer broker's liability to GSCC at $1.6 million per calendar year. In addition, inter-dealer brokers are exempt from the clearing fund contribution requirements; instead, inter-dealer brokers must deposit $1.6 million in collateral with GSCC.[98] The Commission believes that clearing agencies can treat different categories of members differently provided that any different treatment contained in the scheme of financial and operational safeguards is rationally related to the risks posed to the clearing agency by each class of participants.

GSCC treats inter-dealer brokers differently than it treats brokers and dealers because inter-dealer brokers present less potential risk to GSCC and its members than brokers and dealers. Inter-dealer brokers act exclusively as agents for others through systems intended to ensure that all transactions are offset. Thus, the extremely large number of transactions in which inter-dealer brokers participate as parties do not reflect the settlement risks they pose to GSCC. In recognition of this fact, GSCC members collectively decided to set up a separate financial scheme for inter-dealer brokers that provided for allocation of losses based on the fact that inter-dealer brokers act exclusively as agents for others. Therefore, the Commission believes that the special treatment of inter-dealer brokers as a membership category is fair and appropriate in light of the whole scheme GSCC employs to minimize the risk to itself and its members.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule changes are consistent with the Act and, in particular, section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (GSCC–98–04; GSCC–89–05; GSCC–89–06; and GSCC–89–07) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 7, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–16552 Filed 7–13–89; 8:45 am]

BILLING CODE 8010–01–M

[98] GSCC's proposed Rule 4, section 7 requires inter-dealer brokers participating in the netting system to deposit and maintain a cash deposit of $100,000 and an additional open account indebtedness of $1.5 million secured by either eligible treasury securities or irrevocable letters of credit.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 10, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Carlisle Companies, Inc.
Common Stock, $1 Par Value (File No. 7–4675)

Longview Fibre Co.
Common Stock, $7.50 Par Value (File No. 7–4676)

SPI Pharmaceuticals, Inc.
Common Stock, $0.01 Par Value (File No. 7–4677)

Allstate Municipal Premium Income Trust
Common Stock, $0.01 Par Value (File No. 7–4678)

MFS Multimarket Total Return Trust
Shares of Beneficial Interest (File No. 7–4679)

Nuveen Performance Plus Municipal Fund, Inc.
Common Stock, $0.01Par Value (File No. 7–4680)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 31, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–16555 Filed 7–13–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17058; File No. 812–7034]

UNUM Life Insurance Co. et al.; Application for Exemption

Date: July 7, 1989.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: UNUM Life Insurance Company ("UNUM"), TSAVA Separate Account (the "Variable Investment Division") and UNUM Sales Corp. ("UNUM Sales").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) of the 1940 Act from sections 26(a)(2)(C) and 27(c)(2) thereof.

Summary of Application: Applicants seek an order to permit the deduction of mortality and expense risk charges under certain group variable annuity contracts (the "Contracts").

Filing Date: The application was filed on April 24, 1989, and amended on June 28, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the Commission by 5:30 p.m., on August 1, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Joan Sarles Lee, Esquire,

UNUM Life Insurance Company, 2211 Congress Street, Portland, Maine 04122. Copies to Gary O. Cohen, Esquire, Freedman, Levy, Kroll & Simonds, 1050 Connecticut Avenue NW., Suite 825, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa, (202) 272–2622, or Acting Assistant Director Clifford E. Kirsch, (202) 272–2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. UNUM is a stock life insurance company organized under the laws of Maine. The Variable Investment Division is a unit investment trust and has filed with the Commission a registration statement with respect to the Contracts on Form N–4 under the 1940 Act and the Securities Act of 1933 (the "1933 Act"). The Variable Investment Division invests exclusively in shares of the Dreyfus Life and Annuity Index Fund, Inc. (the "Fund"). The Fund will be offered to insurance company separate accounts of both affiliated and unaffiliated insurance companies to fund variable life insurance and variable annuity contracts. The Fund is managed by Wells Fargo Investment Advisers, a registered investment adviser under the Investment Advisers Act of 1940.

2. UNUM Sales, a subsidiary of UNUM, is the principal underwriter and distributor of the Contracts. UNUM Sales will distribute the Contracts through representatives who are licensed to sell securities, insurance products and variable annuities. The Contracts will be offered continuously. UNUM Sales, a broker-dealer registered under the Securities Exchange Act of 1934, is a member of the National Association of Securities Dealers, Inc.

3. The Contracts will be available to employers who offer their employees a retirement program that qualifies for tax benefits under section 403(b) of the Internal Revenue Code of 1986 and regulations thereof (the "Code").

4. The Contracts provide for a Death Benefit for a Participant who dies during the Accumulation Period and before the end of the calendar year in which the Participant turns age 70½. The Death Benefit permits beneficiaries to receive the greater of the following amounts: (a) The sum of all Contributions made under the Contract, less any net withdrawal amounts, amounts converted to an annuity or outstanding loan (including principal and due and accrued interest) or (b) the Participant's account balance less any outstanding loan (including principal and due and accrued interest.) If the Participant's age is greater than 70½ years at death, his/her Beneficiary will be paid the Net Withdrawal Amount as specified in the Contract.

5. UNUM deducts an Annual Administration Charge of $25.00 per year (or the balance of the Participant's account if less) from each Participant's account balance on the last business day of the month in which a participation anniversary occurs. This Annual Administration Charge is imposed only during the accumulation period. UNUM does not anticipate a profit from the Annual Administration Charge and such charge is guaranteed not to increase.

6. No sales charge will be deducted from contributions under the Contracts when initially received. Under the Contracts, during the accumulation period UNUM charges a Contingent Deferred Sales Charge (CDSC) on all total or partial withdrawals of a Participant's account balance unless the withdrawal is on account of one of the following events: (a) The Participant has attained age 59½; (b) the Participant has incurred a disability for which he/she is receiving Social Security payments; (c) the Participant has died; or (d) the Participant has terminated employment with the Contractholder. The CDSC reimburses UNUM for part or all of its expenses related to distribution of the Contracts, including compensation to dealers and the cost of sales materials. Amounts subject to the CDSC are charged in accordance with the following schedule:

Participation year	CDSC percent
1 to 6	5
7	4
8	3
9	2
10	1
11 and later	0

A Participant will receive participation year credits if: (a) On the effective date of the Contract, the Participant is also a participant under another UNUM or UNUM Pension and Insurance Corporation section 403(b) contract; (b) such other contract has a withdrawal charge schedule that declines to zero based on the number of participation years or the number of years such other contract has been effective; and (c) a contribution on behalf of the Participant is made to the Contract during the 12 month period beginning on the effective date of the Contract.

7. UNUM assumes an expense risk in that the actual expenses incurred by UNUM in issuing and administering the Contracts may exceed the amount estimated. UNUM assumes a mortality risk in that UNUM's actuarial estimate of mortality rates during the Annuity Period, as guaranteed in the Contract, may prove erroneous and Annuitant may live longer than expected. By making this contractual guarantee, UNUM assures that neither an Annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect under the Contracts. In addition, UNUM bears the mortality risk that it guarantees to pay a Death Benefit that may be higher than the Paticipant's account balance upon the death of the Participant prior to the annuity period.

8. The compensate it for assuming mortality and expense risks, UNUM will deduct from the net assets of the Variable Investment Division a daily charge in an amount equal to 1.2% on an annual basis. This charge is assessed both during the Accumulation Period and the Annuity Period. The 1.2% cumulative charge consists of .25% for the expense risk and .95% for the mortality risk. The relative proportion of these charges, consistent with industry practice, is estimated and, therefore, may change, based on UNUM's experience in administering the Contracts. However, the total cumulative charge may not be altered.

9. Applicants request exemptive relief from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the assessment and deduction of the mortality and expense risk charge with respect to the Contracts.

10. Applicants represent that the level of the mortality and expense risk charge imposed is both within the range of industry practice for comparable annuity contracts and reasonable in relation to the risks described in the application. Applicants state that this representation is based upon their analysis of publicly available informatioon regarding comparable contracts of other companies, taking into consideration the particular annuity features of the comparable contracts. Such factors includes: death benefit guarantees, annuity purchase rate guarantees, other contract charges, the frequency of charges, the administration

services performed by the companies with respect to the contracts, the distribution methods, the market for the contract and the tax status of the contracts. Applicants represent that they will maintain at their home office and make available to the Commission a memorandum setting forth in detail the comparable variable annuity products analyzed and the methodology, and results of, Applicant's comparative review so long as there are Contracts outstanding.

11. The CDSC may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants acknowledge that if the revenues generated by the CDSC are insufficient to cover UNUM's actual costs related to the distribution of the Contracts, such costs will be paid from UNUM's General Account assets, which may include any ultimate profit derived from the mortality and expense risk charge. In such circumstances, a portion of the mortality and expense risk charge may be viewed as providing for a portion of the costs relating to distribution of the Contracts.

12. Notwithstanding the foregoing, UNUM has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Contractholders and Participants as well as the Variable Investment Division. The bases for UNUM's conclusion are set forth in a memorandum which will be maintained by UNUM at its home office and will be available to the Commission. Moreover, UNUM represents that the Variable Investment Division will invest only in an underlying mutual fund that undertakes, in the event it should adopt any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of Section 2(a)(19 of the 1940 Act.

Applicants' Legal Conclusion

Applicants submit that their requests for exemption are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act and that an order of the Commission should, therefore, be granted. Accordingly, Applicants request an exemption pursuant to Section 6(c) of the 1940 Act from Sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the assessment and deduction of the mortality and expense risk charge, described above, with respect to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–16556 Filed 7–13–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[RS&I-Ap-No. 1011]

Burlington Northern Railroad Co.; Reconsideration; Public Hearing

The Burlington Northern Railroad Company has petitioned the Federal Railroad Administration (FRA) for reconsideration of its petition seeking relief from the requirements of § 236.307 of the Rules, Standards and Instructions (49 CFR Part 236) to the extent that the carrier not be required to install indication locking for the Flashing Yellow aspect (Approach Medium) at 120 colorlight type approach signals. This proceeding is identified as FRA Rules, Standards and Instructions Application No. 1011.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly a public hearing is hereby set for 10 a.m. on August 30, 1989, in the West Meeting Room of the Minot Municipal Auditorium located at 420 Third Avenue SW. in Minot, North Dakota.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on July 10, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–16484 Filed 7–13–89; 8:45 am]

BILLING CODE 4910–06–M

[BS-Ap-No-2836]

Consolidated Rail Corp. and Public Hearing

The Illinois Central Railroad Company and Consolidated Rail Corporation have petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed conversion of the manual interlocking at Effingham, Illinois to automatic operation. This proceeding is identified as FRA Block Signal Application Number 2836.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly a public hearing is hereby set for 10 a.m. on August 23, 1989, in Room D of the Holiday Inn located at 1600 West Fayette Road in Effingham, Illinois.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on July 10, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–16485 Filed 7–13–89; 8:45 am]

BILLING CODE 4910–06–M

Maritime Administration

[Docket No. S-853]

Waterman Steamship Corp.; Amended Application for Privilege Call Service on Trade Routes 10 and 13

Waterman Steamship Corporation (Waterman) has requested an amendment to the **Federal Register** Notice dated July 10, 1989 (54 FR 28857) to correct errors, namely; (1) Waterman's letter in paragraph 1, line 1 should be June 30, 1989, instead of June 29, 1989; (2) "out gross revenues" in paragraph 3, line 13 should read "outbound gross revenues" and (3) the "Outbound total" of Trade Routes 10 and 13 in the table should read 1,035,647 tons versus 10,035,647 tons.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of Maritme Subsidy Board.

Date: July 11, 1989.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 89-16563 Filed 7-13-89; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Treasury Borrowing Advisory Committee of the Public Securities Association; Renewal of Charter

Announces the renewal of the charter for the Treasury Borrowing Advisory Committee of the Pubic Securities Association, formerly known as Government and Federal Agencies Securities Committee of the Public Securities Association advisory committee, for a period of two years, in accordance with the Federal Advisory Committee Act (Pub. L. 92-463).

The Secretary of the Treasury has determined that the renewal of this committee is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the committee is to provide informed advice as representatives of the financial community to the Secretary of the Treasury and Treasury staff, upon the Secretary of the Treasury's request, in carrying out Federal financing and in the management of the public debt.

The scope of the activity of the committee is to consider commercial and financial information relevant to its objectives and to consult with and advise the Secretary of the Treasury and Treasury staff with respect to debt management operations, and to make reports and recommendations.

Meetings and closed to the public because the topics of discussions pertain to information exempt from disclosure under subsection 552b(c)(4) and (c)(9)(A)(i) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

The advice provided consists of commercial and financial information given and received in confidence. As such, debt management advisory committee activities concern matters which fall within the exception covered by subsection 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although Treasury's final announcement of financing plans may not reflect the recommendation provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities markets. Thus, these meetings also fall within the exemption covered by subsection 552b(c)(9)(A)(i) of Title of the United States Code.

Membership consists of twenty to twenty-five members who are experts in Government securities markets, involved in a senior position in debt markets as investor, investment advisor, banker or as a dealer, bank or non-bank in debt securities and are appointed by the Public Securities Association from its association membership. Members must be highly competent, experienced and actively involved in financial markets. Effort is made to get regional representation so that committee views are a reasonable proxy for nationwide views. As far as possible, balance between bank and non-bank dealers is sought. From time to time, members are added or deleted to reflect changing responsibilities and to provide for a rotation of membership in areas where more than one qualified candidate may be available.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463) the Department of the Treasury has renewed the charter of the Treasury Borrowing Advisory Committee of the Public Securities Association and approved the following membership:

Donald B. Riefler, Chairman, Sources & Uses of Funds Committee, Morgan Guaranty Trust Company, New York, NY 10015

Jon S. Corzine, Partner, Goldman Sach & Co., New York NY 10004

Daniel S. Ahearn, Senior Vice President, Wellington Management Company, Boston, MA 02109

Louis Betanzos, Executive Vice President, National Bank of Detroit, Detroit, MI 48226

James S. Brickley, Chief Investment Officer, Boatmen's National Bank of St. Louis, St. Louis, MO 63101

Richard S. Davis, Managing Director, The First Boston Corporation, New York, NY 10055

Raphael de la Gueronniere, Director of Fixed Income, Paine Webber Incorporated, New York, NY 10019

John B. Ford, Chariman of the Board, Aubrey G. Lanston & Co., Inc., New York, NY 10005

Stephen C. Francis, Managing Director, Fischer, Francis, Trees & Watts, Inc., New York, NY 10022

Richard S. Fuld, Jr., Vice Chairman, Shearson Lehman Hutton, Inc., World Financial Center, New York, NY 10295

George H. Grimm, Executive Vice President and Managing Director, Westac Pollack & Company, New York, NY 10038

David A. Jones, Chairman & President, Citicorp Securities Markets, Inc., New York, NY 10268

John J. Mack, Managing Director, Morgan Stanley & Company, Inc., New York, NY 10020

Daniel T. Napoli, Chairman and GEO, Government Securities Department, Merrill Lynch & Co., Inc., New York, NY 10281

Ralph F. Peters, Chairman of the Executive Committee, Discount Corporation, New York, NY 10005

Allan Rogers, Managing Director, Bankers Trust Company, New York, NY 10015

H. Jack Runnion, Jr., Senior Executive Vice President, Wachovia Bank & Trust Company, N.A., Winston-Salem, NC 27101

Morgan B. Stark, Managing Director, Chemical Bank, Global Securities & Foreign Exchange, New York, NY 10172

John R. Vella, Executive Vice President, Bank of America, NT & SA, San Francisco, CA 94104.

David M. Nummy,

Acting Assistant Secretary of the Treasury (Management).

Effective Date: July 15, 1989.

