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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

Certification of Eligible Households

CFR Correction

In title 7 of the Code of Federal Regulations, parts 210 to 299, revised as of January 1, 1990, on page 548, in § 273.11(c)(2)(ii), the last sentence should read as follows: "All but the ineligible members' share is counted as income for the remaining household members.".

BILLING CODE 1505-01-D

Agricultural Marketing Service

7 CFR Part 919

[Docket No. FV 90-171 FR]

Peaches Grown in Mesa County, CO; 1990-91 Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes a rate of assessment for the 1990-91 fiscal period for the Administrative Committee (committee), established under Marketing Order No. 919 regulating peaches grown in Mesa County, Colorado. This action authorizes the committee to pay anticipated marketing order expenses so that it can continue to perform its duties and administer the marketing order program.

EFFECTIVE DATE: Section 919.229 is effective for the period July 1, 1990 through June 30, 1991.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 919, both as amended (7 CFR part 919), regulating the handling of peaches grown in Mesa County, Colorado. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rule 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 about 45 handlers subject to regulation under the Federal marketing order for peaches grown in Mesa County. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual receipts of less than $3,500,000. Likewise, there are about 290 peach producers in Mesa County. Small agricultural producers have been defined by the SBA as those having annual receipts of less than $500,000. The majority of Mesa County peach handlers and producers may be classified as small entities.

An annual budget of expenses and rate of assessment are prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of Mesa County peaches. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in two public meetings. All directly affected persons had an opportunity to participate and provide input into the committee's budget recommendation. Likewise, the proposed budget was published in the **Federal Register** (55 FR 26452; June 28, 1990) and interested persons were invited to submit written comments on the proposal. The comment period ended July 9, 1990. The only comment was received from Allen Williams of Longmont, Colorado, who opposed the proposed budget. His comments are addressed in appropriate sections of this final rule.

The assessment rate recommended by the committee is derived by dividing the anticipated expenses by the expected bushels of assessable peaches shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so the committee will have funds to pay its expenses.

Because of a severe freeze, there was no assessable production from last year's Mesa County peach crop and no assessment rate was established for last year. The committee operated on a reduced budget and relied on voluntary contributions and reserve funds to maintain minimal operations. This year, however, normal marketing order operations are expected to resume with an excellent crop. Thus, a budget of $42,300 is needed to provide full administration of the program. The budget is based on an assessment rate of 20 cents per 50-pound bushel equivalent of peaches. The assessment applies only to interstate shipments of Mesa County peaches—which is estimated for the season to be approximately 150,000 bushels.

In order for the committee to maintain its operations and serve the industry during the 1990-91 crop year, the committee met on May 15 and again on June 5, 1990, to consider proposed budgets and rates of assessment. The budget and rate of assessment in this rulemaking were recommended by the

committee at the June 5 meeting. Major proposed expenditure items for 1990–91, compared with budgeted expenses for 1989–90, are as follows:

	1989-90	1990-91
Program Operations (salary, rent, etc.)	$8,751.00	$14,239.00
Committee Expenses (per diem, etc.)	450.00	450.00
Compliance	1,000.00	1,000.00
Market Research and Development	5,224.00	8,000.00
Contingency (Reserve)	11,147.00	18,611.00
Total	26,572.00	42,300.00

The 1989–90 expenditures for the Program Operations and Market Research and Development is based on very little activity due to the total loss of the crop. The expenditure increases for 1990–91 are needed because the good harvest will necessitate full operations and increased market development activities.

Mr. Williams commented that the Program Operations budget is almost double the amount for the 1989–90 season and that there is no justification or cause for such an increase. However, as noted, last year's costs were unusually low due to loss of the crop. For instance, the committee manager went on a part time work schedule last year to reduce costs.

Mr. Williams pointed out that the Market Research and Development budget of $8,000 is actually broken down into two categories; $4,000 for market development and $4,000 for mosaic and tree orchard statistics. He also stated that, at a committee meeting to develop the budget, a comment was made that the market development budget was intended for advertising. However, this statement was corrected by at least one person in attendance who stated that the Federal program does not provide for paid advertising.

Mr. Williams also contended that market research and development was not specifically discussed at any public meeting. However, a review of the meeting minutes submitted by the committee and the meeting report submitted by Department field staff, show that market development expenditures were discussed. According to the minutes and report, the market development item of $4,000 would continue the committee's current program of developing and distributing promotional items such as caps with a Mesa County peach logo, T-shirts and point-of-purchase flyers. These activities are intended to announce the availability of Mesa County peaches after their absence last year. The specific market development activities proposed by the committee will have to be approved by the Department before implementation. Therefore, Mr. Williams' comment is not supported by written records of meeting discussions.

Mr. Williams commented that "* * * compliance is vague, nonspecific, and would allow members of the committee illegal and overly broad discretionary authority over this category, with the absence of Federal regulatory oversight." However, there is no basis for this concern. Compliance responsibilities for the committee are provided in the Act and in § 919.31 of the marketing order. The committee plans to hire a fieldman to monitor handler compliance during the 1990 season with funds included under "compliance" and some of the funds included in the "contingency reserve" discussed below. Contrary to Mr. Williams' contention, the Department oversees committee operations. The exception is therefore denied.

The 1990–91 contingency reserve of $18,611 for the Colorado peach (Mesa County) marketing order was recommended, in part, to replenish the reserve fund which was drawn on during last year's crop failure. Mr. Williams commented that the increase is without cause or justification. However, the level of contingency reserve was discussed at each budget meeting. It was pointed out that an increase is needed to provide funds for program operations should the industry experience a crop failure in the near future similar to that experienced last year. In addition, the committee intends to make funds available to meet unexpected emergencies within the industry. An example of such an emergency would be to advise consumers on food safety issues.

Section 919.42 of the order provides that reserves may be carried over from one fiscal period to the next. However, such reserves are limited to not more than approximately two fiscal period's expenses. This contingency reserve meets this requirement.

Expected income from 1990–91 assessments will be $30,000, generated by assessments on approximately 150,000 bushels. The total projected crop for this season is 250,000 bushels. However, only about 60 percent of the crop is expected to be shipped out of the State of Colorado, and thus subject to assessments under the order. Other projected income includes a $3,000 grant from Mesa County for the 1991 Mosaic tree survey, $1,000 income from interest and from the sale of market development items, and an $800 Mesa County grant to be used during the tree survey for the trapping of insects which spread mosaic disease. A carryover net reserve of $7,500 from the 1989–90 fiscal period also is available to meet approved committee expenses.

While this action will impose additional costs on handlers, the costs will be in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Mr. Williams commented that the comment period was insufficient to allow for public comment. However, two committee meetings were held, both of which were open to the public. Industry members were advised in advance of these meetings and were encouraged to attend and express their views. In addition, these meetings and the proposed budgets were reported in the local newspaper. Thus, individuals in the industry had ample opportunity to make their comments known. Mr. Williams' comment arrived within the comment period.

Mr. Williams also commented that a notice mailed to industry members on June 22, 1990, did not include notification of the comment period. According to the copy of the notice received by the Department, this notice was dated June 25, and incorrectly indicated that the budget had been set. The notice also contained an additional statement that was not correct. It stated that the assessment applied to "intrastate" shipments. However, the assessment actually applies only to "interstate" shipments, as required by Marketing Order 919. These errors were corrected in a second notice mailed to all known industry members on July 2, 1990.