[FR Doc. 89-16531 Filed 7-13-89; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

[Delegation Order No. 67 (Rev. 19)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The specific authorization to sign the name of, or on behalf of, Fred T. Goldberg, Jr., Commissioner of Internal Revenue. The text of the Delegation Order appears below.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Melva E. Scruggs, PFR:P:I, Room 3524, 1111 Constitution Avenue NW., Washington, DC 20224, (202) 566–4273 (Not a Toll-Free Telephone Call)

Order No. 67 (Rev. 19)

Effective date: July 5, 1989.

Signing the Commissioner's Name or on His Behalf:

Effective 9:00 a.m., July 5, 1989, all outstanding authorizations to sign the name of, or on behalf of, Michael J. Murphy, Acting Commissioner of Internal Revenue, are hereby amended to authorize the signing of the name of, or on behalf of, Fred T. Goldberg, Jr., Commissioner of Internal Revenue.

Delegation Order No. 67 (Rev. 18) effective March 4, 1989, is superseded.

Approved:

Fred T. Goldberg, Jr.,

Commissioner.

Date: July 5, 1989.

[FR Doc. 89–16558 Filed 7–13–89; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 134
Friday, July 14, 1989

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).

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

White House Conference Advisory Committee

DATE AND TIME: August 3, 1989.

PLACE: The Embassy Suites Hotel, Delegate Room, 1250 22nd Street NW., Washington, DC 20037.

STATUS: August 3, 1989, 9:00 a.m.–3:30 p.m., Open.

MATTERS TO BE DISCUSSED: White House Conference on Library and Information Services Conference II Advisory Committee Subcommittee Reports

—WHCLIS II Resources
—WHCLIS II Structure Committee
—Preconference Activities Committee
—Public Relations And Awareness Committee
—Public And Private Sector Liaisons Committee

Status Report on Administrative Items
Review of Formula for Funding States.

Special provisions will be made for handicapped individuals by contacting John W. A. Parsons (1 202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: John W. A. Parsons, NCLIS Staff, 1111 18th Street NW., Suite 310, Washington, DC 20036, (1 202) 254–3100.

Dated: July 11, 1989.

John W. A. Parsons,

Staff Assistant for the White House Conference.

[FR Doc. 89–16644 Filed 7–12–89; 10:01 am]
BILLING CODE 7527–01–M

Corrections

Federal Register
Vol. 54, No. 134
Friday, July 14, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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 THE INTERIOR

Bureau of Land Management

[WY-060-09-4212-14, WYW-101839]

Realty Action; Direct Sale of Public Land in Johnson County, Wyoming

Correction

In notice document 89-14937 beginning on page 26433 in the issue of Friday, June 23, 1989, make the following corrections:

1. On page 26433, in the table, in the second column, the entry should read "T. 41 N., R. 79 W., 6th P.M. Section 5: SW¼SW¼".

2. On the same page, in the same table, in the fourth column, the entry should read "1,400.00.

3. On the same page, in the third column, in the last paragraph, in the fifth line "17091" should read "1701".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AGL-3]

Establishment of Transition Area; Chetek, WI

Correction

In rule document 89-14900 appearing on page 26373 in the issue of Friday, June 23, 1989 make the following correction:

On page 26373, in the first column, under **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the sixth line, "Cheteck" should read "Chetek".

BILLING CODE 1505-01-D

DEPARTMENT OF TREASURY

Fiscal Service

[Dept. Circ. 570, 1988-Rev., Supp. No. 18]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Industrial Indemnity Co., et al.

Correction

In notice document 89-14882 appearing on page 26462 in the issue of Friday, June 23, 1989, make the following correction:

On page 26462, under Department of the Treasury, in the table, under "Company name", the fourth entry should read "North River Insurance Co."

BILLING CODE 1505-01-D

Federal Register

Friday
July 14, 1995

federal register

Friday
July 14, 1989

Part II

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites—Update #9; Federal Facility Sites; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3615-2]

National Priorities List for Uncontrolled Hazardous Waste Sites: Update #9—Federal Facility Sites

AGENCY: Environmental Protection Agency

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing the ninth update to the National Priorities List ("NPL"). This update proposes to add 52 sites to the Federal facilities section of the NPL. These sites are located on facilities that currently are owned or operated by the Federal government. In this update, EPA also proposes to expand one Federal facility site that is on the final NPL. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. CERCLA was amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The NPL, initially promulgated on September 8, 1983 (48 FR 40658), constitutes this list.

These sites are being proposed because they meet the listing requirements of the NPL. This notice provides the public with an opportunity to comment on placing these sites on the NPL.

This proposed rule brings the number of proposed NPL sites to 335, 74 of them in the Federal section; 889 are on the final NPL, 41 of them in the Federal section. Final and proposed sites now total 1,224.

DATES: Comments must be submitted on or before September 12, 1989.

ADDRESSES: Comments may be mailed to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL Staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Addresses for the Headquarters and Regional dockets are provided below. For further details on what these dockets contain, see the Public Comment Section, Section I, of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/382-3046.

Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, John F. Kennedy Federal Bldg., Boston, MA 02203, 617/573-5729.

U.S. EPA, Region 2, Document Control Center, Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano 212/264-5540, Ophelia Brown 212/264-1154.

Diane McCreary, Region 3, U.S. EPA Library, 5th Floor, 841 Chestnut Bldg., 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-0580.

Gayle Alston, Region 4, U.S. EPA Library, Room G-6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347-4216.

Cathy Freeman, Region 5, U.S. EPA 5HSM-12, 230 South Dearborn Street, Chicago, IL 60604, 312/886-6214.

Deborah Vaughn-Wright, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202-2733, 214/655-6740.

Brenda Ward, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/236-2828.

Dolores Eddy, Region 8, U.S. EPA Library, 999 18th Street, Suite 500, Denver, CO 80202-2405, 303/293-1444.

Linda Sunnen, Region 9, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8082.

David Bennett, Region 10, U.S. EPA, 9th Floor, Mail Stop HW-093, 1200 6th Avenue, Seattle, WA 98101, 206/442-2103.

FOR FURTHER INFORMATION CONTACT: Martha Otto, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline at (800) 424-9346 (or 382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* ("CERCLA" or "the Act"), in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Pub. L. No. 99-499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or the "Agency") promulgated the revised National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624), and November 20, 1985 (50 FR 47912), sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed further revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, take into account the potential urgency of such action for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP, (47 FR 31219, July 16, 1982). On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to SARA. EPA intends to issue the revised HRS as soon as possible. However, until the proposed revisions have been subject to public comment and put into effect, EPA will continue to propose and promulgate sites using the current HRS, in accordance with CERCLA section 105(c)(1) and

Congressional intent, as explained on March 31, 1989 (54 FR 13299).

Section 105(a)(8)(B) of CERCLA, as amended, requires that the statutory criteria provided by the HRS be used to prepare a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). Section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site can undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on March 31, 1989 (54 FR 13296). The Agency also has published a number of proposed rulemakings to add sites to the NPL, most recently Update #8 on May 5, 1989 (54 FR 19526).

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 27 sites from the final NPL, most recently on May 31, 1989 (54 FR 23212), when Voortman Farm, Upper Saucon Township, Pennsylvania, was deleted.

This notice proposes to add 52 sites to the Federal facilities section of the NPL, bringing the number of proposed sites to 335, 74 of them in the Federal section. The final NPL contains 889 sites, 41 of them in the Federal section, for a total of 115 Federal sites. Final and proposed sites total 1,224.

The NPL includes sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

Public Comment Period

This **Federal Register** notice opens the formal 60 day comment period for NPL Update #9. Comments may be mailed to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The Headquarters and Regional public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the scoring of these proposed sites. The dockets are available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

The Headquarters docket for NPL Update #9 contains HRS score sheets for each proposed site, a Documentation Record for each site describing the information used to compute the score, a list of documents referenced in the Documentation Record, and pertinent information for any site affected by statutory requirements and listing policies.

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents, which contain the data that EPA relied upon in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. They may be viewed, by appointment only, in the appropriate Regional Docket or Superfund Branch Office. Requests for copies may be directed to the appropriate Regional Docket or Superfund Branch.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the formal comment period. During the comment period, comments are available to the public only in the Headquarters docket. A complete set of comments pertaining to sites in a particular EPA Region will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the appropriate Regional Office docket on an "as received" basis. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any comments. After considering the relevant comments received during the comment period, EPA will add to the NPL all proposed sites that meet EPA's requirements. In past NPL rulemakings, EPA has considered, to the extent practicable, comments received after the close of the comment period. EPA will attempt to do so in this rulemaking as well.

Early Comments

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if they still consider them appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to formal proposal generally will not be included in the docket.

Comments Lacking Specificity

EPA anticipates that some comments will consist of or include additional studies or supporting documentation, e.g., hydrogeology reports, lab data, and previous site studies. Where commenters do not indicate what specific scoring issues the supporting documentation addresses, or what they want EPA to evaluate in the supporting documentation, EPA can only attempt to respond to such documents as best it can. Any commenter submitting additional documentation should indicate what specific points in that documentation EPA is to consider. As the U.S. Court of Appeals for the District of Columbia Circuit noted in *Northside Sanitary Landfill* v. *Thomas and EPA*, 849 F. 2d 1516, 1520 (D.C. Cir. 1988), *cert. denied*, ___U.S.___(March 20, 1989), during notice-and-comment rulemaking a commenter must explain with some specificity how any documents submitted are relevant to issues in the rulemaking.

Availability of Information

EPA has published a statement describing what background information (resulting from the initial investigation of potential CERCLA sites) the Agency discloses in response to Freedom of Information Act requests (52 FR 5578, February 25, 1987).

II. Purpose and Implementation of the NPL

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational

and management tool. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation.

Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.66(c)(2). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at Federally-owned facilities. Federal facility sites also are subject to the requirements of CERCLA section 120, added by SARA.

Implementation

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score is calculated by estimating risks presented in three potential "pathways" of human or environmental exposure: ground water, surface water, and air. Within each pathway of exposure, the HRS considers three categories of factors "that are designed to encompass most aspects of the likelihood of exposure to a hazardous substance through a release and the magnitude or degree of harm from such exposure": (1) Factors that indicate the presence or likelihood of a release to the environment; (2) factors that indicate the nature and quantity of the substances presenting the potential threat; and (3) factors that indicate the human or environmental "targets" potentially at risk from the site. Factors within each of these three categories are assigned a numerical value according to a set scale. Once numerical values are computed for each factor, the HRS uses mathematical formulas that reflect the relative importance and interrelationships of the various factors to arrive at a final site score on a scale of 0 to 100. The resultant HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air" (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State as representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624, September 16, 1985), has been used only in rare instances. It allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

All sites in this update are being proposed for the NPL based on HRS scores.

Federal agencies have the primary responsibility under CERCLA section 120(c) for identifying Federal facility sites. In conjunction with EPA Regional Offices, the Federal agencies perform investigations, sampling, monitoring, and scoring of sites. Regional Offices then conduct a quality control review of the candidate sites. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing (and EPA's listing policies) and solicits public comments on the proposal. Based on these comments and further review by EPA, the Agency determines final scores and lists those sites that still qualify for the final NPL.

III. Statutory Requirements and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances from the definition of a release. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. For example, EPA has chosen not to list sites that result from contamination associated with facilities licensed by the Nuclear Regulatory Commission (NRC), on the grounds that the NRC has the authority and expertise to clean up releases from those facilities (48 FR 40661, September 8, 1983).

Sites proposed for the NPL in this update meet current eligibility requirements and listing policies. The NPL policies and requirements relevant to these Federal facility sites are discussed below.

Releases From Federal Facility Sites

On June 10, 1986 (51 FR 21054), the Agency announced a decision on components of a policy for the listing or the deferral from listing on the NPL of several categories of non-Federal sites subject to the Resource Conservation and Recovery Act (RCRA) Subtitle C corrective action authorities. The policy was intended to reflect RCRA's broadened corrective action authorities as a result of the Hazardous and Solid Waste Amendments of 1984 (HSWA). In announcing the RCRA policy, the Agency reserved for a later date the question of whether this or another policy would be applied to Federal facility sites that included one or more RCRA hazardous waste management units, and thus are subject to RCRA Subtitle C corrective action authorities.

On March 13, 1989 (54 FR 10520), the Agency announced a decision on components of a policy for placing on the NPL those sites located on Federally-owned or -operated facilities that meet the NPL eligibility requirements (e.g., an HRS score of 28.50 or greater) set out in the NCP, even if the Federal facility also is subject to the corrective action authorities of RCRA Subtitle C. Cleanup, if appropriate, could then be effected at those sites under either CERCLA or RCRA. The Agency's statement of this policy, and the rationale, are fully discussed at 54 FR 10520 (March 13, 1989).

The Agency believes that placing on the NPL Federal facility sites with or without RCRA-regulated hazardous waste management units is consistent with the intent of section 120 of SARA and will serve the purposes originally intended by the NCP at 40 CFR 300.66(e)(2)—to advise the public of the

status of Federal government cleanup efforts (50 FR 47931, November 20, 1985). In addition, listing will help other Federal agencies set priorities and focus cleanup efforts on those sites presenting the most serious problems.

Thus, the June 10, 1986, RCRA deferral policy (51 FR 21057), applicable to private sites, will not be applied to Federal facility sites.

Releases of Special Study Wastes

Sections 105(g) and 125 of CERCLA, as amended by SARA, require additional information before sites involving RCRA "special study wastes" can be proposed for the NPL (until revisions to the HRS are effected). Section 105(g) applies to sites that (1) were not on or proposed for the NPL as of October 17, 1986, and (2) contain sufficient quantities of special study wastes as defined under RCRA sections 3001(b)(2) [drilling fluids], 3001(b)(3)(A)(ii) [mining wastes], and 3001(b)(3)(A)(iii) [cement kiln dust]. Before these sites can be added to the NPL, SARA requires that the following information be considered:

- The extent to which the HRS score for the facility is affected by the presence of the special study waste at or released from the facility.
- Available information as to the quantity, toxicity and concentration of hazardous substances that are constituents of any special study waste at or released from the facility; the extent of or potential for release of such hazardous constituents; the exposure or potential exposure to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at the facility.

Two sites in this proposed NPL update—the Feed Materials Production Center (USDOE), in Fernald, Ohio and Monticello Mill Tailings (USDOE) in Monticello, Utah—contain CERCLA section 105(g) special study wastes, specifically mining wastes. The Agency has prepared addenda for these two sites that evaluate the information called for in section 105(g). These addenda indicate that the special study wastes at the sites present a threat to human health and the environment, and that both sites should be proposed to the NPL. The addenda are available for review in the public docket.

Section 125 of CERCLA, as amended, addresses special study wastes described in RCRA section 3001(b)(3)(A)(i) [fly ash and related wastes]. No sites in this rule are subject to the provisions of section 125.

Releases From Mining Sites

The Agency's position is that mining wastes may be hazardous substances, pollutants, or contaminants under CERCLA and, therefore, mining waste sites are eligible for the NPL. This position was affirmed in 1985 by the United States Court of Appeals for the District of Columbia Circuit (*Eagle-Picher Industries. Inc.* v. *EPA*, 759 F. 2d 922 (D.C. Cir 1985)).

The Agency's policy, prior to listing mining sites, is to consider whether they might be addressed satisfactorily using State-share monies from the Abandoned Mine Land Reclamation (AMLR) Fund under the response authorities of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). One noncoal mining site being proposed in this update, Feed Materials Production Center (USDOE) in Fernald, Ohio, does not meet the SMCRA eligibility criteria because it was active after the August 7, 1977, SMCRA enactment date. The other noncoal mining site being proposed, Monticello Mill Tailings (USDOE) in Monticello, Utah, potentially is eligible for SMCRA funds. However, available information suggests that the site will not be addressed under SMCRA in the foreseeable future. Thus, this site is being proposed for placement on the NPL, consistent with EPA policy. (See 54 FR 10512, 10514–10516 (March 13, 1989) and 54 FR 13300–13301, 13302 (March 31, 1989).) Information supporting EPA's position regarding the Monticello Mill Tailings (USDOE) site is available in the docket.

IV. Contents of Proposed NPL Update #9

Federal facility sites are placed in a separate section of the NPL. For this update, the Agency is proposing 52 Federal facility sites (Table 1), bringing the total number of such proposed sites to 74. Currently, 41 Federal facility sites are on the final NPL.

In addition to proposing new sites, EPA also is proposing to expand one final Federal facility site. Mather Air Force Base (AC&W Disposal Site), Sacramento, California, was placed on the final NPL on July 22, 1987 (52 FR 27620). Since then, EPA has determined that additional areas of the base are responsible for further contamination of the aquifer, and may be responsible for contamination off base. Consequently, EPA proposes to expand the original site and requests comment on the expanded site. The site would be renamed "Mather Air Force Base." EPA discussed the basis for site expansions in a final rule concerning Federal facility sites [54 FR 10512, March 13, 1989].

Each proposed site is placed by score in a group corresponding to groups of 50 sites presented within the final NPL. For example, a site in Group 8 of the proposed Federal facility update has a score that falls within the range of scores covered by the eighth group of 50 sites on the final NPL. The NPL is arranged by HRS score and is presented in groups of 50 to emphasize that minor differences in scores do not necessarily represent significantly different levels of risk.

In the past, each site entry was accompanied by one or more notations reflecting the status of response and cleanup activities at the site at the time this list was prepared. EPA now intends to acknowledge response activities conducted by potentially responsible parties with Federal or State oversight in a report, which will be available later this year. In the interim, information on activities at the new proposed sites is available upon request to the appropriate Regional Office.

V. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to proposal to the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order No. 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites. EPA believes that the kinds of economic effects associated with this revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes that the anticipated economic effects related to proposing the addition of these sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

Costs

EPA has determined that this proposed rulemaking is not a "major" regulation under Executive Order No. 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party

or determine its liability for site response costs. Costs that arise out of site responses result from site by-site decisions about what actions to take, not directly from the act of listing itself.

Benefits

The benefits associated with today's proposed amendment to add sites to the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the Remedial Investigation/Feasibility Study at these particular sites. Associated with the costs of remedial actions are significant potential benefits and cost offsets. The distributional costs of carrying out remedies at sites on the NPL have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the effect of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small governmental jurisdictions, and nonprofit organizations.

While proposed modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. Proposing sites for the NPL does not in itself require any action by any party (e.g., contractors operating government-owned facilities), nor does it determine the liability of any party for the cost of cleanup at the site. Further, because today's proposed rule involves Federally-owned or -operated facilities, the number of small entities that could be affected by this proposal will be limited.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Jonathan Z. Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Date: July 6, 1989.

PART 300—[AMENDED]

It is proposed to amend 40 CFR Part 300 as follows:

1. The authority citation for Part 300 continues to read as follows:

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2), E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2943.

Appendix B to Part 300—National Priorities List (By Rank) [Amended]

2. It is proposed to add the following sites by Group to the Federal Section of the National Priorities List, Appendix B of Part 300.

TABLE 1—NATIONAL PRIORITIES LIST, FEDERAL FACILITY SITES, PROPOSED UPDATE 9 (BY GROUP) JULY 1989

NPL Gr[1]	St	Site Name	City/County
2	ID	Mountain Home Air Force Base	Mountain Home.
2	OH	Feed Materials Prod Cent (USDOE)	Fernald.
2	WA	Bangor Naval Submarine Base	Silverdale.
3	WA	Bonneville Power Adm Ross (USDOE)	Vancouver.
4	ID	Idaho National Engin Lab (USDOE)	Idaho Falls.
4	TN	Oak Ridge Reservation (USDOE)	Oak Ridge.
5	CA	Treasure Island Nav Sta-Hun Pt An	San Francisco.
5	AK	Eielson Air Force Base	Fairbanks N Star Bor.
5	SC	Savannah River Site (USDOE)	Aiken.
6	AK	Standard Steel & Met Sal Yd (USDOT)	Anchorage.
6	MA	Otis Air Nat Guard/Camp Edwards	Falmouth.
6	AK	Elmendorf Air Force Base	Greater Anchorage Bo.
6	GA	Marine Corps Logistics Base	Albany.
7	CO	Air Force Plant PJKS	Waterton.
7	NJ	Picatinny Arsenal	Rockaway Township.
7	AK	Fort Wainwright	Fairbanks N Star Bor.
7	FL	Homestead Air Force Base	Homestead.
7	FL	Pensacola Naval Air Station	Pensacola.
8	CA	Fort Ord	Marina.
8	MA	Fort Devens	Fort Devens.
9	NY	Brookhaven National Lab (USDOE)	Upton.
9	TX	Longhorn Army Ammunition Plant	Karnack.
9	NJ	Federal Aviation Admin Tech Cent	Atlantic County.
9	NH	Pease Air Force Base	Portsmouth/ Newington.
9	WY	F.E. Warren Air Force Base	Cheyenne.
10	AZ	Luke Air Force Base	Glendale.
10	AZ	Williams Air Force Base	Chandler.
10	CA	Barstow Marine Corps Logist Base	Barstow.
10	PA	Tobyhanna Army Depot	Tobyhanna.
10	NY	Seneca Army Depot	Romulus.
11	UT	Monticello Mill Tailings (USDOE)	Monticello.
12	MA	Fort Devens-Sudbury Training Ann	Middlesex County.
12	WA	Fort Lewis Logistics Center	Tillicum.
12	OH	Mound Plant (USDOE)	Miamisburg.
12	RI	Davisville Naval Constr Batt Cent	North Kingstown.
12	ME	Loring Air Force Base	Limestone.
13	CA	Camp Pendleton Marine Corps Base	San Diego County.
13	KS	Fort Riley	Junction City
14	CA	Edwards Air Force Base	Kern County.

TABLE 1—NATIONAL PRIORITIES LIST, FEDERAL FACILITY SITES, PROPOSED UPDATE 9 (BY GROUP) JULY 1989—Continued

NPL Gr[1]	St	Site Name	City/County
14	CA	George Air Force Base	Victorville.
14	RI	Newport Naval Educat/Training Cen	Newport.
14	FL	Jacksonville Naval Air Station	Jacksonville.
15	FL	Cecil Field Naval Air Station	Jacksonville.
15	CA	March Air Force Base	Riverside.
15	CA	Lawrence Livermore Lab-300 (USDOE)	Livermore.
15	CA	Tracy Defense Depot	Tracy.
16	MN	Naval Industrial Reserve Ordnance	Fridley.
16	MO	Weldon Spring Form Army Ord Works	St. Charles County.
16	NY	Plattsburgh Air Force Base	Plattsburgh.
17	IA	Iowa Army Ammunition Plant	Middletown.
17	CA	Travis Air Force Base	Solano County.
17	HI	Schofield Barracks	Oahu.

Number of Federal Facility Sites Proposed for Listing: 52

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL

[FR Doc. 89-16419 Filed 7-13-89; 8:45 am]
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federal register

Friday
July 14, 1989

Part III

Department of the Interior

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 122; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Western Gulf of Mexico
Oil and Gas Lease Sale 122
(August 1989)

Correction: On Thursday July 6, 1989, at 54 FR 28513 the Notice of Sale for proposed Western Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sale was published in the Federal Register. The following corrections should be made:

Correction #1: Paragraphs 11(a) and (b) on page 28514 listing the leasing maps should be corrected. The Notice lists a South Texas Set for $5, and an East Texas Set for $7. These are now combined into a single set of maps which sells for $18.

Correction #2: Paragraph 11(c) on page 28514 should be corrected to reflect the following updated revision dates:

NG 14 - 6 Port Isabel (revised 4/27/89)
NG 15 - 2 Garden Banks (revised 10/19/81)
NG 15 - 4 Alaminos Canyon (revised 4/27/89)
NG 15 - 8 (No Name) (revised 4/27/89)

Correction #3: Paragraph 12 (d) on page 28515 which lists Federal acreage under lease is amended to correct the following errors:

The listing of blocks for the High Island area should end with the block number A-165. Blocks A-414 to A-596 should be listed under the heading High Island, South Addition, and

The following block number was repeated and the second listing of that block should be deleted from the list:

Map Area	Block Number
East Breaks	112

Correction #4: Paragraph 13, Lease Terms and Stipulations, Stipulation No. 2--Protection of Topographic Features contains a table on page 28516 in which the listing of banks and water depths

should be corrected to read as follows (Footnotes remain unchanged):

Bank Name	No Activity Zone Defined by Isobath (meters)
Shelf Edge Banks	
West Flower Garden Bank[1] (defined by 1/4 1/4 1/4 system)	100
East Flower Garden Bank[1] (defined by 1/4 1/4 1/4 system)	100
MacNeil Bank	82
29 Fathom Bank	64
Rankin Bank	85
Geyer Bank	85
Elvers Bank	85
Bright Bank[5]	85
McGrail Bank[5]	85
Rezak Bank[5]	85
Sidner Bank	85
Parker Bank	85
Stetson Bank	62
Applebaum Bank	85
Low Relief Banks[2]	
Mysterious Bank	74,76,78,80,84 (see leasing map)
Coffee Lump	Various (see leasing map)
Blackfish Ridge	70
Big Dunn Bar	65
Small Dunn Bar	65
32 Fathom Bank	52
Claypile Bank[3]	50
South Texas Banks[4]	
Dream Bank	78,82
Southern Bank	80
Hospital Bank	70
North Hospital Bank	68
Aransas Bank	70
South Baker Bank	70
Baker Bank	70

Correction #5: Paragraph 13, Lease Terms and Stipulations, Stipulation No. 3--Military Warning Areas, section [a] on page 28516:

The clause in the first sentence which reads, "..to any persons of to any property of any person or persons who are agents,.." should be corrected to read, "..to any persons or to any property of any person or persons who are agents,.."

Correction #6: Paragraph 14 (g) Gulf Ocean Incineration Site on page 28517 contains a table in which the map name Garden Breaks should be corrected to Garden Banks.

Carolita Kallaur

Associate Director for Offshore Minerals Management

Carolita Kallaur

JUL 11 1989

Date

[FR Doc. 89-16545 Filed 7-13-89; 8:45 am]
BILLING CODE 4310-MR-C

federal register

Friday
July 14, 1989

Part IV

Department of the Interior

Minerals Management Service

5-Year Outer Continental Shelf Oil and Gas Leasing Program for Fall 1991 to Fall 1996; Notices

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Intent To Prepare an Environmental Impact Statement for the Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for Fall 1991 to Fall 1996

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior's Minerals Management Service (MMS) intends to prepare an Environmental Impact Statement (EIS) regarding a proposed new 5-Year Outer Continental Shelf (OCS) oil and gas leasing program for the period fall 1991 to fall 1996. The draft EIS is currently scheduled for release in late 1990.

Section 18 of the OCS Lands Act requires the Department of the Interior to prepare and maintain an oil and gas leasing program consisting of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet national energy needs for the 5-year period following the approval of the program. Alternatives to the proposed leasing program will include options for the size, timing, and location of lease sales.

A Notice requesting suggestions and comments from States, local governments, the oil and gas industry, Federal Agencies, and other interested individuals and groups to assist the Department of the Interior in the preparation of a 5-Year OCS Oil and Gas Leasing Program to cover the period fall 1991 to fall 1996 also appears in today's **Federal Register**. Information was requested on the characteristics of the OCS planning areas, environmental sensitivity, and the ranking of OCS areas both by oil and gas potential and by interest in exploration and development.

Pursuant to 40 CFR 1501.7, this Notice initiates the scoping process for the EIS. The Department of the Interior hereby solicits information from Federal, State, and local agencies and the public regarding alternatives and issues which should be evaluated in the EIS. Respondents are requested to focus their comments on the significant environmental issues attendant to OCS oil and gas leasing and development and on alternative leasing schedules and presale processes which should be evaluated in the EIS. The opportunity for public input continues throughout the EIS preparation process. For example, comments and information received during the drafting of the new 5-year leasing program will also be taken into consideration during the preparation of the EIS. In addition, the final EIS will incorporate comments received following public review of the draft EIS.

DATES: Scoping comments should be received by August 28, 1989.

ADDRESS: Scoping comments should be submitted to Debra Purvis, Minerals Management Service, Mail Stop 644, 381 Elden Street, Herndon, Virginia 22070. Hand deliveries to the Department of the Interior may be made to Room 2525, 18th and C Streets NW., Washington, DC 20240. Envelopes or packages should be marked "Scoping comments on the Proposed 5-Year Leasing Program EIS."

FOR FURTHER INFORMATION CONTACT: Debra Purvis, Branch of Environmental Evaluation, MMS, at (703) 787–1666.

Barry A. Williamson,

Director, Minerals Management Service.

Date: July 10, 1989.

[FR Doc. 89–16532 Filed 7–13–89; 8:45 am]

BILLING CODE 4310–MR–M

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Notice of Request for Comments on the Development of a New 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program

SUMMARY: Section 18 of the OCS Lands Act (hereafter, the Act) requires the Department of the Interior to solicit suggestions from Federal Agencies, coastal States, and others during the preparation of a new 5-Year OCS Oil and Gas Leasing Program. The current leasing program, approved in July 1987, schedules lease sales through June 1992. The Minerals Management Service (MMS) intends to prepare a new program for the period fall 1991 to fall 1996.

The program preparation effort is expected to take over 2 years to complete. Approval of the new program in fall 1991 will help provide a smooth transition from the existing program to the new one.

Statutorily required steps in the program development process following this initial Notice include the development of a draft proposed program, a proposed program, a proposed final program, and a final program. An Environmental Impact Statement will also be prepared, and the initiation of that process is announced in a companion Notice. The draft proposed program is currently scheduled to be issued in March 1990, following consideration of the report related to the Presidential Task Force on OCS Sales 91 (Northern California), 95 (Southern California), and 116--Part II (Eastern Gulf of Mexico).

DATES: Comments and information must be received within 45 days from the publication of this Notice.

ADDRESS: Comments and information should be mailed to: Deputy Associate Director for Offshore Leasing, Minerals Management Service (MS-641), Room 4230, 18th and C Streets, NW., Washington, DC. 20240. Hand deliveries to the Department of the Interior may be made at 18th and C Streets, NW., Room 2525, Washington, DC. Envelopes or packages should be marked "Comments for Development of the New 5-Year OCS Oil and Gas Leasing Program." If any privileged or proprietary information which the respondent wishes to be treated as confidential is attached to comments, the envelope should be marked, "Contains Confidential Information." As required by section 18(c)(1) of the Act, any suggestions from the executive of any affected local government in an affected State shall be first submitted to the Governor of such State.

FOR FURTHER INFORMATION CONTACT: For information on the development of a new 5-year leasing program, telephone contact may be made with Paul R. Stang, Chief, Branch of Program Development and Planning, at (202) 343-1072. For copies of base maps referred to below or documents and maps describing the 1987 program, telephone orders can be placed to (202) 343-1072.

SUPPLEMENTARY INFORMATION: Comments are requested from States, local governments, the oil and gas industry, Federal Agencies, and other interested individuals and groups to assist the Department of the Interior in the preparation of a 5-Year OCS Oil and Gas Leasing Program to cover the period fall 1991 to fall 1996.

The OCS leasing program enables the Federal Government, affected States, industry, and other interested parties to plan for the steps leading to OCS oil and gas lease sales. A decision on whether to proceed with a specific sale on the schedule will be made only after all the applicable requirements of the Act, the National Environmental Policy Act of 1969, and other applicable statutes have been met.

The program preparation process will follow all the procedural steps set out in section 18 of the Act, including the development of a draft proposed program, a proposed program, a proposed final program, and a final program. The purpose of this Notice is to solicit comments early in the program preparation process pursuant to section 18(c)(1) of the Act.