After consideration of all relevant information provided including the committee's recommendation, the comment received, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be implemented promptly because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found that good cause exists for not postponing the effective date of this

action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 919

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 919 is amended as follows:

Note: This action will not be published in the annual Code of Federal Regulations.

1. The authority citation for 7 CFR part 919 continues to read as follows:

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

2. Section 919.229 is added to read as follows:

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

§ 919.229 Expenses and rate of assessment

Expenses of $42,300 are authorized to be incurred by the Administrative Committee for the fiscal period ending June 30, 1991. An assessment rate of 20 cents per 50-pound bushel equivalent is established for the fiscal year ending June 30, 1991. Unexpended funds from the previous fiscal period may be carried over as a reserve.

Dated: July 30, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–18115 Filed 8–2–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 931

[Docket No. FV–90–180FR]

Expenses and Assessment Rate for Marketing Order Covering Fresh Bartlett Pears Grown in Oregon and Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 931 for the 1990–91 fiscal period (July 1–June 30). This action is needed for the Northwest Fresh Bartlett Pear Marketing Committee (committee) established under M.O. 931 to incur operating expenses during the 1990–91 fiscal period and to collect funds during that period to pay those expenses. This would facilitate program operations.

EFFECTIVE DATE: July 1, 1990 through June 30, 1991.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 931 (7 CFR part 931) regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The Bartlett pear marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the 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 70 handlers of fresh Bartlett pears regulated under this marketing order each season and approximately 1,900 Bartlett pear producers in Washington and Oregon. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Bartlett pear marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable pears handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are pear handlers and producers. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committee's budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected shipments of pears (in standard boxes). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on May 31, 1990, and unanimously recommended 1990–91 fiscal period expenditures of $78,485 and an assessment rate of $0.015 per standard box or equivalent of assessable pears shipped under M.O. 931. In comparison, 1989–90 fiscal period budgeted expenditures were $81,386 and the assessment rate was the same as recommended for the 1990–91 fiscal period. These expenditures are primarily for program administration. Most of the expenditure items are budgeted at about last year's amounts. One substantial difference between 1990–91 budgeted expenditures and those budgeted in 1989–90 is a $6,037 decrease in funds allocated for unforeseen contingencies.

Assessment income for the 1990–91 fiscal period is expected to total $49,118 based on shipments of 3,274,533 packed boxes of pears at $0.015 per standard box or equivalent. Other available funds include a reserve of $27,867 carried into this fiscal period, and $1,500 in miscellaneous income, primarily from interest bearing accounts. Hence, total available funds equal budgeted expenditures.

The committee also unanimously recommended that any unexpended funds or excess assessments from the 1989–90 fiscal period be placed in its reserve. The reserve is within the limits authorized under the marketing order.

Notice of this action was published in the **Federal Register** on July 9, 1990 (55 FR 28048). The comment period ended July 19, 1990. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has

determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. The 1990–91 fiscal period began July 1. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 931

Bartlett pears, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

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

2. New § 931.225 is added to read as follows:

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

§ 931.225 Expenses and assessment rate.

Expenses of $78,485 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized, and an assessment rate of $0.015 per standard box or equivalent of assessable pears is established, for the fiscal period ending June 30, 1991. Unexpended funds from the 1989–90 fiscal period may be carried over as a reserve.

Dated: July 30, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–18116 Filed 8–2–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 945

[Docket No. FV–90–179]

Idaho-Eastern Oregon Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 945 for the 1990–91 fiscal period. Authorization of this budget will allow the Idaho-Eastern Oregon Potato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1990, through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Order No. 945 (7 CFR part 945), both as amended, regulating the handling of potatoes grown in designated counties of Idaho and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the 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 70 handlers of Idaho-Eastern Oregon potatoes under this marketing order, and 3,793 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of potato producers and handlers may be classified as small entities.

The budget of expenses for the 1990–91 fiscal period was prepared by the Idaho-Eastern Oregon Potato Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Idaho-Eastern Oregon potatoes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon potatoes. Because that rate is applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the new fiscal period starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The committee met on June 13, 1990, and unanimously recommended a 1990–91 budget of $98,400, $20,220 more than the previous year. Increases were made in the manager's and steno's salaries, stationery and supplies, meetings and miscellaneous, Federal payroll taxes, insurance and bonds, contingency, reserve for auto purchase, gasoline, and maintenance/repair portions of the budget. The committee also unanimously recommended an assessment rate of $0.0026 per hundredweight of potatoes, the same as last year. This rate, when applied to anticipated fresh market shipments of 24 million hundredweight, will yield $62,400 in assessment income. This, along with $3,600 in fees, $2,400 in interest, and $30,000 from the committee's authorized reserve, will be adequate for budgeted expenses. The projected reserve at the end of the 1990–91 fiscal period is $44,000, which will be carried over into the next fiscal period. This amount is within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation

of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on July 10, 1990 (55 FR 28214). That document contained a proposal to add § 945.243 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through July 20, 1990. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1990–91 fiscal period for the program begins on August 1, 1990, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

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

2. Section 945.243 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 945.243 Expenses and assessment rate.

Expenses of $98,400 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of potatoes is established for the fiscal period ending July 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: July 30, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–18117 Filed 8–2–90; 8:45 am]

BILLING CODE 3410–02–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice to waive the nonmanufacturer rule for dictionaries and thesauruses.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the "nonmanufacturer rule" for dictionaries and thesauruses. The basis for a waiver is that no small business manufacturer is supplying these classes of products to the Federal government. The effect of a waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer on a Federal contract set aside for small business or awarded through the 8(a) program.

EFFECTIVE DATE: August 3, 1990.

FOR FURTHER INFORMATION CONTACT: Robert J. Moffitt, Chairperson, Size Policy Board, Tel: (202) 653–6635.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small business or 8(a) contracts must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the "nonmanufacturer rule." The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

This notice waives the nonmanufacturer rule for dictionaries and thesauruses. The issue of a lack of small business publishers of dictionaries and thesauruses was recently brought to the attention of SBA by a dealer in the 8(a) program. In response to this concern, SBA initiated a review of small business manufacturers or publishers of dictionaries and thesauruses to the Federal Government.

To be considered in the Federal market, a small manufacturer must have been awarded a contract by the Federal government within the last three years. A class of products is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognized product line within a PSC. In this case, the classes of products are dictionaries and thesauruses, two items within the PSC–7610, Books and Pamphlets. The definition of these terms is consistent with those previously used to establish a waiver of the nonmanufacturer rule for several types of construction equipment on December 28, 1989 (54 FR 53317) and with those included in a notice of proposed rulemaking to establish Agency procedures on nonmanufacturer waivers on May 17, 1990 (55 FR 20467).

SBA followed two approaches to identify the existence of small business manufacturers—examining contract data and requesting public comment through a **Federal Register** notice. First, SBA reviewed the Federal market by evaluating procurement statistics based on data originated by the U.S. General Services Administration's Federal Procurement Data Center (FPDC). Specifically, SBA examined Federal contract awards for 1987 and 1988 (the latest data available) which lists: the type of product (PSC), the manufacturer, and whether the manufacturer is a small business. The FPDC procurement data for fiscal years 1987 and 1988 revealed that while small business publishers of a variety of books, pamphlets and general reference books had received contracts, there were no small business publishers of dictionaries and thesauruses that had received Federal contracts.