A draft proposed program will be prepared based on consideration of the factors specified by section 18 (these factors are indicated below). The draft proposed program will display planning milestones and will refer to sales by name and number. For the decision on the draft proposed program, a number of options will be developed which will include a range of schedules varying the timing or location of proposed offshore lease sales.

The Department of the Interior is considering new approaches to conduct the OCS oil and gas leasing program so as to reduce conflict as well as obtain a proper balance between the economic benefits and environmental risks. A part of the program development effort will be the reassessment of the current approach of focusing on promising acreage, the reexamination of past approaches such as tract selection, and the search for new initiatives. Other policy options to be examined will cover such topics as the determination of which areas should be available for leasing, the frequency and timing of lease sales, different treatment for different OCS areas, and potential expansion of the planning horizon beyond 5 years.

As part of the decision process, your comments will be considered along with the analysis required by section 18 of the Act. The report of the Task Force which President Bush has appointed to review and resolve environmental concerns over impacts of OCS Lease Sales 91 and 95 offshore California and Sale 116, Part II offshore Florida will also be considered in formulating the 5-year program. The Task Force, composed of representatives from the Departments of the Interior, Energy, and Commerce (the National Oceanic and Atmospheric Administration), the Environmental Protection Agency, and the Office of Management and Budget, with scientific support from the National Academy of Sciences, is to present its report to the President by January 1, 1990. Separate opportunities to comment have been provided by the Task Force.

Respondents should be aware that the following concepts will be considered in the development of the 5-year program:

1. Both quantitative and qualitative information will be considered in meeting the requirements of section 18(a) of the Act; and

2. Leasing activities under the program should assure receipt of fair market value for the lands leased (this is a statutory requirement of section 18(a)(4) of the Act).

The list of planning areas in Table 1 is open to comment. These areas will be subject to analysis under section 18 and will be considered as candidates for the draft proposed program. Lease sales are scheduled in 20 of these planning areas in the current 5-year leasing program.

Precise marine boundaries between the United States and nearby or adjacent nations have not been determined in all cases. The maritime boundaries and limits depicted in the attached maps, as well as divisions between planning areas where shown, are for planning purposes only. These limits shall not affect or prejudice in any manner the position of the United States with respect to the nature or extent of the internal waters or of sovereign rights or jurisdiction for any purpose whatsoever.

Information Requested

--All Parties

Comments are solicited as follows: Information and comments submitted at this stage should be general or conceptual in nature and relevant to determining the appropriate overall size, timing, and location of sales to be considered in the leasing program (i.e., the configuration of planning area boundaries, the frequency of sales in a planning area, and the presale process which determines sale size and location--including any suggestions for new approaches, as indicated above).

As noted above, the Department is required by section 18(a) of the Act to consider a number of factors in formulating a 5-year leasing program. We would like to have information and your suggestions relevant to the requirements of section 18(a), including your suggestions or criteria of nationwide application that would be useful in shaping the new 5-year program. The following list provides an indication of the kind of information which would be most useful in conducting the section 18(a) analysis. Please note that not all factors may be relevant to all parties wishing to comment.

(1) Information on national energy needs for the period relevant to the new program; on the economic, social, and environmental values of the renewable and nonrenewable resources contained in the OCS; and on the potential impact of oil and gas exploration on other resource values of the OCS and the marine, coastal, and human environments.

(2) Existing information concerning geographical, geological, and ecological characteristics of the regions (planning areas) of the OCS and nearshore environments.

(3) Suggested methods and information for analyzing the sharing of developmental benefits and environmental risks among the various regions (planning areas) and ways to determine what constitutes an equitable sharing.

(4) Information concerning other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of OCS resources and space.

(5) Methods and information for assessing relative environmental sensitivity and marine productivity of the different planning areas of the OCS.

(6) Relevant environmental and predictive information pertinent to offshore and coastal areas potentially affected by OCS development.

(7) The location of planning areas with respect to, and the relative needs of, regional and national energy markets.

We would also like to have information on the availability of transportation networks to bring oil and gas supplies to demand areas both on a current and projected basis.

Parties requesting the inclusion of one or more portions of the OCS in the new oil and gas leasing program should also indicate where leasing need not be pursued.

Parties requesting the exclusion of one or more portions of the OCS in the new oil and gas leasing program should also indicate where leasing should be permitted.

Information and criteria which support comments are also requested to assist the Department in its deliberations.

--Governors of Coastal States

The Governors of affected States are also being requested concurrently by letter to identify State laws, goals, and policies relevant for the Department's consideration.

--Oil and Gas Industry

Oil and gas industry respondents are requested to provide information which could be used to identify the areas most likely to contain oil and natural gas accumulations of sufficient size and number to warrant leasing, exploration, and commercial development activities under current and foreseeable technological and economic conditions. It should be emphasized that this information will be considered along with comments on possible environmental effects and the results of various environmental and other cost and economic analyses to determine the size, timing, and location of areas which may be offered for leasing in the 5-year program. All information requested should be based on estimates of resources expected to be unleased as of fall 1991.

Specifically, for each of the 26 whole planning areas identified in Table 1, below, companies are asked to provide the following information:

1) Delineate those areas within each planning area most likely to have high, moderate, low, and unknown potential for possible oil and natural gas accumulations. These rankings should be relative to the individual planning area. The delineations should be as specific as possible, given the information available at this early stage of the 5-year program development process. It would be helpful if respondents used standard base maps, which can be requested from the "Further Information Contact" listed above.

2) Rank each planning area from 1 to 26 by order of interest in leasing, exploration and development. If this ranking would change by considering only the acreage available for leasing in the 1987 program, please provide such a revised ranking and explain the rationale for the change.

3) Indicate whether your company considers each planning area to be oil-prone, gas-prone, both, or unknown.

4) Indicate the desired interval between sales, if more than one sale is deemed desirable for the area during the new program.

5) If only one sale in a planning area is deemed desirable, indicate whether the planning area should be offered early or late in the proposed program schedule.

6) Indicate whether your company agrees or disagrees with the ranking of potential in Table 2, below. Table 2 shows a preliminary ranking of OCS planning areas, based on undiscovered, unleased risked mean barrels of oil equivalent, as estimated by MMS.

Confidential treatment of privileged or proprietary information is authorized under section 18(g) of the Act. In order that only privileged or proprietary information be treated as confidential, it should be submitted as an attachment to the other comments which a respondent submits. An attachment to a response containing privileged or proprietary information will, upon request, be treated as confidential from the time of receipt by MMS until 5 years after final approval of the next leasing program. However, summaries of such information submitted to MMS, the names of respondents submitting it, and comments not containing such information will not be treated as confidential information. As noted above, if any privileged or proprietary information which the respondent wishes to be treated as confidential is attached to comments, the envelope should be marked, "Contains Confidential Information."

Suggestions are also requested for possible revisions in the planning area boundaries described earlier in this Notice with reasons for any such revisions.

Barry Williamson

Barry A. Williamson
Director, Minerals Management Service

JUL 10 1989
Date

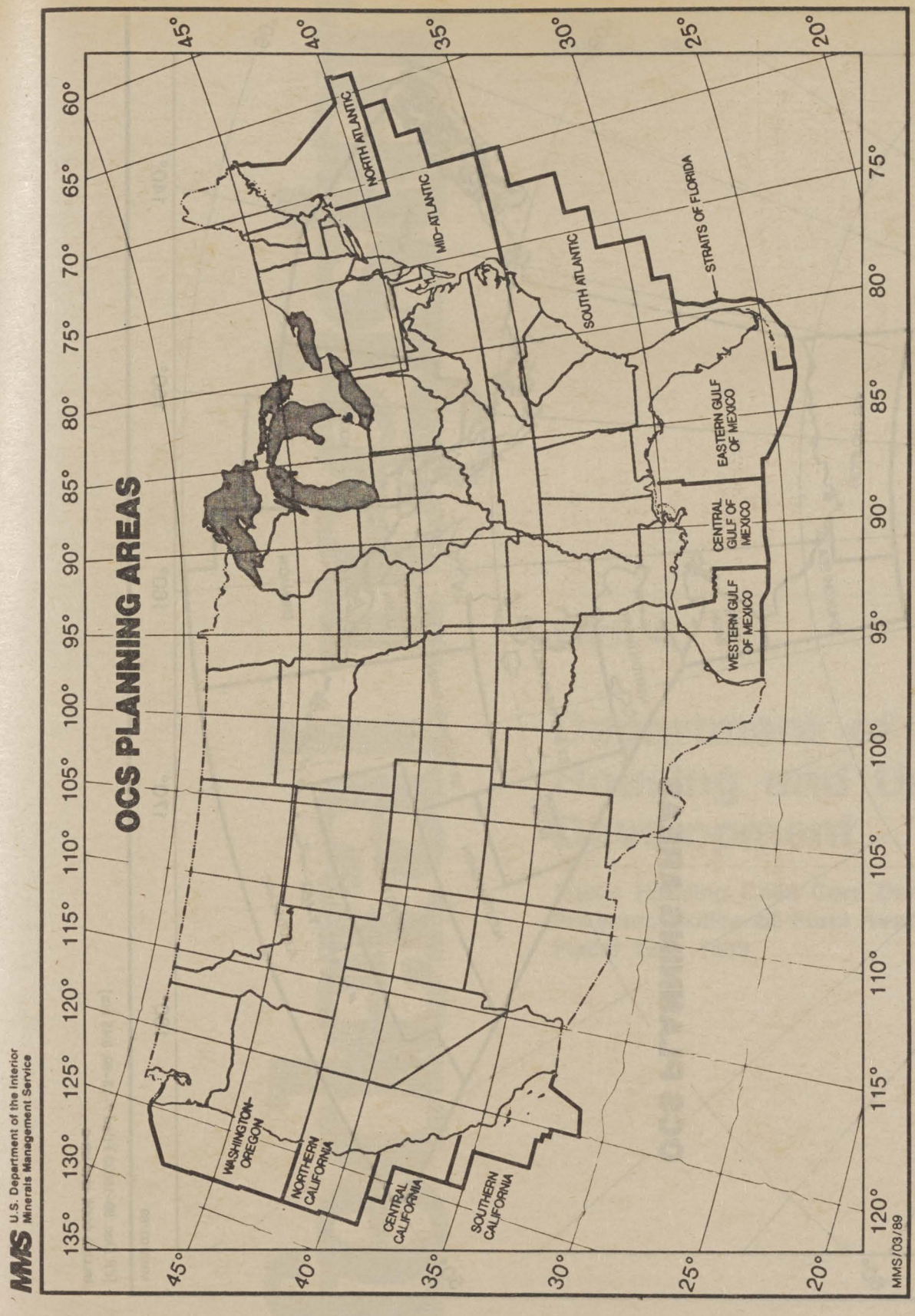
Table 1

North Atlantic, Mid-Atlantic, South Atlantic, Straits of Florida, Eastern Gulf of Mexico, Central Gulf of Mexico, Western Gulf of Mexico, Southern California, Central California, Northern California, Washington-Oregon, Gulf of Alaska, Kodiak, Cook Inlet, Shumagin, Aleutian Arc, North Aleutian Basin, St. George Basin, Bowers Basin, Aleutian Basin, Navarin Basin, St. Matthew-Hall, Norton Basin, Hope Basin, Chukchi Sea, Beaufort Sea.

Table 2

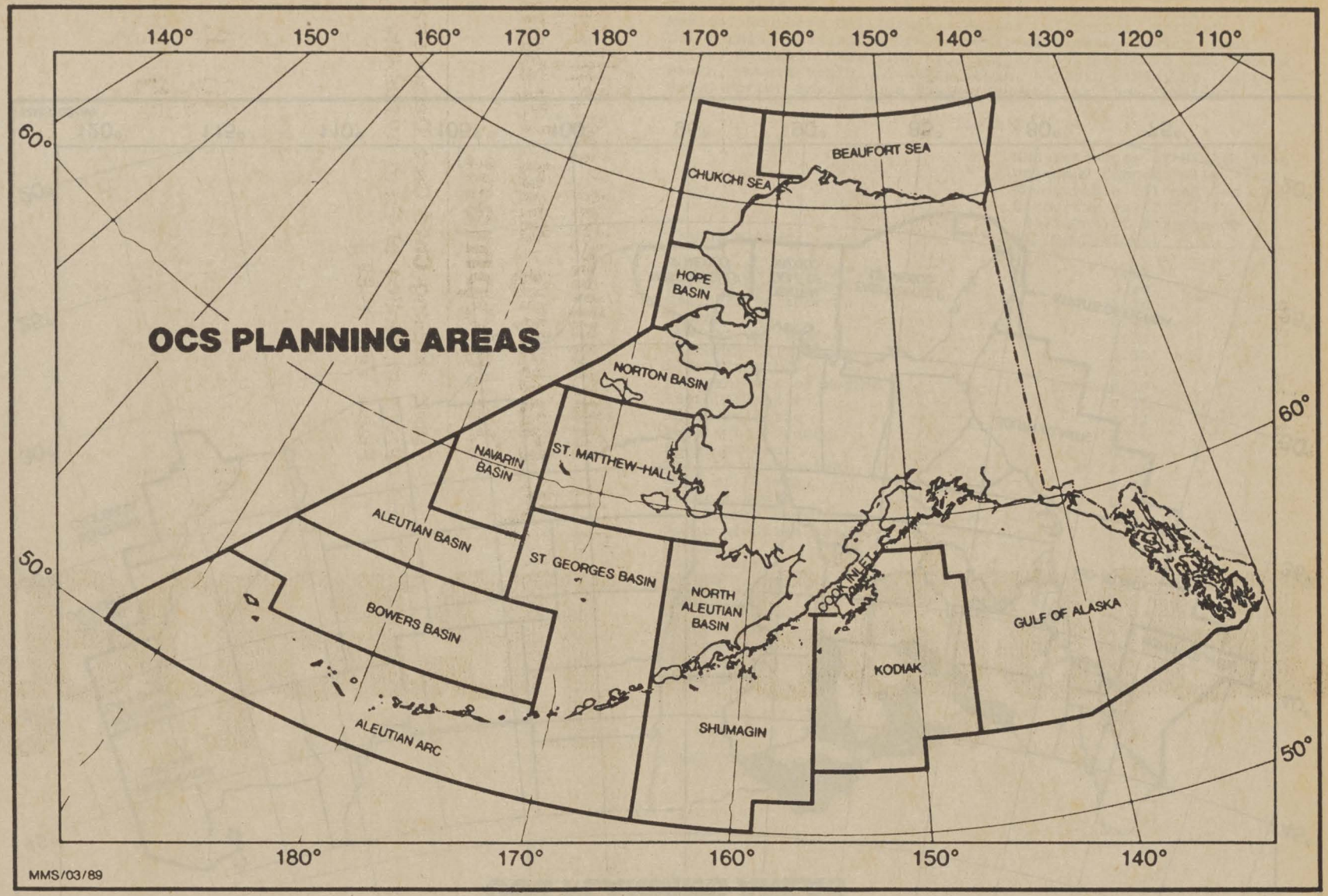
Planning Area	MMS Estimates of Risked Mean Unleased Economically Recoverable Oil and Gas Resources as of 1/1/87 (Billions of Barrels of Oil Equivalent)
Central Gulf of Mexico	7.38
Western Gulf of Mexico	5.20
Southern California	1.36
Chukchi Sea	0.59
Central California	0.58
Northern California	0.52
Mid-Atlantic	0.43
Eastern Gulf of Mexico	0.30
South Atlantic	0.23
North Atlantic	0.22
Washington-Oregon	0.14
Beaufort Sea	0.12
Straits of Florida	0.08
Gulf of Alaska	0.04
Navarin Basin	0.03
St. George Basin	0.01
North Aleutian Basin	0.01
Kodiak	0.01
Cook Inlet	*
Norton Basin	*
Hope Basin	*
St. Matthew-Hall	*
Aleutian Arc	*
Bowers Basin	*
Aleutian Basin	*
Shumagin	*

* Negligible



MMS U.S. Department of the Interior Minerals Management Service

MMS U.S. Department of the Interior
Minerals Management Service



[FR Doc. 89–16533 Filed 7–13–89; 8:45 am]
BILLING CODE 4310–MR–C

federal register

Friday
July 14, 1989

Part V

Department of Housing and Urban Development

Public Housing Child Care Demonstration Program; Notice of Fund Availability, Fiscal Year 1989

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-89-1943; FR-2467]

Public Housing Child Care Demonstration Program Notice of Fund Availability, Fiscal Year 1989

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability.