Second, on July 2, 1990, SBA published a notice with request for comment in the **Federal Register** proposing to waive the nonmanufacturer rule for dictionaries and thesauruses (55 FR 27250). The notice described the legal provisions for a waiver, the origin of the request, how SBA defines the Federal market, data sources, and the finding that no small business publishers of dictionaries and thesauruses had been awarded Federal contracts in 1987 or 1988. SBA received no comments on this notice.

This waiver is being granted under statutory authority for the designated classes of products, prior to the promulgation of final regulatory procedures. Although the processing and evaluation of this waiver request are intended to be similar to the proposed procedures published May 17, 1990, final procedures may differ from those followed for this particular request.

A waiver of the nonmanufacturer rule is established for purposes of allowing an otherwise qualified small business regular dealer to supply the product of any domestic manufacturer on a contract set-aside for small business or awarded through the 8(a) program for the following classes of products:

Dictionaries (PSC–7610)
Thesauruses (PSC–7610)

Dated: July 30, 1990.

Susan S. Engeleiter,

Administrator, U.S. Small Business Administration.

[FR Doc. 90–18137 Filed 8–2–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771 and 774

[Docket No. 900787–0187]

RIN 0694–A106

Elimination of Quarterly Reporting Requirements for General License GLR— Replacement Parts and Equipment

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (EAR) are being amended to eliminate the quarterly reporting requirements for exports of replacement parts and equipment under General License GLR to Country Groups Q, W, Y, and Z, the People's Republic of China, and Afghanistan. These reporting requirements were originally imposed as a tracking system to help determine how well the replacement provisions of the General License GLR regime were working. BXA is satisfied that the procedure is functioning smoothly, and has determined that the reporting requirements are no longer necessary. However, the removal of the quarterly reporting requirements does not relieve the exporter of recordkeeping obligations required by § 787.13 of the EAR. In addition, value restrictions on shipments of replacement parts have been removed because they are no longer required by COCOM.

EFFECTIVE DATE: This rule is effective August 3, 1990.

FOR FURTHER INFORMATION CONTACT: Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: 202–377–4819.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule eliminates a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. *et seq.*). This collection had been approved by the Office of Management and Budget under control number 0694–0019.

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 771 and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 771 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 771—[AMENDED]

1. The authority citation for 15 CFR part 771 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 100–418 of August 23, 1988; and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 771.17 [Amended]

2. Section 771.17 is amended by removing paragraphs (e)(4) and (f)(3)(v).

PART 774—[AMENDED]

3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, Pub. L. by 100–418 of August 23, 1988, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

4. Section 774.2 is amended by revising paragraph (a)(4) as follows:

§ 774.2 Permissive reexports.[2]

* * * * *

(a) * * *

(4) May be exported directly from the United States to the country of destination under paragraphs (e) or (f) of General License GLR (§ 771.17). A party reexporting U.S.-origin one-for-one replacement parts or replacements for defective or unacceptable U.S.-origin equipment shall ensure that the commodities being repaired or replaced were shipped to their present location in accordance with U.S. law and continue to be legally used, and that either before or promptly after reexport of the replacement parts or equipment, the replaced parts or equipment are either destroyed or returned to the United States or to the foreign firm in Country Groups T or V that shipped the replacement parts or equipment.

* * * * *

Dated: July 31, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90–18146 Filed 8–2–90 8:45 am]

BILLING CODE 3510–DS–M

[2] See § 774.9 for effect on foreign laws.

15 CFR Part 786

[Docket No. 900785-0185]

RIN 0694-A105

Increase in the Dollar Value Limit Exemption From the Shipper's Export Declaration Filing Requirement

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is raising the dollar value limit for exemption from the Shipper's Export Declaration (SED) filing requirement for non-mail shipments from $1500 to $2500. This change is being made in accordance with the Bureau of the Census' final rule amending the Foreign Trade Statistics Regulations published May 23, 1990 (55 FR 21186). This is intended to relieve the processing burden of the Bureau of the Census, which currently receives over 800,000 SED's per month. It is also expected to reduce the exporter's administrative burden by increasing the number of shipments exempt from special documentation requirements.

EFFECTIVE DATE: This rule is effective August 3, 1990.

FOR FURTHER INFORMATION CONTACT: Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: 202-377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control numbers 0607-0018 and 0607-0152.

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 786

Exports, Reporting and recordkeeping requirements.

Accordingly, part 786 of the Export Administration Regulations (15 CFR parts 730-799) is amended as follows:

PART 786—[AMENDED]

1. The authority citation for 15 CFR part 786 continues to read as follows:

Authority: Public Law 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended by Public Law 97-145 of December 29, 1981, by Public Law 100-418 of August 23, 1988; and by Public Law 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Public Law 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Public Law 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 786.1 [Amended]

2. Section 786.1(c)(2)(i) is amended by revising the phrase "valued at $1500.00 or less." to read "valued at $2500 or less." immediately after the phrase "the shipment is" and immediately before the parenthetical phrase.

Dated: July 31, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 90-18144 Filed 8-2-90; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 90-130]

Freeport Grand Prix, Long Beach, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the special local regulations contained in 33 CFR 100.106 which govern the annual Freeport Grand Prix. At the request of the sponsor, this rule amends the permanent regulations, 33 CFR 100.106, 54 FR 32066, August 4, 1989 by changing the location and the date of the annual Freeport Grand Prix. This event will be held on August 11, 1990 at Long Beach, New York. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This regulation becomes effective at 11 a.m. on August 11, 1990 and terminates at 3 p.m. on August 11, 1990. In the case of inclement weather the alternate date will be August 12, 1990 from 11 a.m. to 3 p.m.

FOR FURTHER INFORMATION CONTACT: Ensign Leslie J. Penney, (617) 223-8310.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application was received less than 30 days from the event due to negotiations with the sponsor and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this notice are Ensign L.J. Penney, Project Officer, Boating Safety Office, and Lieutenant R.E. Korroch, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulations

The Freeport Grand Prix is a high performance Indy 500 type powerboat race. The Coast Guard is amending 33 CFR 100.106 by changing the location of the race course and the date of the event. In past years the race has been held on the coastal Atlantic waters of Long Island one and one quarter (1¼) miles south of Long Beach, New York and three and one quarter (3¼) miles north of the northern boundary of

Ambrose Channel. The race course has moved to one half (½) mile south of Long Beach, New York and four and one half (4½) miles north of the northern boundary of Ambrose Channel approach lane. The course was moved closer to shore so that spectators could view the race more easily and the Coast Guard and other patrol vessels could patrol the area more effectively. In past years the race was held on the first or second Sunday of August. The date is being changed to Saturday, August 11, 1990 to allow for a rain date on Sunday, August 12, 1990.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.106 is amended by revising paragraphs (a) and (c) to read as follows:

§ 100.106 Freeport Grand Prix, Long Beach, New York.

(a) Definitions. *Regulated Area.* The regulated area is a trapezoidal area on the coastal Atlantic waters of Long Island to the south of Long Beach, New York. The regulated area is one half (½) mile south of Long Beach, New York and four and one half (4½) miles north of the northern boundary of Ambrose Channel approach lane and is specifically bounded as follows:

(1) *Northeast Corner:* Shoreline of Lido Beach at coordinates 40–35.2 North, 073–36.0 West.

(2) *Southeast Corner:* Approximately two and one tenth (2⅒) miles southwest of Jones Inlet breakwater at coordinates 40–33.1 North, 073–36.75 West.