SUMMARY: HUD is announcing the availability of $5 million for fiscal year 1989 for the Public Housing Child Care Demonstration Program under amended Section 222 of the Housing and Urban Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983). The demonstration is intended to provide grants to nonprofit organizations to: (1) Assist in establishing child care facilities so that the parents or guardians of preschool or school-aged children may seek, retain or train for employment; and (2) determine the extend to which the availability of such child care services facilitates the employability of the parents or guardians of children residing in public housing. This Notice also implements Section 1002 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). Section 1002 provides that the child care facilities under this demonstration program may be established not only in lower income housing projects (as provided by Section 117 of the Housing and Community Develolpment Act of 1987), but also in facilities located near such projects.

DATES: Submissions must be received in the Department of Housing and Urban Development, Office of Procurement and Contracts, Room 5256, 451 Seventh Street, SW., Washington, DC 20410 by 5:15 p.m., Eastern Standard Time, on August 28, 1989; or postmarked no later than August 28, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter or Annette Hancock, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5256, Washington, DC 20410, telephone (202) 755-5585. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577-0110. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Develolpment, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Congress authorized the Public Housing Child Care Demonstration program (PHCC) under Section 222 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA). The purpose of the demonstration is to determine the feasibility of using public housing projects, and facilities near such projects, to provide child care services for lower income families that reside in public housing.

On February 5, 1988, President Reagan signed the Housing and Community Development Act of 1987 ("the 1987 Act") (Pub. L. 100-242). Section 117 of the 1987 Act amended the HURRA to provide that grants could be awarded to nonprofit organizations for the purpose of operating child care programs that enable the parents or guardians of young children to be employed or to receive employment training. The primary objective of the demonstration is to determine whether the availability of accessible child care will enable public housing residents to obtain or retain jobs, or to enroll in training that might lead to employment.

The Department published a notice of fund availability (NOFA) on August 17, 1988 (53 FR 31256) to implement the 1987 legislative amendments, and to announce the availability of $5 million for the PHCC demonstration program in fiscal year 1988.

1988 McKinney Amendment

"In or near a lower income housing project"

Under the Housing and Community Development Act of 1987, one of the statutory requirements for receiving PHCC assistance was that the proposed child care facility had to be located in a lower income housing project. The term "lower income housing project" was defined in the August 10, 1987 NOFA to mean housing developed, acquired, or assisted by a public housing agency (PHA) under the U.S. Housing Act of 1937 (other than Section 8 housing). The Department construed this definition to include housing developed, acquired or assisted by an Indian housing authority (IHA).

On November 7, 1988 Congress amended the requirement that the child care facility had to be located in a lower income housing project. Section 1002 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628) (1988 McKinney Act) provides that the child care facility may be located "in or near" a public housing project. As a result, nonprofit organizations may now apply to receive grant funds to opeate a child care facility under this demonstration either on the premises of a public housing project, or near such a project.

HUD is construing "near" to mean that the proposed child care facility must be within a reasonable walking distance to the project, based upon its distance from the project and the types of thoroughfares that must be crossed. As part of its submission to HUD, applicants are required to certify that the proposed facility is within a reasonable walking distance to the project.

If a nonprofit organization seeks to establish an offsite child care center, it will need to located a PHA that is willing to provide the facility. Section 11.2(c)(3)(i) of this NOFA requires the nonprofit entity to include in its grant application evidence that the PHA has, or will be able to, assume control of the proposed offsite premises. This evidence can include copies of the negotiated lease, an option to lease, or a resolution from the lessor's board of directors indicating that the facility will be available to the PHA for use as a child care facility.

While PHAs may use their operating subsidies to provide the offsite child care facilities under this demonstration, a number of PHAs may find that they are financially constrained from exploring this option. Therefore, PHAs with limited operating budgets may choose to enter into lease-back arrangements with nonprofit applicants that already own a facility, or enter into a lease with a third party at nominal or no cost.

Note: Applicants that intend to use grant funds to renovate a building owned by a primarily religious organization are advised

that certain First Amendment requirements not contained in this NOFA may be incorporated into the grant agreement executed with HUD.

Resident Management Corporations and Resident Councils; Grant Selection Procedures

The development and operation of child care facilities in or near public housing projects requires the active involvement and commitment of public housing residents and their organizations. The Department encourages PHAs to make Resident Management Corporations (RMCs) and Resident Councils (RCs) full partners in this effort. An RMC or RC under this NOFA must comply with the requirements of 24 CFR Part 964 (as amended on September 7, 1988, see 53 FR 34676). However, to facilitate the development and operation of child care facilities in public housing projects, RCs may manage such facilities notwithstanding the otherwise applicable requirements of 24 CFR Part 964. To emphasize the importance that the Department attaches to full RMC/RC participation in the development and operation of child care facilities, HUD is awarding points in the selection process (under Section 10 of this NOFA) to applicants that are RMCs or RCs.

This rating criteria will not, however, be applied to applicants that seek to establish child care facilities to serve Indian housing projects. IHAs are not covered by the Department's existing tenant participation and management regulations (24 CFR Part 964) and, hence, would be competitively disadvantaged by this rating criterion. Until HUD promulgates final regulations on Indian tenant participation, either through an amendment to Part 964 or as part of the Indian Consolidated Rule under Part 905, the selection process under this demonstration program will be as follows:

All grant applicants will be reviewed to determine threshold eligibility under Section 9.1. HUD will then evaluate each application on the basis of the selective rating factors at Section 10 and assign the appropriate scores. Applicants that want to establish a child care facility to serve a public housing project will be evaluated on all seven elements listed at Section 10 (including the RMC/RC participation rating element), and will be ranked based upon their total selective rating score. Applicants that will serve an Indian housing project will be rated on six elements, but *not* on the RMC/RC participation element, and will be separately ranked based upon their total selective rating score.

HUD may then use its discretion under Section 9.4 of this NOFA to ensure an equitable distribution of grant funds among both pools of top-rated applicants—those that will serve public housing and Indian housing projects. In exercising its discretion under this section, HUD shall take into account the overall ratio of PHAs to IHAs; the ratio of fundable applications submitted by nonprofit organizations serving public and Indian housing projects; and the extent of available grant funds under this demonstration.

The Department may also exercise its discretion under § 9.5 to substitute one or more highly rated applications if the top-rated applications under the selection criteria do not ensure equitable geographical distribution among urban and rural areas, and among nonprofit organizations providing child care services to lower income housing projects of varying sizes.

Lead Based Paint Guidelines

The requirements of the Lead-Based Paint Poisoning Prevention Act, as amended, (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 shall apply to this demonstration program as follows:

1. Post-1978 Buildings

A child care facility that is to be located in a building that was constructed or substantially rehabilitated after January 1, 1978 does not trigger lead based paint requirements. Either the PHA (for onsite facilities) or the nonprofit (for offsite child care facilities) must certify that the building in which the child care facility is to be located was constructed or substantially rehabilitated after January 1, 1978.

2. Pre-1978 Buildings

A child care facility that is to be located in a building that was constructed or substantially rehabilitated prior to 1978 must have all applicable surfaces tested for the presence of lead-based paint (lead content of greater than or equal to 1 mg/cm^2). Testing is to be performed in accordance with the requirements of 24 CFR Part 965 (this would not include the periodic inspection requirement under § 965.704). If lead-based paint is detected, abatement procedures under 24 CFR 35.24 (as revised on June 6, 1988; 53 FR 20790) must be undertaken. A certification must be provided by the PHA (for onsite child care facilities) or the nonprofit (for offsite facilities) that the building in which the child care facility is to be located will be tested for lead-based paint and, if found, abatement procedures will be undertaken as required by 24 CFR 35.24 before the facilities are used for child care.

Grant funds under this demonstration may be used for lead-based paint testing that is undertaken after the execution of the grant agreement with HUD. Grant funds may *not* be used for lead-based paint abatement. Should lead-based paint abatement be required, grantees that intend to operate off-site child care facilities are advised to seek State, local and private funding for this purpose. Grantees that intend to operate a child care facility within a lower income housing project may request funding from the PHA (Comprehensive Improvement Assistance Program). Each such request will be evaluated by the PHA and HUD on a case-by-case basis.

Because of the prohibitive costs associated with lead based paint abatement, and the fact that abatement activities are not eligible program costs, PHAs are advised to locate child care facilities in newer buildings that have less likelihood of containing lead based paint.

Program Guidelines

This NOFA provides nonprofit organizations with guidelines for the preparation of a grant application under the PHCC demonstration. As an aid to the reader, the following table of contents specifies the various provisions of the NOFA:

1. Definitions

Applicable surface means all intact and nonintact interior and exterior painted surfaces of a residential structure (including a child care facility established under this NOFA.

Lower income housing project means lower income housing and all necessary appurtenances developed, acquired, or assisted by a public or Indian housing agency under the United States Housing Act of 1937 (other than under section 8). A project encompasses those buildings identified in the Annual Contributions Contract (ACC) that is executed between HUD and the PHA or IHA.

Minor renovations means labor, materials, tools, and other costs related to the child care facility for the reconfiguration of space, installation of bathrooms, kitchens, renovations necessary to achieve compliance with physical accessibility standards for the handicapped, or required to meet State or local licensing and building code standards, painting and lighting. Minor renovation does *not* include the costs associated with lead-based paint abatement. Minor renovation also does not include the costs associated with landscaping, unless it is necessary for the security or safety of an outdoor play area.

Nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(a) Have a voluntary board;

(b)(1) Have an accounting system that is, or will be, operated in accordance with governmental accounting and financial reporting standards; or

(2) Designate an entity that will maintain a functioning accounting system for the organization in accordance with governmental accounting and financial reporting standards; and

(c) Practice nondiscrimination in the provision of assistance under the Public Housing Child Care Demonstration program in accordance with the authorities at section 14.1 of this NOFA.

Nonroutine maintenance means work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

Obligated means that the nonprofit grantee has placed orders, awarded contracts, received services or entered similar transaction that require payment from the grant amount.

Operating expenses means expenses that a grantee incurs for planning and development costs, administration, leasing, maintenance, minor or routine repairs, security, utilities, furnishings, equipment, insurance, and staff salaries.

Residual value of improvements means the appraised value of the improvements for continued use, as determined by an independent appraiser at the time the facility is discontinued for use as a child care center.

2. Applicants

2.1 *Eligibility.* Any nonprofit organization is eligible to receive a grant under this Demonstration. A PHA, IHA, Indian tribe, or other governmental entity that seeks to obtain grant funds under this demonstration must first establish a separate nonprofit entity that meets the requirements of Section 1 (*see* definition of "nonprofit organization").

The Department encourages applications from community-based, nonprofit organizations that have proven experience in providing child care or other related services to lower income families. HUD particularly encourages public housing resident associations and resident management corporations (RMCs) with similar experience to submit applications under this program. To facilitate the development and operation of child care programs in public housing projects, RCs may be applicants and manage such programs notwithstanding the otherwise applicable requirements of 24 CFR Part 964 (as amended on September 7, 1988, 53 FR 34676). Under Section 10 of this NOFA, additional points will be awarded to applicants that are RMCs or RCs. (This rating element does not apply to applicants seeking to establish a child care facility to serve an Indian housing project.)

An RMC or RC under this demonstration may act *either* as an agent for the sponsoring PHA, or as the nonprofit grantee receiving grant funds from HUD, but it may not act in both capacities simultaneously.

Moreover, an RMC or RC acting on behalf of a PHA may not assume certain PHA responsibilities specified in this NOFA, including lead-based paint inspection and abatement for onsite child care facilities. The PHA must assume this function.

2.2 *Minority applicants.* HUD encourages the full participation of minority nonprofit organizations in this demonstration program.

2.3 *Multiple applications.* An eligible nonprofit organization may submit multiple applications under this demonstration, so long as each application requests funding to establish a child care facility for a different lower income housing project (*see* the definition of "lower income housing project" under Section 1 of NOFA).

2.4 *Previously approved applicants.* Nonprofit applicants that have been approved to receive a child care demonstration grant under a previous funding round are not eligible to receive a grant for the same project under this NOFA.

3. Grant Amounts

3.1 *Maximum grant amount.* To ensure that grants are provided to the largest number of nonprofit organizations practicable, the maximum grant amount is $100,000. The Department has discretion to determine the amount of any grant award.

3.2 *Start-up capital.* In making grant award determinations, HUD will give preference to those applicants that: (a) Intend to use grant amounts as start-up capital; (b) demonstrate a high level of

non-HUD funding during the demonstration phase; and (c) have a strategy for achieving 100 percent non-HUD funding following the expiration of the grant award. In this manner, the child care programs that are established under this demonstration may continue to operate without further HUD funding.

3.3 *Non-HUD Funding.* Other sources of funding that applicants should explore include: HHS Title XX; Department of Agriculture funding for meals; Job Training Partnership Act funds; State and local funding; grants from nonprofit social service agencies; and public housing agency funds, as well as the support of private, voluntary and religious organizations.

4. Use of Grant Funds

4.1 *Eligible activities.* Grant funds may be used for operating expenses and minor renovation of the child care facilities. HUD recommends that applicants use the grant award for start-up or one-time costs. While the Department discourages the use of grant funds for salaries, it will consider such applications if: (a) The program is of unusual merit; (b) the applicant demonstrates that there is no other source of funding available to pay these costs in the initial grant year; and (c) the applicant identifies additional sources of funds to pay for salaries in subsequent years. If major renovations are needed, they must be undertaken with other sources of funding. The guarantee of these funding sources and the timeliness of completion of the work must be demonstrated in order for the application to be approved.

5. Eligible Facilities

A proposed facility under this demonstration program must:

(a) Be located in or near (i.e. within a reasonable walking distance to) a lower income housing project;

(b) Be large enough to accommodate the proposed number of children;

(c) Meet all State and local standards and requirements for child care facilities (including total square footage per child, adequate kitchen and bathroom facilities, accessibility for the handicapped, security, staff qualifications and licenses, etc.); and

(d) not be located in a PHA: (1) with outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, unless the PHA is implementing a HUD-approved plan or compliance agreement designed to correct the area(s) of noncompliance; or (2) that is in violation of the compliance agreement.

Applications for "Family-based" child care facilities—i.e., facilities to be operated by a nonprofit organization using the homes of one or more residents of a project—may be considered for processing if they meet all of the eligibility requirements set out in this NOFA, especially day care provider qualifications, and the ability of the facility to meet State and local licensing standards.

6. Staffing Guidelines

Applicants must demonstrate that the proposed child care facility will provide staff in sufficient numbers, and with adequate training, to meet applicable State and local standards. In making its grant award determinations, HUD will consider under Section 9.1(e)(2) whether the applicant, to the extent practicable, has designed the child care program to employ in part-time positions elderly individuals residing in the project. Additional rating points will be awarded under Section 10(b) to applicants that have designed the child care program so as to employ public housing tenants residing in the project.