(3) *Southwest Corner:* Approximately two and one half (2½) miles southeast of East Rockaway Inlet breakwater at coordinates 40–33.1 North, 073–43.0 West.

(4) *Northwest Corner:* Shoreline of Atlantic Beach at coordinates 40–35.1 North, 073–43.8 West.

* * * * *

(c) *Effective date.* These regulations are effective at 11 a.m. on August 11, 1990 and terminate at 3 p.m. on August 11, 1990. In case of inclement weather, the alternate date will be August 12, 1990 from 11 a.m. to 3 p.m.

Dated: July 25, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 90–18129 Filed 8–2–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1–90–135]

Safety Zone Regulations: Lower Hudson River, NY and NJ

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Lower Hudson River, New York and New Jersey. This Zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a power boat race. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 11 a.m. local time on 18 August 1990. It terminates at 3 p.m. local time on 18 August 1990.

FOR FURTHER INFORMATION CONTACT: MST1 S.T. Whinham of Captain of the Port, New York (212) 668–7933.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards. This action has been analyzed in accordance with the principle and criteria of E.O. 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer for the Captain of the Port, New York, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from a power boat race on the Lower Hudson River, New York and New Jersey. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows;

PART 165—[AMENDED]

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

Authority 33 USC 1225 and 1231; 50 USC 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Part 165 is amended by adding § 165.T1135 to read as follows:

§ 165.T1135 Safety Zone: Lower Hudson River, New York and New Jersey.

(a) *Location.* The following area has been declared a safety zone: that portion of the waters within the Lower Hudson River, New York and New Jersey which lie north of Spuyten Duyvil Creek and south of the Tappan Zee Bridge.

(b) *Effective date.* This regulation becomes effective at 11 a.m. local time on 18 August 1990. It terminates at 3 p.m. local time on 18 August 1990.

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

Dated: July 24, 1990.

R.M. Larrabee,

Captain, U. S. Coast Guard, Captain of the Port, New York.

[FR Doc. 90–18123 Filed 8–2–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD1 90–112]

Safety Zone Regulations; Norwich Tenth Annual Harbor Day

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in Norwich Harbor, CT. This safety zone is needed to protect marine traffic and spectator craft from the safety hazard associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation becomes effective at 8:30 p.m. August 26,

1990, 15 minutes prior to the display. It terminates upon completion of the display at approximately 9:10 p.m., August 26, 1990, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, Long Island Sound, Port Operations duty watchstander at (203) 468–4464.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect any marine traffic from the potential hazards involved.

Drafting Information

The drafters of this regulation are BMC Cassin, project officer, Captain of the Port, Long Island Sound, and LT Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at 8:45 p.m. on August 26, 1990. It is the launching of approximately 500 lbs. of fireworks in Norwich Harbor, Norwich, CT. This Safety Zone is needed to protect any transiting commercial or recreational marine traffic from the possible hazards associated with the fireworks display in the channel area.

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

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

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

2. A new 33 CFR 165.T1112 is added to read as follows:

§ 165.T1112 Safety Zone: Norwich Tenth Annual Harbor Day.

(a) *Location.* The following area is a safety zone: All waters within a 575 ft radius of the "American Wharf Barge" (the fireworks launching platform at approximate positions 41°31'35" N, 072° 04'53" W). The safety zone will be closed to all marine traffic from 8:30 p.m. until the completion of the display at approximately 9:10 p.m. on August 26, 1990.

(b) *Effective date.* This regulation becomes effective on August 26, 1990 at 8:30 p.m. It terminates upon completion of the display at approximately 9:10 p.m. August 26, 1990, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or his on scene representatives.

Dated: July 17, 1990.

T.H. Collins,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 90–18186 Filed 8–2–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AD99

Definition of Marginal Employment in Consideration of Total Evaluations Based on Individual Unemployability

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs (VA) has amended the Schedule for Rating Disabilities to define marginal employment in consideration of total disability ratings based on unemployability of an individual. This amendment was necessary to respond to a General Accounting Office (GAO) study on this subject. The intended effect is to promote consistency in making determinations of marginal employment.

EFFECTIVE DATE: This amendment is effective September 4, 1990.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend § 4.16(a) on pages 35507–35508 of the **Federal Register** of August 28, 1989. A correction was published on page 37698 of the **Federal Register** of September 12, 1989. Interested persons were invited to submit comments, suggestions, or objections by September 27 1989. Three comments were received.

One commenter stated that the proposed definition provides inadequate guidelines and would fail to establish the intended effect. The commenter points out that the GAO study revealed that many veterans with earnings are not reporting such earnings to VA as required and asks how establishing an earned income limit will resolve that problem.

VA does not concur. GAO's recommendation that VA define marginal employment was not intended to resolve the problem of veterans' non-reporting of earned income.

The same commenter questions how VA proposes to apply the earned income limit, the poverty threshold established by the Bureau of the Census each March for the preceding year, and suggests that if an earnings limit must be set, it should be as economically current as possible (e.g., a percentage of the current minimum wage).

VA proposes that the poverty threshold be applied for the period from the date of its establishment until a new threshold is established the following year, even though such thresholds are for the preceding years. VA does not concur with using a percentage of the minimum wage as that is an hourly figure and VA is considering income for a 12 month period. Income for such a period based on the minimum wage would depend on the number of hours worked.

That commenter further stated the ability or inability to earn, rather than the earnings themselves, must be the determining factor when considering entitlement to individual unemployability.

VA concurs. Earned income as the criteria for defining marginal employment is not intended to be the determining factor when considering entitlement to individual unemployability. It is merely intended to define marginal employment which VA policy has long considered not to be substantially gainful employment.

The same commenter also suggested that the term "neuropsychiatric" in § 4.16(a) should be changed to "neurological" for the same reasons set forth as the basis for prior amendments of §§ 4.16 and 4.130 regarding individual unemployability and mental disorders.

VA does not concur. The term "neuropsychiatric" is acceptable and understood as used. Furthermore, the prior amendments to which the commenter referred do not support the suggested change in terminology.

Another commenter noted that the Schedule for Rating Disabilities already contains a definition of marginal employment in § 4.17(a) pertaining to claims for nonservice-connected pension. The commenter stated that the proposed rule would require veterans who are supporting families to seek and pursue part-time sedentary employment which would remunerate them at or below the poverty level of a single person. The commenter suggested that the current definition in § 4.17(a) be adopted when considering total evaluations based on individual unemployability in compensation claims.

VA does not concur. The proposed rule would not require any veteran to seek and pursue employment which would remunerate them at or below the poverty level. Furthermore, pension is based on need with need determined by income. The determining factor for compensation based on individual unemployability is not income, but whether a veteran is unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities. The income criteria as a definition of marginal employment is intended to establish consistency in decisions as to whether a veteran's employment constitutes a substantially gainful occupation.

A third comment suggested that VA define what factors would warrant a decision that marginal employment may be held to exist when earned income exceeds the poverty threshold. VA concurs and has revised the proposed regulation to include examples.

VA reviewed Office of Workers' Compensation Programs and Social Security Administration regulations (20 CFR parts 10 and 404, respectively) and found no reference to the term "marginal employment" or anything akin thereto.

The weighted average poverty threshold in 1988 for one person (unrelated individual), as established by the Bureau of the Census, was $6,024. VA will publish subsequent poverty threshold figures as notices in the **Federal Register.**

We appreciate the comments and suggestions submitted in response to the proposed rule which is adopted with the revision noted above.

The Secretary hereby certifies that this regulatory amendment will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, VA has determined that this regulatory amendment is non-major for the following reasons:

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

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

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

(Catalog of Federal Domestic assistance program number is 64.109)

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: July 10, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 4—[AMENDED]

In 38 CFR part 4, Schedule for Rating Disabilities, § 4.16 is amended by adding the following five sentences to paragraph (a) to read:

§ 4.16 Total disability ratings for compensation based on unemployability of the individual.

(a) * * *

It is provided further that the existence or degree of nonservice-connected disabilities or previous unemployability status will be disregarded where the percentages referred to in this paragraph for the service-connected disability or disabilities are met and in the judgment of the rating agency such service-connected disabilities render the veteran unemployable. Marginal employment shall not be considered substantially gainful employment. For purposes of this section, marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the U.S. Department of Commerce, Bureau of the Census, as the poverty threshold for one person. Marginal employment may also be held to exist, on a facts found basis (includes but is not limited to employment in a protected environment such as a family business or sheltered workshop), when earned annual income exceeds the poverty threshold. Consideration shall be given in all claims to the nature of the employment and the reason for termination.

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

* * * * *

[FR Doc. 90–18132 Filed 8–2–90; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900–AD85

Veterans Education; The Veterans' Benefits and Programs Improvement Act of 1988 and VEAP

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Final regulations.

SUMMARY: The Veterans' Benefits and Programs Improvement Act of 1988 contains several provisions which affect the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). These include permitting cooperative training in this program, permitting refresher, remedial and deficiency training in this program, providing tutorial assistance to veterans in this program, liberalizing the standards for determining extensions to a veteran's basic period of eligibility, and reducing benefits to veterans who are incarcerated by reason of a felony conviction. Some of these changes are liberalizing. Some are more restrictive. This will acquaint the public with the way in which the Department of Veterans Affairs will administer the new provisions of law.

EFFECTIVE DATES: New regulations §§ 21.5021 (r) and (s) and 21.5230 (a) and (b) are effective September 4, 1990. The effective dates of the remainder of the amendments coincide with the effective dates of the sections of the law upon which they are based. Consequently, §§ 21.5042, 21.5072(a), 21.5130, 21.5131 and 21.5296, and new regulations §§ 21.5021 (t), (u) and (v), 21.5072 (f) and (g), 21.5139 and 21.5141 are retroactively effective on November 18, 1988. Furthermore, new regulation § 21.5230(c) is effective on August 15, 1989, and all other amendments are retroactively effective on January 1, 1989.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affaris, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 48641 through 48645 of the **Federal Register** of November 24, 1989, there was published notice of intent to amend 38 CFR part 21 in order to implement the provisions of the Veterans' Benefits and Programs Improvement Act of 1988 (Pub. L. 100–689) which affect VEAP. Interested people were given 32 days to submit comments, suggestions or objections. VA and Department of Defense received one letter from a legal foundation.

The letter generally supported the proposal. In particular, the letter supported the amendments to § 21.5042 concerning the extension to the eligibility period due to a veteran's disability. The foundation also supported the policy behind the new regulation, § 21.5139, which would require a reduction in benefits to veterans incarcerated following conviction of a felony. However, the foundation believes that § 21.5139 does not go far enough. The letter suggested terminating eligibility for VEAP benefits for veterans convicted of violent felonies such as robbery, rape or drug dealing.

The Department of Veterans Affairs and the Department of Defense have carefully considered this suggestion, but have decided not to adopt it.

The law upon which § 21.5139 is based is found at 38 U.S.C. 1631(e) as added by Public Law 100–689. This provision of law explicitly authorizes payment of educational assistance to veterans incarcerated in a Federal, State or local penal institution for conviction of a felony, but limits the amount of the payment as provided therein. The provision applies to all such incarcerated felons without distinguishing the nature of the felony for which the veteran was convicted. In order for VA and Department of Defense to draw such a distinction and entirely deny benefits to certain categories of felons during and after their incarceration, the law would have to be amended. Therefore, VA and the Department of Defense are making proposed regulations final without change.

The Department of Veterans Affairs and the Department of Defense find that good cause exists for making the amendments to §§ 21.5042, 21.5072(a), 21.5130, 21.5131 and 21.5296, and the new regulations §§ 21.5021 (t), (u) and (v), 21.5072 (f) and (g), 21.5139, and 21.5141, like the sections of Public Law 100–689 they implement, retroactively effective on November 18, 1988. The Department of Veterans Affairs and the Department of Defense find that good cause exists for making new regulation § 21.5230(c), like the section of law it implements, effective on August 15, 1989. The Department of Veterans Affairs and the Department of Defense find that good cause exists for making the remainder of the regulations (other than new regulations § 21.5021 (r) and (s) and § 21.5230 (a) and (b) retroactively effective on January 1, 1989. To achieve the maximum benefit of the legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial or improper payment of a benefit to a veteran or servicemember. Moreover, the above sections simply interpret and implement statutory provisions.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense certify that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 7, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: June 25, 1990.

Donald W. Jones,

Lieutenant General, USA Deputy Assistant Secretary of Defense (Military Manpower and Personnel Policy).

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In § 21.5021, paragraphs (r) through (v) are added to read as follows:

§ 21.5021 Definitions.

* * * * *

(r) *Educational objective*—An educational objective is one that leads to the awarding of a diploma, degree or certificate which is generally recognized as reflecting educational attainment.

(Authority: 38 U.S.C. 1602(2), 1652(b))

(s) *Professional or vocational objective*—A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program of education consists of a series of courses not leading to an educational objective, these courses must be generally accepted as necessary for attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 1602(2))

(t) *Deficiency course*—The term "deficiency course" means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(Authority: 38 U.S.C. 1641; Pub. L. 100–689)

(u) *Refresher course*—The term "refresher course" means—

(1) Either a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed, or

(2) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the indvidual's field of employment and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U.S.C. 1641(a); Pub. L. 100–689)

(v) *Disabling effects of chronic alcoholism.* (1) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental

disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case—

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 1632, 1662; Pub. L. 100–689)

2. In § 21.5042, paragraphs (c) (1) and (2) are redesignated as paragraphs (c) (3) and (4) respectively; paragraph (a)(2) is revised and paragraphs (c) (1) and (2) and (d)(4) are added so that revised and added text reads as follows:

§ 21.5042 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. See § 21.5021(v).

(Authority: 38 U.S.C. 105, 1632, 1662; Pub. L. 99–576, Pub. L. 100–689)

* * * * *

(c) *Qualifying period of disability.* (1) A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education.

(2) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct provided the last date of the time limit for filing a claim for the extension determined under § 21.5030(c)(3) of this part occurs after November 17, 1988.

(Authority: 38 U.S.C. 105; Pub. L. 100–689)

* * * * *

(d) *Commencing date.* * * *

(4) For a veteran whose entitlement to an extended period of eligibility is dependent upon the disabling effects of chronic alcoholism, may not begin before November 18, 1988.

(Authority: 38 U.S.C. 105, 1632; Pub. 99–576, Pub. L. 100–689)

3. In § 21.5072, paragraph (a) heading and paragraph (a)(1) are revised and paragraphs (e), (f), and (g) are added to read as follows:

§ 21.5072 Entitlement charge.