7. Responsibilities of Grantees

All nonprofit organizations receiving grants under this demonstration must:

7.1 *Enrollment restrictions.* Ensure that the child care center targets its enrollment to the children of lower income families residing in public housing for as long as the PHA provides the facilities (preference may be given to single parents). Non-PHA residents may enroll their children in the facility *only* if there are available openings in the child care facility, and there is no demand for those openings by PHA residents. Moreover, when filling vacancies, the nonprofit grantee is required to give preference to any lower income housing project residents whose names are placed on a waiting list;

7.2 *Notify tenants of child care services.* Undertake affirmative measures to inform lower income families that reside in the project to be served by the child care facility of the existence and fee structure of the child care facility;

7.3 *Recordkeeping.*

(a) *Budget.* Maintain accurate records of the child care facility's operation, expenditures, and revenues, and submit these records for review by HUD or the PHA, upon request;

(b) *Income and employment status of parents and guardians.* Maintain accurate records concerning the names and addresses of all participating parents and guardians for submission to HUD. In addition, maintain accurate income and employment status records on all non-PHA resident parents and guardians. Such information shall be collected upon admission of a child to the facility, and updated thereafter on an annual basis for submission to HUD. PHAs are required to provide HUD with income and employment status information for PHA resident parents and guardians in accordance with section 8.5 of this NOFA.

(c) *Race, ethnicity and gender data.* Maintain accurate records on the race, ethnicity and gender of: (1) Non-PHA resident parents (or guardians) and their children that apply for admission to, as well as those that participate in, the program; and (2) the children of PHA residents that apply for, and those that participate in, the child care program.

(d) *Participating children.* Maintain accurate records on the children participating in the program, including their age, school grade level, and any physical or emotional handicaps. These records shall be submitted to HUD or the PHA upon request;

(e) *Annual performance report.* Provide HUD with an annual performance report on the obligation and expenditure of funds for the eligible activities described in Section 4.1 of this Notice, together with data concerning the level of non-HUD funding received during the grant year. The annual performance report must also provide HUD with the racial, ethnic and gender data required under Section 7.3(c). The report must be submitted by the end of the fiscal year for which grant amounts are made available; and

(f) *Periodic reports.* Submit periodic reports to HUD on the operation of the child care facility, as requested.

7.4 *Insurance.* Maintain general liability insurance with a minimum limit of $500,000 per occurrence, and workers' compensation, in compliance with State statutes.

7.5 *Child care fees.* In order to generate income, the child care facility may charge reasonable fees for services, which may be based upon a sliding fee scale that corresponds to the family's income. The child care facility may also charge reduced fees for public housing residents.

7.6 *Compliance.* Ensure compliance with all the requirements specified in this NOFA.

8. Responsibilities of the PHA

All PHAs that participate under this Demonstration must:

8.1 *Provide suitable facilities.* Provide suitable space for the child care facility either in or near the lower income housing project.

8.2 *Identify participants and resident employees.* Assist the grantee

in identifying and selecting public housing participants and potential resident employees;

8.3 *Submit Form HUD–50058.* Provide HUD with Form HUD–50058 for each public housing resident parent and guardian participating in the demonstration program, if such form has not previously been submitted.

8.4 *Annual Contributions Contract (ACC) project number.* For child care facilities that are to be located within a lower income housing project, provide HUD with the ACC project number for the building in which the facility is to be located;

8.5 *Utilities.* Provide utility services to the facility, if the child care facility is located within the project and if such services were being provided by the PHA to the facility before implementation of the demonstration program;

8.6 *Miscellaneous assistance.* Provide other assistance to the grantee as needed, and as agreed upon by the PHA and the grantee (e.g., assist the grantee in seeking non-HUD funding or in preparing reports for submission to HUD). While PHAs are *not* required to provide funds to grantees under this demonstration, they may elect to do so; and

8.7 *Nondiscrimination.* Comply with the civil rights authorities listed at Section 14.1 of this NOFA.

9. Review and Approval Process

9.1 *Threshold criteria.* Applications will first be reviewed to determine threshold eligibility. Applications that do not meet the following threshold criteria will be disqualified from further processing:

(a) The applicant must be a nonprofit organization (*see* definition at Section 1 of this NOFA);

(b) The child care facility must be located in or near (i.e., within a reasonable walking distance to) a lower income housing project. The nonprofit applicant is required to certify that the offsite facility is within a reasonable walking distance to the project based upon its distance from the project and the types of thoroughfares that must be crossed;

(c) The child care program must be designed to target its enrollment to the children of lower income facilities residing in public housing, as long as the sponsoring PHA provides the facility;

(d) The child care services program must be designed to either serve preschool children during the day, school children after school, or both, in order to permit the parents or guardians of such children to obtain, retain, or train for employment;

(e) The child care services program must be designed, to the extent practicable, to: (1) Involve the participation of the parents of children in the program; and (2) employ in part-time positions elderly individuals residing in the project;

(f) At the time the application is submitted under this demonstration, there must *not* be a child care services program in operation for the project;

(g) The application must provide assurances from the PHA that it will provide suitable facilities in the project for the child care facility. In the case of offsite child care facilities, the PHA must provide evidence that it has, or will be able to, assume control of the proposed premises (*see* Section 11.2(c)(3)(i) of this NOFA);

(h) The participating PHA must certify that it is in compliance with the civil rights authorities listed under Section 14.1 of this NOFA; and

(i) The applicant must comply with all applicable State and local laws, regulations, and ordinances.

9.2 *Additional information.* Applications that meet these threshold eligibility requirements will also be reviewed for completeness. HUD reserves the right to request additional information from applicants in order to ensure completeness. If additional information is requested, it must be submitted to HUD by the specified date. If the applicant has not submitted the information by the due date, the application will be considered incomplete and disqualified from further processing.

9.3 *Ranking.* After HUD has determined that an application meets the threshold criteria specified under Section 9.1 of this NOFA, it will evaluate an applicant's qualifications on the basis of the selective rating factors listed at Section 10 and will assign the appropriate scores. Applicants that want to establish a child care facility to serve a public housing project will be evaluated on all seven elements listed at Section 10 (including the RMC/RC participation rating element at paragraph (e)), and will be ranked based upon their total selective rating score. Applicants that will serve an Indian housing project will be rated on six elements, but *not* on the RMC/RC participation element at paragraph (e), and will be separately ranked based upon their total selective rating score.

9.4 *PHA/IHA Distribution.* HUD may exercise its discretion under this paragraph to ensure an equitable distribution of grant funds among the top-rated applicants serving both public housing and Indian housing projects. In exercising its discretion under this section, HUD may take into account the overall ratio of PHAs to IHAs, the ratio of fundable applications submitted by nonprofit organizations serving public and Indian housing projects; and the extent of available grant funds under this demonstration.

9.5 *Geographical Distribution.* In accordance with section 117 of the Housing and Community Development Act of 1987, HUD may substitute one or more highly rated applications if the top rated applications under the selection criteria do not ensure equitable geographical distribution among urban and rural areas, and among nonprofit organizations providing child care services in lower income housing projects of varying sizes.

10. Selective Rating Factors

The Department will evaluate a grant application under this demonstration based upon the following selective rating factors. Applicants may receive up to the maximum number of points identified for each of these factors. Failure to address a factor will result in an applicant's receiving no points for that element.

(a) The extent of demonstrated need for a child care services program, as reflected by: (1) The number of preschool and school-aged children residing in the lower income housing project; (2) the adequacy, affordability, and availability of other child care programs; and (3) the number of residents in the lower income housing project that require the services of a child care facility in order to obtain, train, or retain employment. (Maximum: 20 points)

(b) The extent to which the child care facility will offer a broad or innovative range of services that exceed basic custodial care. These services could include providing a curriculum designed to promote the personal development of the children using the facility; establishing operating hours responsive to the needs of working parents; providing opportunities for parental involvement; and employing in the child care facility public housing tenants residing in the project. (Maximum: 20 points)

(c) The applicant's ability to implement the proposed facility, as demonstrated by its previous child care (or related) experience, particularly experience with children residing in lower income projects (public housing resident associations, resident councils, and resident management corporations with similar experience are especially encouraged to apply); employment of a director with appropriate training and

experience; and development of a strategy to employ and train a qualified staff, including elderly public housing residents; (Maximum: 15 points)

(d) The applicant's ability to mobilize public and private resources during the demonstration phase, as reflected by the use of HUD grant amounts as start-up capital to supplement funds from other sources (including in-kind commitments) during the period covered by the HUD grant. This would also include the extent to which the PHA provides financial or in-kind support to promote the objectives of the demonstration, including fund-raising assistance, job training or other self-sufficiency programs for public housing residents. (Maximum: 15 points).

(e) The applicant's ability to demonstrate that it is either the RMC or RC for the project to be served by the child care program. [This rating factor applies only to facilities to serve a public, but not an Indian, housing project]. (Maximum: 10 points).

(f) The applicant's ability to sustain the facility beyond the demonstration phase. This would include having a realistic strategy for achieving 100 percent non-HUD funding upon the expiration of the HUD grant. (Maximum: 10 points).

(g) The applicant's ability to become operational within a reasonable period of time duirng the demonstration phase. (Maximum: 10 points)

11. Application

11.1 *Submission.* Nonprofit organizations interested in operating a child care facility in accordance with the requirements of this NOFA should submit an original plus two copies of the application materials discussed below, as follows:

(a) Page dimensions should be 8½"x11";

(b) Each page in the application package should be numbered;

(c) A table of contents must be included at the front of the package;

(d) *each* of the application requirements must be addressed (or documentation provided) in the order indicated in Section 11.2, and clearly identified with the item number to which it responds. (For example, evidence of nonprofit status would appear as the second item in the applicant's package, identified as "11.2(a)(2)").

The original of the application materials should be forwarded to Robert Carpenter, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5256, Washington, DC 20410. The submission must be received in Room 5256 by 5:15 p.m., Eastern Standard Time, on August 28, 1989; or postmarked no later than August 28, 1989. Applications recieved or postmarked after this date, or applications that fail to address all of the application requirements set out below, will be disqualified from receiving a grant award and returned. (See section 11.3 of this NOFA).

One copy of the application materials must also be concurrently sent to the HUD Regional Office (Attention: Regional Public Housing Director or, for child care facilities to serve an Indian housing project, to the Director of the Office of Indian Programs), and to the HUD Field Office with jurisdiction over the sponsoring PHA or IHA.

11.2 *Application requirements.* The application must contain the following information, in the order presented below:

(a) *Narrative content.*

(1) The applicant's name, address, telephone number and the name of a responsible contact person;

(2) Evidence of the applicant's nonprofit status. This evidence must include photocopies of the nonprofit organization's bylaws and articles of incorporation, or proof of IRS nonprofit tax status under Section 501(c)(3)).

(3) A description of the nonprofit organization, including the names and titles of the members of its governing board, its strategy for employing and training a qualified staff, qualifications of the proposed facility director; the anticipated number of employees that will be working on a part- or fulltime basis (and whether any of these employees are expected to be elderly residents, or otherwise residents of, the designated project); the anticipated number of volunteers (if any); its ability to implement and manage the proposed child care program, including its prior experience in providing child care or other related services to lower income families, a statement as to whether the applicant is a community-based, nonprofit organization (such as a public housing resident association, Resident Council (RC) or Resident Management Corporation (RMC));

(4) A description of the applicant's proposed method of targeting its enrollment to the children of lower income families residing in public housing, and of informing residents of the availability of such child care services;

(5) A description of the proposed facility, including: its location on-or offsite; the public housing project to be served by the facility; the need for the chiid care facility, including whether there is any other child care program in operation for the project, the anticipated number and age range of the children to be served; the anticipated number of residents that may require the services of a child care facility in order to obtain, train or retain employment; the curriculum and types of services to be provided; and the anticipated fee structure for payment of child care services (including sliding or adjusted fee scale and in-kind services);

(6) A statement concerning the need and proposed use of the HUD grant funds (see discussion at Section 4 of this NOFA); the length of the grant term; a proposed budget for the grant period identifying the child care facility's projected revenues and expenses. *HUD funds should be reported separately from other funding sources.* Projected expenses must include: (1) Both one-time start-up expenses, and (2) on-going operational expenses;

(7) A statement of the grantee's efforts to obtain additional funding from non-HUD sources, including Title XX, USDA meals programs, State and local governments, the private sector, etc.; a description of any commitments obtained from social service providers and volunteer agencies to provide resources to meet the immediate needs of the children to be served by the facility and their parents. Possible services to be provided include training and employment assistance, diagnostic services, and volunteer aides. In addition to the narrative discription, the applicant should include copies of letters of commitment it has received from these agencies;

(8) A statement of how the nonprofit applicant intends to continue operation of the child care facility following expiration of the HUD grant. If the applicant proposes to use grant funds for salaries during the first year of operation, information on how this activity will be funded on an ongoing basis must be specifically provided;

(9) The projected opening date for the child care facility, and a description of any plans for its minor or major renovation. The applicant must provide a timetable for completing major renovations, indicating the source of its funding, and a timetable for meeting the projected opening date;

(b) *Certifications from the nonprofit applicant.* The nonprofit applicant must certify that the proposed child care facility will:

(1) Serve preschool children during the day, school children after school, or both, in order to permit the parents or guardians of such children to obtain, retain or train for employment;

(2) Be designed, to the extent practicable, to involve the participation

of the parents and guardians of children that reside in the project and that use the facility; and to employ on a full- or part-time basis elderly residents of the project;

(3) In its recruitment and selection of staff, require a declaration from all prospective employees that lists all pending and prior criminal arrests, and any charges related to child abuse, and their disposition, and all felony convictions and current criminal charges. The declaration may exclude traffic fines of $50.00 or less, any offense (other than an offense related to child abuse, child sexual abuse, or a violent felony) committed before the prospective employee's 18th birthday which was adjudicated in a juvenile court or under a youth offender law, and any conviction set aside under the Federal Youth and Corrections Act or similar State authority; and

(4) Comply with the requirements of Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and Executive Order 11063—Equal Opportunity in Housing.

(5) Provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988. (*See* sample certification at the appendix to this NOFA).

(6) In the case of offsite child care facilities, that: (i) The premises conform to the lead based paint requirements specified at section 14.2 of this NOFA, or that the nonprofit will complete such measures before the opening of the child care facility; and (ii) the facilities are located within a reasonable walking distance to the project to be served, based upon its distance from the project and the types of throughfares to be crossed;

(7) Inform residents of the lower income housing project to be served of the availability of the child care facility;

(8) Comply with all applicable State and local laws, regulations and ordinances;

(9) Comply with all of the requirements specified in this NOFA

(c) *Resolution from the PHA Board.* The sponsoring PHA must submit a resolution from its board of directors indicating:

(1) The ACC project number for the project to be served by the child care facility;

(2) Its agreement to provide suitable space for the child care facility in the designated lower income housing project. In the case of offsite child care facilities, the public housing agency must provide evidence that it has, or will be able to, assume control of the proposed premises. This evidence can include copies of the negotiated lease, an option to lease, or a resolution from the lessor's board of directors indicating that the facility will be available to the PHA for use as a child care center;

(3) In the case of child care facililities located in the project, that the premises conform to the lead-based paint requirements specified at section 14.2 of this NOFA, or that the PHA will complete such measures before the opening of the child care facility;

(4) A certification as to whether the proposed child care facility will be located in a special flood hazard area, and if so, an agreement by the PHA to ensure that the necessary flood insurance is obtained;

(5) A certification that there is no child care facility in existence for the designated lower income housing project prior to the receipt of grant funds under this demonstration;

(6) Its agreement to provide the nonprofit grantee with the information required under Section 8.4 of this NOFA concerning potential public housing participants in the designated lower income housing project, and on potential resident employees;

(7) If applicable, a statement that a resident management corporation or resident council is acting on the PHA's behalf, and evidence of the authority delegated by the PHA to the RMC or RC;

(8) A statement indicating whether there are any outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations, as provided under Section 5(d) of this NOFA; and

(9) A statement by the PHA that it will comply with the nondiscrimination requirements under Section 14.1 of this NOFA.

(10) Its agreement to comply with the Federal requirements specified in Section 14 of this NOFA;

11.3 *Late Applications, modification and withdrawal of applications.*

(a) Any application received at the office designated in this NOFA after the exact date and time specified for receipt will not be considered unless it is received before award is made and:

(1) It was mailed on or before 12:00 midnight of the application deadline date. In such cases, applicants must use registered, certified, or U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, to substantiate the date of mailing. The only evidence to establish the date of mailing is the label or postmark on the wrapper, or on the original receipt from the U.S. Postal Service. (The term "postmark" means a printed, stamped, or otherwise place impression that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service). If neither shows a legible date, and the application is received after the date specified, the application shall be deemed to have been mailed late. Private metered postmarks (such as those from Federal Express or other courier companies) *shall not* be acceptable proof of the date of mailing; or

(2) It was the only application received.

(b) Hand-delivered applications must be received in the designated office by the application deadline date and time (documentation is the notation on the application wrapper of the time and date received by the designated office).

(c) Any modification of an application is subject to the same conditions as in paragraphs (a) and (b).

(d) Notwithstanding the above, a late modification of an application that already has been selected for funding and which makes its terms more favorable to HUD will be considered at any time it is received and may be accepted.

(e) Applications may be withdrawn by written notice or telegram (including mailgram) received at any time prior to award. Applications may be withdrawn in person by an applicant or by the applicant's authorized representative, provided his or her identity is made known and the representative signs a receipt for the application prior to award.

12. Environmental Review

HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and applicable related environmental authorities, and HUD's implementing regulations at 24 CFR Part 50. Any application that HUD determines to require an Environmental Impact Statement (EIS) in accordance with 24 CFR Part 50, Subpart E will not be eligible for assistance under this NOFA. As a result of its environmental review, HUD may find that it cannot approve an application unless adequate measures are taken to mitigate environmental impacts. HUD will consider any anticipated time delays in the selection process.

13 Grant Administration

13.1 *Disbursement of grant funds.* Except for funds necessary to finance start-up costs associated with initial staffing, minor renovation, and similar approved expenditures that may

precede licensing, no grant funds may be disbursed until the grantee submits to HUD a photocopy of the appropriate license to operate the proposed child care facility. Furthermore, as a condition to the disbursement of PHCC grant funds, HUD reserves the right to inspect the facility to ensure compliance with the requirements of this NOFA, and the grant agreement.

13.2 *Grant agreement.* The grant will be made by means of a grant agreement executed by HUD and the grantee. No funds may be disbursed under this demonstration program until a grant agreement is executed.

13.3 *Responsibility for grant administration.* Grantees are responsible for ensuring that public housing child care demonstration grants are administered in accordance with the requirements of this NOFA and other applicable laws.

13.4 *Deadline for obligation of grant amounts.* Grant funds under this demonstration must be obligated within one year of the date on which grant amounts are awarded to the grantee by HUD. It is not necessary that all work related to the child care facility be completed within this one-year period.

13.5 *Method of payment.* Grantees shall be advanced periodic grant amounts under this demonstration by the submission of a properly signed original and two (2) copies of Standard Form 270, Request for Advance or Reimbursement. Payments will be made through the Department of Treasury's Automated Clearing House (ACH), which will automatically deposit approved funds into the grantee's bank account. Grant funds will *not* be disbursed by lump sum payment.

13.6 *Termination and reallocation of grant funds.*

(a) HUD may deobligate, or take other similar action to recover, amounts awarded under this demonstration under the following circumstances:

(1) Grant amounts designated for use as operating costs may be deobligated if the proposed child care facility operations are not begun within a reasonable time following selection, or if the grantee fails to obligate funds in accordance with Section 13.4 of this NOFA;

(2) If, as a result of an audit, HUD determines that a grantee has expended funds for uses that are ineligible under this demonstration. HUD may require such funds to be returned by the grantee, or may offset ineligible expenditures against subsequent disbursements to which the grantee is entitled; and

(3) The grant agreement will set forth in detail other circumstances under which funds may be deobligated or returned, and other sanctions imposed.

(b) Upon the deobligation or adjustment of grant funds, HUD may:

(1) Readvertise the availability of funds that have been deobligated or adjusted under this section in a notice of fund availability; or

(2) Reconsider applications that were submitted in response to the most recently published notice of fund availability, and select applications for funding with deobligated or returned funds. Such selections will be made in accordance with the requirements of Section 9.3 of this NOFA.

14. Applicability of Other Federal Requirements

Use of public housing child care demonstration grant amounts requires compliance with the following additional requirements:

14.1 *Nondiscrimination.* The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at Subchapter A of Title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1; Section 504 and implementing regulations at 24 CFR Part 8; and Executive Order 11063 and implementing regulations at 24 CFR Part 107; and all applicable State nondiscrimination statutes.

14.2 *Lead-based paint.* The requirements of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 shall apply as follow:

1. Post-1978 Buildings

A child care facility that is to be located in a building that was constructed or substantially rehabilitated after January 1, 1978 does not trigger lead based paint requirements. Either the PHA (for onsite facilities) or the nonprofit (for offsite child care facilities) must certify that the building in which the child care facility is to be located was constructed or substantially rehabilitated after January 1, 1978.

2. Pre-1978 Buildings

A child care facility that is to be located in a building that was constructed or substantially rehabilitated *prior to* 1978 must have all applicable surfaces tested for the presence of lead-based paint (lead content of greater than or equal to 1 mg/cm^2). Testing is to be performed in accordance with the requirements of 24 CFR Part 965 (this would not include the periodic inspection requirement under § 965.704). If lead-based paint is detected, abatement procedures under 24 CFR 35.24 (as revised on June 6, 1988; 53 FR 20790) must be undertaken. A certification must be provided by the PHA (for onsite child care facilities) or the nonprofit (for offset facilities) that the building in which the child care facility is to be located will be tested for lead-based paint and, if found, abatement procedures will be undertaken as required by 24 CFR 35.24 before the facilities are used for child care.

Grant funds under this demonstration may be used for lead-based paint testing that is undertaken after the execution of the grant agreement with HUD. Grant funds may *not* be used for lead-based paint abatement. Should lead-based paint abatement be required, grantees that intend to operate offsite child care facilities are advised to seek State, local and private funding for this purpose. Grantees that intend to operate a child care facility within a lower income housing project may request funding from the PHA (Comprehensive Improvement Assistance Program—comprehensive or lead-based paint modernization (for FY 90)). Each such request will be evaluated by the PHA and HUD on a case-by-case basis.

Because of the prohibitive costs associated with lead based paint abatement, and the fact that abatement activities are not eligible program costs, PHAs are advised to locate their child care facilities in newer buildings that have less likelihood of containing lead based paint.

14.3 *OMB Circulars.* The requirements of OMB Circular Nos. A–110 concerning Uniform administrative requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit organizations), and A–122 concerning Cost Principals applicable to Institutions of Higher Education, Hospitals and other Nonprofit organizations). (Copies of these circulars can be obtained from EOP Publications Office, 725 17th Street, NW., Suite 220, Washington, DC 20503);

14.4 *Use of debarred, suspended or ineligible contractors.* The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status; and

14.5 *Coastal Barriers.* In accordance with the Coastal Barrier Resources Act, 16 U.S.C. 3501, no financial assistance under this NOFA may be made available within the Coastal Barrier Resources System.

14.6 *Flood insurance.* A proposed child care site to be renovated with funds under this NOFA may not be located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless (1)(i) the community in which the area is situated is participating in the National Flood Insurance Program and is in compliance with the regulations thereunder (44 CFR Parts 59 through 79); or (ii) less than a year has passed since FEMA notification regarding such hazards, and; (2) the grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*)

14.7 *National Environmental Policy Act.* The provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), and applicable related environmental authorities at 24 CFR Part 50.4, and HUD's implementing regulations at 24 CFR Part 50.

14.8 *Drug Free Workplace Act of 1988.* Each grantee is required to certify that it will maintain a drug-free workplace in accordance with the requirements of 54 FR 4946 (published January 31, 1989; effective March 18, 1989). (For the convenience of the applicant, the required certification is provided in the Appendix to this NOFA.)

14.9 *Prevailing Wage Rates.* For child care facilities to be located in a project covered by a contract pursuant to the U.S. Housing Act of 1937 (including projects covered by an ACC contract executed between HUD and the PHA), the following prevailing wage rates must be paid:

(a) for laborers and mechanics employed in the development of the project (*i.e.*, other than routine and non-routine maintenance), the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trades;

(b) for architects, technical engineers, draftsmen and technicians employed in the development of the project, the HUD-determined prevailing wage rate;

(c) for laborers and mechanics employed in the operation of the project, the HUD-determined prevailing wage rate. For purposes of this provision, operation activities include both routine and non-routine maintenance related to the project. (*See* the definition of "non-routine maintenance" at Section 1 of this NOFA).

14.10 *Indian Preference.* (Applicable to Indian Housing Authorities only.) The provisions of section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e) which requires to the greatest extent feasible that preference and opportunities for training and employment be given to Indians and that preference in the award of subcontracts and subgrants be given to Indian Organizations and Indian Owned Economic Enterprises.

15. Other Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The collection of information requirements contained in this Notice have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number *2577-0110.* Certain sections of this NOFA have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN, PROPOSED RULE—PUBLIC HOUSING CHILD CARE DEMONSTRATION PROGRAM

Description of information collection	Section of NOFA affected	Number of respondents	Numbers of responses per respondents	Total annual responses	Hours per response	Total hours
Requirement that grantees maintain accurate records of the child care facilities operation.	7-3(a)-(d)	65 (Grtees)	Once/as needed	65	192 × 4 = 768	49,920
Requirement that grantees provide HUD with Annual performance report.	7-3(e)	65 (Grtees)	Annually	65	48	3,120
Requires that grantees submit periodic reports to HUD on the operation of the child care facility.	7-3(f)	65 (Grtees)	Once/as needed	65	64	4,160
Requires PHA to provide HUD with Form HUD-50058 for each public housing resident participating in the PHCCD.	8-5	65 (Grtees) × 10 (Participants) = 650	Once	650	0.16 (10 mins.)	104
PHCCD program Application Requirements	11-2 and 14.2	300 (Applts)	1	300	100	30,000
Requires grantee to certify that it will maintain a drug-free workplace.	14.8 and Appendix.	65 (Grtees)	1	65	1	65
Total Annual Reporting Burden						87,369

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the provisions of this Notice do not have "federalism implications" within the meaning of the Order. The establishment of child care facilities in certain public housing projects, as provided by this Notice, will not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

The General Counsel, as the Designated Official for Executive Order 12606, *the Family,* has determined that the provisions of this Notice might have the potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Order. The Notice makes available $5 million for the development of child care facilities in and near lower income housing projects. More accessible child care services will enable the parents or guardians of children residing in public housing to seek, retain or train for employment. As such, the demonstration

will sustain the family as a cohesive unit by promoting self-sufficiency.

Authority: Sec. 222 of the Housing and Urban-Rural Recovery Act of 1983, (12 U.S.C. 1701z–6 note); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

Dated: July 7, 1989

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

Appendix—Drug-Free Workplace Certification

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one or more of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of performance (street address, city, county, state, zip code):

_____

_____

_____

[FR Doc. 89–16574 Filed 7–13–89; 8:45 am]

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federal register

Friday
July 14, 1989

Part VI

Department of Education

Adult Education for the Homeless Program; Invitation for Application for New Awards To Be Made in Fiscal Year (FY) 1990; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.192]

Adult Education for the Homeless Program; Invitation for Application for New Awards To Be Made in Fiscal Year (FY) 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide assistance to enable State educational agencies to plan and implement, either directly or through contracts or subgrants, a program of literacy training and basic skills remediation for adult homeless individuals within their States.

Deadline for Transmittal of Applications: August 14, 1989.

Deadline for Intergovernmental Review: October 13, 1989.

Available Funds: $7,094,000.

Estimated Range of Awards: $75,000–$500,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 35.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Eligible Applicants: State educational agencies in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and (b) When effective after adoption in final form, the regulations for this program in 34 CFR Part 441, as proposed on April 12, 1989 (54 FR 14751).

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) for this program, as published in the **Federal Register** on April 12, 1989 (54 FR 14751), so that the States can implement their assistance programs for homeless adults before the coldest part of the year.

Further, the Secretary has not received any substantive comments on Part 441 of the NPRM which applies to the Adult Education for the Homeless program, and does not anticipate making any substantive changes in this part of the final regulations. However, if any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.

Priority: The Secretary is particularly interested in applications that meet the following invitational priority.

The Secretary invites applications from States that propose a program of education for homeless adults that is targeted to a homeless population sharing common characteristics (such as homeless single parents, homeless alcoholic men, or homeless victims of spousal abuse).

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Other Information: Programs must include (a) systematic outreach activities; and (b) coordination with existing resources such as community-based organizations, VISTA recipients, the adult basic education program and its recipients, and nonprofit literacy-action organizations.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

The Secretary assigns the 15 points reserved in 34 CFR 441.20(d) as follows: 5 points to the Selection Criterion (a)—Program Factors—in 34 CFR 441.21(a) for a total of 30 points for that criterion; 5 points to the Selection Criterion (b) —Extent of Need for the Project—in 34 CFR 441.21(b) for a total of 20 points for that criterion; and 5 points to the Selection Criterion (f) —Evaluation Plan—in 34 CFR 441.21(f) for a total of 15 points for that criterion.

(a) *Program factors.* (30 points) The Secretary reviews each application to determine the extent to which—

(1) The program design is tailored to the literacy and basic skills needs of the specific homeless population being served (for example, designs to address the particular needs of single parent heads of households, substance abusers, or the chronically mentally ill);

(2) Cooperative relationships with other service agencies will provide an integrated package of support services to address the most pressing needs of the target group at, or through, the project site. Support services must be designed to bring members of the target group to a state of readiness for instructional services or to enhance the effectiveness of instructional services. Examples of appropriate support services to be provided and funded through cooperative relationships include, but are not limited to—

(i) Assistance with food and shelter;

(ii) Alcohol and drug abuse counseling;

(iii) Individual and group mental health counseling;

(iv) Health care;

(v) Child care;

(vi) Case management;

(vii) Job skills training;

(viii) Employment training and work experience programs; and

(ix) Job placement;

(3) The SEA's application provides for individualized instruction, especially the use of individualized instructional plans or individual education plans that are developed jointly by the student and the teacher and reflect student goals;

(4) The program's activities include outreach services, especially interpersonal contacts at locations where homeless persons are known to gather, and outreach efforts through cooperative relations with local agencies that provide services to the homeless; and

(5) Instructional services will be readily accessible to students, especially the provision of instructional services at a shelter or transitional housing site.

(b) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs in section 702 of the Stewart B. McKinney Homeless Assistance Act (Act), including consideration of—

(1)(i) An estimate of the number of homeless persons expected to be served and the number of homeless adults to be served within each participating school district of the State;

(ii) For the purposes of the count in paragraph (b)(1)(i), an eligible homeless

adult is an individual who has attained 16 years of age or who is beyond the age of compulsory attendance under the applicable State law; who does not have a high school diploma, a GED, or the basic education skills to obtain full-time meaningful employment; and who meets the definition of "homeless or homeless individual" in section 103 of the Act;

(2) How the numbers in paragraph (b)(1) were determined;

(3) The extent to which the target population of homeless to be served in the project needs and can benefit from literacy training and basic skills remediation;

(4) The need of that population for educational services, including their readiness for instructional services and how readiness was assessed; and

(5) How the project would meet the literacy and basic skills needs of the specific target group to be served.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of written, measurable goals and objectives for the project that are based on the project's overall mission;

(2) The extent to which the program is coordinated with existing resources such as community-based organizations, VISTA recipients, adult basic education program recipients, nonprofit literacy-action organizations, and existing organizations providing shelter to the homeless;

(3) The extent to which the management plan is effective and ensures proper and efficient administration of the project;

(4) How the applicant will ensure that project participants otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(5) If applicable, the plan for the local application process and the criteria for evaluating local applications submitted by eligible applicants for contracts or subgrants.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the State plans to use on the project, including—

(i) The qualifications of the State coordinator/project director;

(ii) The qualifications of each of the other key personnel to be used by the SEA in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii), the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience in providing services to homeless populations;

(iii) Experience and training in project management; and

(iv) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The budget is presented in enough detail for determining paragraphs (e)(1) and (2).