(a) *General.* (1) Except as provided in paragraphs (b) through (g) of this section, VA will make a charge against the period of entitlement as follows:

* * * * *

(e) *Cooperative training.* VA will make a charge against entitlement of 80 percent of a month for each month for which a veteran is paid educational assistance allowance at the cooperative training rate as provided in § 21.5138(a). If the veteran is paid for a partial month of training, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 1631(d); Pub. L. 100–689)

(f) *Training while the veteran is incarcerated.* If the veteran must be paid educational assistance allowance at a reduced rate because he or she is incarcerated as provided in § 21.5139 of this part, VA will make a charge against entitlement of one month for each amount of educational assistance allowance paid to the veteran which is the equivalent of one month's benefits as provided in § 21.5138 of this part for the appropriate type of training pursued.

(Authority: 38 U.S.C. 1631(e); Pub. L. 100–689)

(g) *Tutorial assistance.* If an individual is paid tutorial assistance as provided in § 21.5141 of this part, the following provisions will apply.

(1) There will be no charge to entitlement for the first $600 of tutorial assistance paid to an individual.

(2) VA will make a charge against the period of entitlement for each amount of tutorial assistance paid to the individual in excess of $600 that is equal to the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of a residence course as provided in § 21.5138(c) of this part. When the amount of tutorial assistance paid to the individual in excess of $600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 1634; Pub. L. 100–689)

4. In § 21.5130, paragraphs (a) and (d) are revised to read as follows:

§ 21.5130 Payments-educational assistance allowance.

* * * * *

(a) Section 21.4131 (except paragraph (e))—Commencing dates.

(Authority: 38 U.S.C. 1641)

* * * * *

(d) Section 21.4135 (except paragraphs (b), (c), (d), (o), and (v))—Discontinuance dates.

(Authority: 38 U.S.C. 1641)

* * * * *

5. Section 21.5131 is revised to read as follows:

§ 21.5131 Educational assistance allowance.

VA will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 of this part while the individual is pursuing either an approved program of education or a refresher or deficiency course or other preparatory or special education or training which is necessary to enable the individual to pursue an approved program of education. VA will make no payment for pursuit of any course which either is not part of the veteran's program of education, or is not a refresher, deficiency or other preparatory or special education or training course which is necessary to enable the individual to pursue an approved program of education. VA may withhold final payment until it receives proof of the individual's account.

(Authority: 38 U.S.C. 1641; Pub. L. 94–502, 99–576, 100–689)

6. In § 21.5132, paragraph (a) is revised to read as follows:

§ 21.5132 Criteria used in determining benefit payments.

(a) *Training time.* The amount of benefit payment to an individual in all types of training except cooperative training, correspondence training and apprenticeship and other on-job training depends on whether VA determines that the individual is a full-time student, three-quarter-time student, half-time student or one-quarter-time student.

(Authority: 38 U.S.C. 1641, 1788; Pub. L. 99–576, Pub. L. 100–689)

* * * * *

7. In § 21.5138 paragraph (a)(4) is added to read as follows:

§ 21.5133 Computation of benefit payments and monthly rates.

* * * * *

(a) * * *

(4) For cooperative training VA will compute the entitlement factor as follows:

(i) Enter the number of full months in the applicable benefit period.	(1)	_____
(ii) Enter the number of full days in excess of the number of full months.	(a)	_____
(iii) Divide line a by 30. Enter the quotient.	(2)	_____
(iv) Total lines 1 and 2.....	(3)	_____
(v) Multiply line 3 by .80. Enter the result.	(4)	_____

(This is the entitlement factor.)

(Authority: 38 U.S.C. 1631; Pub. L. 100–689)

8. Sections 21.5139 and 21.5141 are added to read as follows:

§ 21.5139 Computation of benefit payments for incarcerated individuals.

Notwithstanding the provisions of § 21.5138, some incarcerated individuals may have their educational assistance allowance terminated or reduced. The provisions of this section shall not apply in the case of any individual who is pursuing a program of education while residing in a halfway house or participating in a work-release program in connection with that individual's conviction of a felony.

(a) *No educational assistance allowance payable to some incarcerated individuals.* VA will pay no educational assistance allowance to an individual who—

(1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course where his or her tuition and fees are being paid by a Federal program (other than one administered by VA) or by a State or local program, and

(3) Has incurred no expenses for supplies, books or equipment.

(Authority: 38 U.S.C. 1631(e))

(b) *Reduced educational assistance allowance for some incarcerated individuals.* (1) VA will pay a reduced educational assistance allowance to a veteran who—

(i) Is incarcerated in a Federal, State or local penal institution of conviction of a felony, and

(ii) Is enrolled in a course—

(A) For which the individual pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the individual to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance allowance payable to such an individual shall be the lesser of the following:

(i) The monthly rate determined by adding the tuition and fees that the veteran must pay and the charge to the veteran for the cost of necessary supplies, books and equipment and prorating the total on a monthly basis, or

(ii) The monthly rate for the individual as determined by § 21.5138(c) of this part.

(Authority: 38 U.S.C. 1631(e))

§ 21.5141 Tutorial assistance.

(a) *Entitlement to tutorial assistance.* (1) An individual who is otherwise eligible to receive benefits under the Post-Vietnam Era Veterans' Educational Assistance Program may receive supplemental monetary assistance to provide tutorial services if he or she—

(i) Is pursuing a post-secondary educational program on a half-time or greater basis at an educational institution, and

(ii) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education.

(2) This supplemental monetary assistance shall be termed tutorial assistance.

(Authority: 38 U.S.C. 1634, 1692; Pub. L. 100–689)

(b) *Application for tutorial assistance.* The application for tutorial assistance shall be in the form prescribed by the Secretary and shall contain such information as the Secretary may require.

(Authority: 38 U.S.C. 1634, 3001; Pub. L. 100–689)

(c) *Approval of tutorial assistance.* The Department of Veterans Affairs will approve an application for tutorial assistance when—

(1) The educational institution where the individual is pursuing a program of education certifies that—

(i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;

(ii) The tutor selected—

(A) Is qualified, and

(B) Is not the parent, spouse, child, brother or sister of the individual; and

(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis.

(Authority: 38 U.S.C. 1634, 1692; Pub. L. 100–689)

(d) *Limitations on tutorial assistance.* (1) The Department of Veterans Affairs will authorize tutorial assistance in an amount not to exceed $100 per month.

(2) Tutorial assistance provided under this section will not exceed a maximum of $1,200.

(Authority: 38 U.S.C. 1634, 1692; Pub. L. 100–689)

9. Section § 21.5230 is revised to read as follows:

§ 21.5230 Programs of education.

(a) *Approving the selected program of education.* Except as provided in paragraphs (b) and (c) of this section, VA will approve a program of education under chapter 32, title 38, United States Code, only if it—

(1) Meets the definition of a program of education stated in § 21.5021(q) of this part;

(2) Has an objective as described in § 21.5021 (r) or (s) of this part;

(3) The courses or subjects in the program are approved for VA training; and

(4) The veteran or serviceperson is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 1602(2))

(b) *Programs which include secondary school training.* VA may approve the enrollment of a veteran or serviceperson in a refresher, remedial, deficiency or other preparatory or special educational assistance course when the veteran or eligible serviceperson needs the course in order to pursue an approved program of education.

(Authority: 38 U.S.C. 1641(a)(2))

(c) *Refresher training for those already qualified.* The refresher training referred to in paragraph (b) of this section includes training in a course or courses for which the veteran is already qualified provided the course or courses permit the veteran to update knowledge and skills or to be instructed in the technological advances which have occurred in the veteran's field of employment. The relevant field of employment may have been pursued either before, during or after the veteran's active duty.

(Authority: 38 U.S.C. 1641(a)(2); Pub. L. 100–689)

10. In § 21.5250, paragraphs (h) through (n) are revised and paragraph (o) is added to read as follows:

§ 21.5250 Courses.

* * * * *

(h) Section 21.4257—Cooperative courses.

(Authority: 38 U.S.C. 1602(2); Pub. L. 100-689)

(i) Section 21.4258—Notice of approval.

(Authority: 38 U.S.C. 1641, 1778; Pub. L. 94-502, Pub. L. 99-576)

(j) Section 21.4259—Suspension or disapproval.

(Authority: 38 U.S.C. 1641, 1779; Pub. L. 94-502)

(k) Section 21.4260—Courses in foreign countries.

(Authority: 38 U.S.C. 1641, 1676; Pub. L. 94-502)

(l) Section 21.4261—Apprentice courses.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(m) Section 21.4262—Other training on-the-job courses.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(n) Section 21.4265 (except paragraph (g))—Practical training approved as institutional training.

(Authority: 38 U.S.C. 1641, 1772; Pub. L. 94-502)

(o) Section 21.4266—Courses offered at subsidiary branches or extensions.

(Authority: 38 U.S.C. 1641, 1772, 1789(c); Pub. L. 94-502)

11. In § 21.5270, paragraph (a) is revised to read as follows:

§ 21.5270 Assessment and pursuit of course.

* * * * *

(a) Section 21.4270 (except those portions of the paragraph and footnotes dealing with farm cooperative training)—Measurement of courses. For the purpose of benefits payable under chapter 32 that training identified in § 21.4270 of this part as less than one-half and more than one-quarter time will be treated as one-quarter-time training.

(Authority: 38 U.S.C. 1641, 1788; Pub. L. 94-502, Pub. L. 99-576, Pub. L. 100-689)

* * * * *

12. In § 21.5296, paragraphs (a)(2) and (c) introductory text are revised to read as follows:

§ 21.5296 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or metal disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(Authority: 38 U.S.C. 105, 1632; Pub. L. 99-576, Pub. L. 100-689)

* * * * *

(c) *Qualifying period of disability.* A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(Authority: 38 U.S.C. 105, 1632; Pub. L. 99-576, Pub. L. 100-689)

* * * * *

[FR Doc. 90-18135 Filed 8-2-90; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3812-2]

Approval and Promulgation of Air Quality Implementation Plans; State of Texas; Control of Gasoline Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision that is applicable only in the Dallas/Fort Worth (D/FW) area, and includes rules which were submitted by the State of Texas. The rules will reduce emissions of volatile organic compounds (VOCs) from gasoline by reducing its Reid Vapor Pressure (RVP). EPA is also finding that Texas' rules are "necessary to achieve" the National Ambient Air Quality Standard (NAAQS) for ozone, and are excepted from Federal preemption under section 211(c)(4)(C) of the Clean Air Act (the Act). The intended effect of this action is to make reasonable further progress towards attainment of the ozone standard in the D/FW area as expeditiously as practicable, as required under the Act.

DATES: This action will be effective September 4, 1990.

ADDRESSES: Copies of the State's submittal and other relevant documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Planning Section (6T-AP), 1445 Ross Avenue, Dallas, Texas 75202.

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Becky Caldwell at (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION:

Introduction

This notice describes EPA's decision to approve revisions to the Texas SIP which limit the volatility of gasoline in the D/FW area from May 1 to September 16 beginning in 1990. The remainder of this preamble is divided into three sections. The first provides the background for this action, with respect to both chronology and the broad issues involved. The second section presents today's action and EPA's rationale. The third section summarizes the comments received on the proposed action and EPA's responses to them.

Background

The Texas Air Control Board (TACB) considered RVP control during the development of its Interim Post-82 SIP for the D/FW non-attainment area. This SIP was developed in 1987, and submitted on December 21, 1987. This Interim Post-82 and the initial Post-82 SIP are described in greater detail in EPA's February 9, 1989, **Federal Register** (54 FR 6302). When the Interim SIP was submitted, EPA had proposed to control RVP, but had not issued a final rule. In the Interim SIP, Texas made a commitment to control RVP in the D/FW area, if EPA failed to take final action. In addition, the TACB based its demonstration of attainment on a 9.0 pounds per square inch (psi) RVP standard in the D/FW area. When EPA issued its final rule, the RVP standard in the D/FW area was set at 9.5 psi for the period June 1 through September 15 and at 10.5 psi for May. This compromised the demonstration of attainment, and provided the impetus for TACB to develop a 9.0 psi RVP rule.

The TACB began development of the RVP rules in mid-1989, and held four public hearings on the proposed rules in August 1989. On December 8, 1989, the Texas Air Control Board (TACB) adopted the final RVP rules by adding a new subchapter to TACB Regulation V, (31 TAC 115.242-115.249). The rules require that no person shall place, store, or hold in any stationary tank, reservoir, or other container any gasoline with an RVP greater than 9.0 psi. The rules also require that no person shall transfer or allow the transfer of gasoline having an

RVP greater than 9.0 psi to or from a bulk plant, terminal, or motor vehicle fuel dispensing facility. The rules only apply to affected facilities in the D/FW Consolidated Metropolitan Statistical Area (CMSA) (this includes Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties). All motor vehicle fuel dispensing facilities in the affected counties must comply during the period of June 1 through September 16 of each year, and all other affected facilities must comply during the period of May 1 through September 16 of each year, beginning in 1990. The rules also prescribe test methods, recordkeeping requirements, and exemptions. On March 5, 1990, the Governor of Texas submitted a SIP revision, which includes a copy of the RVP rules, analysis of testimony regarding the rules, a public hearing certification, a complete record of the public hearings, and Board Order No. 89–13. In addition, on February 26, 1990, the Executive Director of the TACB submitted a copy of the RVP rules, analysis of testimony regarding the rules, and an exception request to regulate gasoline volatility (which includes lists of reasonable and not reasonable VOC control measures, and a discussion of the agency's plans for enforcing the RVP rules).

EPA published a notice of proposed rulemaking on August 19, 1987, (52 FR 31274) which proposed to require the control of gasoline volatility nationally. In that notice, EPA proposed that for the years 1989–1991, the standard in east Texas where the D/FW CMSA is located would be 10.5 psi from May 16 to May 31, and 9.1 psi from June 1 to September 15. In 1992 and subsequent years, the proposed standard was to be 9.0 psi from May 16 to May 31, and 7.8 psi from June 1 to September 15. On March 22, 1989, EPA published Phase 1 of the final RVP rulemaking (54 FR 11868). Under Phase 1, the RVP standards were revised from the original proposal. The RVP standard for east Texas is 10.5 psi from May 1 to May 31, and 9.5 psi from June 1 to September 15, beginning in 1989. The Phase 2 RVP standards were published on June 11, 1990. Beginning in 1992, the standards for all of Texas will be 9.0 psi in May and 7.8 psi June 1–September 15.