(f) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Objectively, and to the extent possible, quantifiably measure the success, both of the program and of the participants, in achieving established goals and objectives;

(2) Contain provisions that allow for frequent feedback from evaluation data provided by participants, teachers, and community groups in order to improve the effectiveness of the program; and

(3) Include a description of the types of instructional materials the applicant plans to make available and the methods for making the materials available.

Additional Factor: In addition to the above selection criteria, the Secretary may consider whether funding a particular application would improve the geographical distribution of projects funded under this program. (Approved by the Office of Management and Budget under OMB Control No. 1830–0506, expires on September, 1990)

Intergovernmental Review of Federal Programs: The Adult Education for the Homeless Program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on November 18, 1987, pages 44338–44340. In States that have not established a process or chosen a program for review, State, areawide, regional and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA #84.192, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC Time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.192, Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC Time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.192, Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number: 84.192, and title of this program: Adult Education for the Homeless Program.

(3) The applicant must indicate on the envelope and—if not provide by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms: This notice has two appendices:

Appendix A is divided into three parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials: Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424(B)).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

Note: ED Form GCS–009 is intended for the use of primary participants and should not be tranmitted to the Department).

Certification Regarding Drug-Free Workplace Requirements: Grantees Other Than Individuals (ED 80–0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

Appendix B contains questions and answers to assist potential applicants.

For Information Contact: Sarah Newcomb, Program Services Branch, Division of Adult Education, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4423, Mary Switzer Building), Washington, DC 20202–7320. Telephone (202) 732–2390—or—Paul R. Geib, Jr., Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4512, Mary Switzer Building), Washington, DC 20202–7242. Telephone (202) 732–2364.

Program Authority: 42 U.S.C. 11421.

Dated: July 12, 1989.

D. Kay Wright,

Acting Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

PART III

Estimated Number of Homeless Adults Expected to be Served

For making estimates required for Tables 1 and 2 of this part, an Eligible Homeless Adult is an individual who has attained 16 years of age or who is beyond the age of compulsory attendance under the applicable State law; who does not have a high school diploma, a GED, or the basic education skills to obtain full time meaningful employment; and who meets the definition of "homeless or homeless individual" in section 103 of the Stewart B. McKinney Homeless Assistance Act (P.L. 100-77).

Note in the space below the source of data used in making estimates for Tables 1 and 2 of this part (for example, State's Comprehensive Homeless Assistance Plan (CHAP), shelter bed counts, surveys of providers of services to homeless adults conducted specifically for the purpose of establishing this program):

Instructions for Table 1: Enter the estimated number of homeless adults expected to be served by each participating site in Table 1 below. Add more lines, if needed.

TABLE 1

Estimated Number of Homeless Adults Expected to be Served in the States

SITE	NUMBER
1.	
2.	
3.	
4.	
5.	
6.	
TOTAL EXPECTED TO BE SERVED IN THE STATE	

PART III

Estimated Number of Homeless Adults Expected to be Served in Participating School Districts

Instructions for Table 2: Enter the estimated number of homeless adults expected to be served in each participating school district in Table 2 below.

TABLE 2

Estimated Number of Homeless Adults Expected to be Served in Each Participating School District

District	Number
TOTAL EXPECTED TO BE SERVED	

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 9 2

TITLE: Adult Education for the Homeless Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0034

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Part II—Budget Information

Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from any one of the grant programs funded by the U.S. Department of Education. For the Adult Education for the Homeless Program (CFDA No. 84.192), Section A, B, and C should provide the budget for the entire project period (up to 18 months).

(Note: Sections D and E need not be completed to apply for this program).

All applications should contain a breakdown by the object class categories shown in Section B, Lines 6a through 6j, except those identified later in the instructions as not applying to the Adult Education for the Homeless Program.

Section A. Budget Summary

Line 1, Columns (a) through (g)—Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the entire project period.

Section B. Budget Categories

Lines 6a through 6i—Fill in the total requirements for Federal funds by object class categories for the entire project period.

Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in Line 6f.

Line 6b—Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employee and transportation for program participants if required.

Line 6d—Equipment: Indicate the cost of tangible, nonexpendable, personal property which has a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $5000 per unit with a useful life of less than one year.

Line 6f—Contractual: Show the amount to be used for: (a) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and/or (b) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc. Categories of expenditure in sub-grants or contracts should be shown for each sub-grantee in the budget narrative (section F).

Line 6g—Construction: Construction expenses are not allowable under the Adult Education for the Homeless Program.

Line 6h—Other: Indicate all direct costs not clearly covered by lines 6a through 6g. Note that stipends are not allowable costs under the Adult Education for the Homeless Program.

Line 6i—Total Direct Charges: Show total of Lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project. Applicants should note that indirect costs are limited to 8 percent of the Federal share of total direct costs. However, a State or local government (as defined in 34 CFR 80.3) may claim a negotiated indirect cost rate (34 CFR 75.562).

Line 6k—Enter the total of the amounts on Lines 6i and 6j.

Section C. Non-Federal Resources

Line 8—Enter any amounts of non-Federal resources that will be used on the grant, if any were entered on Line 1(f). In-kind contributions are not required under the Adult Education for the Homeless Program.

Column (a)—Enter the catalog program title.

Column (b)—Enter the contribution to be made by the applicant.

Column (d)—Enter the amount of cash and in-kind contributions (if any) to be made from all other sources.

Column (e)—Enter totals of columns (b), and (d).

Section F. Other Budget Information

Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in Sections A, B, and C. Be sure to report objective categories of expenditures in each sub-grantee (or contractor) providing literacy and basic skills training to homeless adults and report the amount retained by the State for State administrative costs. An SEA or an eligible recipient may use no more than the amount of funds from its award that is necessary and reasonable for the proper and efficient administration of projects, services, and activities under the Adult Education for the Homeless Program.

Instructions For Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the program statute, the information regarding the priority, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

4. Include the charts designated at Table 1 and Table 2 below.

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PART III

Estimated Population of Homeless Adults

For making estimates required for Table 1 and 2 of this Section, an Eligible Homeless Adult is an individual who has attained 16 years of age or who is beyond the age of compulsory attendance under the applicable State law; who does not have a high school diploma, a GED, or the basic education skills to obtain full time meaningful employment; and who meets the definition of "homeless or homeless individual" in section 103 of the Stewart B. McKinney Homeless Assistance Act (P.L. 100-77). Note the source of data used in making estimates for Table 1 and 2 of this section here (for example, State's Comprehensive Homeless Assistance Plan (CHAP), shelter bed counts, surveys of providers of services to homeless adults conducted specifically for the purpose of establishing this program):

Instructions for Table 1: Enter the estimated number of homeless adults to be served by each site in Table 1 below. Add more lines, if needed.

TABLE 1

Estimated Number of Homeless Adults to be Served

SITE	NUMBER
1.	
2.	
3.	
4.	
5.	
6.	
TOTAL TO BE SERVED	

PART III

Statewide Population of Homeless Adults

Instructions for Table 2: Enter the estimated number of homeless adults to be served in each school district in Table 2 below.

TABLE 2

Estimated Number of Homeless Adults in Each School District

District	Number
STATE TOTAL	

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Instructions for Estimated Public Reporting Burden

Under the terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1830–0506, Washington, DC 20503.

(Information Collection Approved under OMB control number 1830–0506, Expiration date: September, 1990)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U S C 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U S.C §§ 4801 et seq) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-008, (REV.12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regardi Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name _____ PR/Award Number or Project Name _____

Name and Title of Authorized Representative _____

Signature _____ Date _____

ED 80-0004

BILLING CODE 4000-01-C

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications *cannot* be granted, regardless of the circumstances.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes; however, the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application; but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in an "Application Narrative" of no more than thirty pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualification that are relevant to the proposed project. Qualifications of consultants should be provided and be similarly brief. Staff résumés may be inserted in a clearly marked appendix.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project.

(3) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. How should my application be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria contained in this notice. A table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project generally enhance the review of the application.

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Contruction Programs," simply state in writing that you are meeting a prescribed requirement.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only an original and two copies need be submitted. However, an original and four copies will be greatly appreciated. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applicants should not use foldouts, photographs, audio-visuals, or other materials that are hard-to-duplicate.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, copies of reviewers' comments will be mailed to unsuccessful applicants.

Q. Will my application be returned if I am not funded?

A. We no longer return original copies of unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

(1) Title VII, Subtitle A, Section 702, Stewart B. McKinney Homeless Assistance Act of 1987, Pub. L. 100–77.

(2) Title VII, Subtitle A, Section 701, Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628.

(3) Title VI, Part A, Section 6001, Augustus B. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amentments of 1988, Pub. L. 100–297.

(4) When effective after adoption in final form, 34 CFR Part 441 (Adult Education for the Homeless Program). Applicants should prepare their applications based upon the Notice of Proposed Rulemaking which appeared in the **Federal Register** on April 12, 1989. You may contact Program Officers, Paul R. Geib, or Sarah Newcomb at the address provided in this Notice if you need a copy of these proposed regulations.

(5) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80, 81, and 85.

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Reader Aids

Federal Register

Vol. 54, No. 134

Friday, July 14, 1989

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, JULY

CFR PARTS AFFECTED DURING JULY

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

302.....28964
305.....28964
310.....28964

3 CFR

Proclamations:
5995.....28409
5996.....28993
5997.....28999
5998.....29313

Executive Orders:
11958 (Amended by EO 12680).....28995
12163 (Amended by EO 12680).....28995
12171 (Amended by EO 12681).....28997
12680.....28995
12681.....28997
12682.....29315

Administrative Orders:
Presidential Determinations:
No. 89-16 of June 22, 1989.....28017

5 CFR

1201.....28632
1202.....28657
1203.....28658
1204.....28658
1205.....28662
1206.....28664
1209.....28654

Proposed Rules:
900.....28426

7 CFR

2.....28665
29.....27855
33.....29317
400.....28019, 28411
401.....28795
905.....29318
910.....28796, 29701
916.....27856
917.....27856, 29321
921.....29319
922.....29319
923.....29319
924.....29319
928.....29318
929.....29323
946.....27862
948.....29324
955.....29325
958.....29324
989.....29326
1040.....29327
1260.....28019
1822.....29329
1823.....29329
1910.....29329
1941.....28019, 29329
1942.....29329
1943.....28019, 29329
1944.....29329
1945.....29329
1951.....28019, 28020, 28411, 29329
1955.....29329
1965.....29329
1980.....28021

Proposed Rules:
29.....27883
319.....29566
401.....28019, 28428, 28820
449.....28429
911.....29338
927.....29340
947.....29341
987.....29342
989.....29343
1762.....27883
1864.....29569
1956.....29569
1965.....29569

8 CFR

100.....29438
103.....29438, 29440
242.....29438
245.....29440
245A.....29434, 29442
264.....29438
299.....29438

Proposed Rules:
103.....29344
242.....29050

9 CFR

92.....29003

Proposed Rules:
54.....29576
75.....28070

10 CFR

2.....27864, 29008
7.....28554
26.....29139
51.....27864
60.....27864

Proposed Rules:
2.....28822
764.....29732

12 CFR

226.....28665

Proposed Rules:
5.....28072
202.....29734
561.....27885
563.....27885

14 CFR

39.....28022, 28023, 28025, 28026, 28028, 28554, 29008, 29009, 29529, 29530, 29534, 29535, 29537, 29538
71.....28029, 29539, 29540, 29817
91.....28769, 29698
97.....28029
107.....28765
108.....28985

Proposed Rules:

Ch. I.....28074
1.....28978
39.....29050–29056, 29577, 29579, 29580, 29582
71.....28074, 29057–29059
91.....28978
108.....28992
121.....28978
125.....28978
129.....28978
135.....28978

15 CFR

50.....29010
771.....29011
774.....28665
786.....29011

Proposed Rules:

25.....28430

16 CFR

305.....28031

17 CFR

200.....28796
201.....28797
211.....29333
240.....28799
241.....28799

Proposed Rules:

250.....29739
259.....29739

19 CFR

10.....28412
134.....29540
141.....28412
178.....28412

20 CFR

655.....28037

21 CFR

177.....29018
310.....28772, 28780
520.....29543
522.....29543
524.....29543
556.....28051
558.....28051, 28154, 29335, 29544
573.....29019
1308.....28414

Proposed Rules:

10.....28872
310.....28872
314.....28872
320.....28823, 28872
341.....28442

22 CFR

34.....28415

23 CFR

Proposed Rules:

658.....29060

24 CFR

203.....28053

26 CFR

1.....28576
602.....28576

Proposed Rules:

1.....28075, 28683, 29061

27 CFR

5.....29701

Proposed Rules:

9.....29739

29 CFR

1910.....28054, 28154, 29142, 29545, 29546
1915.....29142
1917.....29142
1918.....29142
1926.....29546
2610.....27872, 28944, 29702
2619.....29703
2622.....27872
2644.....27872
2670.....29025
2675.....29025

30 CFR

938.....29704

Proposed Rules:

715.....28443
916.....29742
936.....29583

31 CFR

103.....28416
344.....28752

Proposed Rules:

800.....29744

33 CFR

100.....28814, 29547
165.....28814
167.....28061

Proposed Rules:

100.....29348

35 CFR

103.....29335
117.....29335
135.....29335

Proposed Rules:

103.....29584
133.....29584

37 CFR

1.....29548
2.....29548
201.....27873

38 CFR

3.....28445
17.....28667, 28673
19.....28445
21.....28676

Proposed Rules:

36.....28683

39 CFR

111.....27879

221.....29706
222.....29706
223.....29706
224.....29706
225.....29706
226.....29706
227.....29706
228.....29706
229.....29706

40 CFR

52.....27880, 29310, 29554, 29555
82.....28062, 29336
131.....28662
228.....29034, 29712
271.....28677, 29557
761.....28418
763.....29460
795.....29715
797.....29715

Proposed Rules:

22.....29516
52.....28684, 28689, 29061, 29063, 29349
60.....28447, 29352
81.....29349
82.....29353
142.....29516
300.....29820
302.....29306
355.....29306
707.....29524

41 CFR

302–1.....29716

42 CFR

57.....28065
405.....29717
442.....29717
447.....29717
483.....29717
488.....29717
489.....29717
498.....29717

43 CFR

Proposed Rules:

5450.....29357
5460.....29357

46 CFR

502.....29036

47 CFR

1.....29037
22.....28815, 28816
73.....28677, 28678, 29038, 29559–29561, 29719, 29720
74.....29039
80.....29040
90.....28678

Proposed Rules:

Ch. I.....28789
2.....28823
15.....28690, 28691, 28693
73.....27904, 28077, 28695, 28696, 29067, 29587, 29588, 29755, 29756
87.....28823

48 CFR

1.....29278
4.....29278
7.....29278
8.....29278
14.....29278
15.....29278
17.....29278
19.....29278
22.....29278
25.....29278
36.....29278
37.....29278
38.....29278
47.....29278
51.....29278
52.....29278
53.....29278
204.....28419
503.....29720
505.....29720
552.....29720
705.....28068
706.....28068
715.....28068
752.....28068
Ch. 18.....28186

Proposed Rules:

15.....29296
43.....29296
52.....29296
917.....29757
935.....29757

49 CFR

89.....28680
171.....28750
172.....28750
173.....28750
176.....28750
178.....28750
192.....27881
193.....27881
195.....27881
390.....28818
391.....28818
393.....28818
571.....29041–29045
1011.....29337

Proposed Rules:

512.....28696
571.....29067–29071
572.....29071

50 CFR

17.....29652, 29655, 29658, 29726
642.....29561
661.....28818, 29730
672.....28422, 28681
674.....28423

Proposed Rules:

20.....29640
285.....29359

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 13, 1989.