Under section 211(c)(4)(A) of the Act, EPA's RVP regulation normally preempts any state RVP regulation which is not identical to EPA's regulation. However, section 211(c)(4)(C) of the Act provides for approval of state control of fuel or fuel additives if the control is part of the SIP and is necessary to achieve the primary or secondary NAAQS which the plan implements.

On April 30, 1990, EPA published a **Federal Register** document (54 FR 18005) proposing approval of the Texas SIP revision. EPA also proposed to find that these revisions were "necessary" to achieve the NAAQS for ozone within the meaning of section 211(c)(4)(C) of the Act and, thus, meet the requirements for an exception to Federal preemption.

Description of Today's Action

EPA today approves revisions to the Texas SIP which limit gasoline volatility to 9 psi between May 1 and September 16 beginning 30 days from the date of publication of this notice in 1990 and each year thereafter between May 1 and September 16 for the D/FW CMSA. The final Phase 2 federal RVP regulations are effective beginning 1992.

EPA is also explicitly finding that the Texas revisions are "necessary to achieve" the NAAQS within the meaning of section 211(c)(4)(C) of the Act. This means that Texas's RVP regulations are not preempted by the Federal RVP regulations promulgated on March 22, 1989.

EPA's rationale for this action and its effective date are presented below. In this context issues raised by commenters on the proposal will be addressed. The remaining comments will be discussed in the next portion of this notice.

In approving the Texas RVP SIP revisions, EPA must consider requirements imposed by two different sections of the Clean Air Act. As with all SIP revisions, section 110 provides the requirements for approval into the SIP. In this case, since EPA has promulgated Federal RVP regulations, section 211(c)(4)(A) preempts inconsistent State control. However, section 211(c)(4)(c) provides that the Administrator may except a State RVP control program from preemption if he finds it is "necessary" to achieve the NAAQS. Thus, the Texas revisions must satisfy both section 110 and section 211 requirements to gain approval.

EPA has concluded that the D/FW RVP regulations are "necessary" to achieve the ozone NAAQS. In reaching this conclusion, EPA has followed the test first articulated in approving the Maricopa County, Arizona SIP (53 FR 17413 (May 19, 1988) and 53 FR 30228 (August 10, 1988)) and later presented in the proposed approval of the Texas revisions. EPA stated that if, after accounting for the possible reductions from all other reasonable control measures, Texas could demonstrate that RVP controls are still required to achieve the standard, then RVP controls are necessary within the meaning of section 211(c)(4)(C). EPA will not interpret that provision to require a State to impose more drastic measures such as driving prohibitions or source shutdowns before it can adopt its own fuel control program.

As discussed in the notice of proposed rulemaking, Texas considered the emission reduction potential of 30 control options, including those already adopted. These categories correspond to those listed by EPA, in its proposed Post-1987 ozone policy, which may give significant VOC emission reductions (52 FR 45104, appendix C, November 24, 1987). In most of the relevant categories not already adopted the potential reductions are a very small portion of the 1983 inventory. The Texas exemption request includes a table of the potential reductions from these categories, and the rationale for determining which measures were not reasonable (see 54 FR 18005). Rejection of control measures as not reasonable was based on one or more of the following criteria; high cost of control, delay of expeditious attainment, small VOC reduction, difficulty of enforcement, and public acceptance.

If all of the above referenced control measures (including a 9.5 psi RVP) were implemented, the interim SIP indicates that a VOC reduction shortfall of 1.8% would result in Dallas County; there would, however, be an excess of VOC reduction (2.1% of the 1983 inventory) for Tarrant County. It is clear that even with the adoption of all the reasonable control measures listed above, the 9.5 psi RVP required by the Federal rule is not sufficient to demonstrate attainment of the ozone standard in Dallas County. In addition, RVP controls appear to be necessary in Tarrant County also, in order to yield additional immediate results, ultimately bringing Tarrant County into attainment at an earlier date.

EPA would also like to note that several other counties in the CMSA have experienced exceedances of the ozone standard. EPA made a SIP call for Denton County in 1984, as a result of monitored ozone exceedances in Denton County. Ozone exceedances have also occurred in Parker, Rockwall, and Collin Counties. EPA made a Post–87 SIP call on May 26, 1988, for the D/FW CMSA, which will require all the counties in the CMSA to be addressed in the Post–87 ozone plan for the D/FW area. As part of the Post–87 SIP call, Texas is currently developing an updated VOC emissions inventory for the entire CMSA. In light of the fact that Texas does not currently have an approved

control strategy for Dallas and Tarrant Counties, nor does it have an attainment demonstration for the remaining CMSA counties, EPA cannot now conclude that the RVP program is not necessary to achieve the standard as expeditiously as practicable in those areas. Until EPA is in a position to conclude that the program is definitely not necessary, the Agency believes it is appropriate to make a finding under section 211(c)(4)(C) with respect to the RVP program in the CMSA. Furthermore, EPA believes that the RVP rules must be approved for the entire Dallas-Fort Worth CMSA in order to avoid significant supply, distribution and compliance problems. In addition, the RVP rules must be approved for all the CMSA counties because of the inter-county travel of vehicles throughout the CMSA. The effectiveness of the volatility controls in Dallas County would be significantly reduced and attainment would likely be delayed, if the large population of motorists who routinely commute into Dallas from the surrounding counties are allowed to refuel with higher volatility gasoline outside of Dallas and then drive into the city. EPA therefore today finds that the state RVP regulation, as applicable to the entire Dallas-Fort Worth CMSA, is "necessary" under section 211(c)(4)(C) of the Act.

Summary of Public Comments and EPA's Responses

(1) *Comment:* One commenter argued that the lower RVP control in the D/FW area is not warranted due to the out-of-date inventory data and undemonstrated benefits. The specific concern was that no evidence was provided as to the impact of a .5 RVP reduction for the D/FW area and the necessity to achieving attainment.

Response: EPA has required Texas to update their inventories for Post 1987 SIP planning purposes. However, EPA has continued to use existing inventories in evaluating current control proposals. EPA expects the D/FW inventory to show much higher emissions than the current inventory since it is expected to include more sources, improved quality assurance, and improved mobile source emission model estimates. Thus, if the current inventory is lacking, it understates current emissions and errs such that the likely percentage reduction needed to attain the standard is also understated.

As mentioned in the proposed rulemaking, evidence was provided by the TACB as to the impact of a 0.5 RVP reduction in Dallas County. It was also presented that even with the adoption of all the other reasonable controls, the 9.5 psi RVP required by the Federal rule is not sufficient to demonstrate attainment of the ozone standard in Dallas County.

(2) *Comments:* Two comments were received from petroleum industries recommending tolerance in the enforcement of both the Texas and federal RVP regulations.

Response: EPA has determined that gasoline refiners and other regulated parties will be expected to meet applicable RVP standards in-use. In other words, they must take test variability into account in producing (and marketing) gasoline and cannot rely on EPA to automatically provide an enforcement tolerance in addition to the RVP standard. For example, if the applicable RVP standard is 9.0 psi and the Agency finds a sample of gasoline to exceed this standard (*e.g.*, 9.1 psi), this will be considered a violation of the regulatory standard that could subject liable parties to an enforcement action by EPA. This is the same manner in which the Agency's motor vehicle emission control standards are enforced.

EPA's experience in its RVP testing program has been that consistent results can be obtained with careful testing procedures. In order to ensure quality results, the Agency lab conducts daily RVP tests of "pure" components with known RVP values (*e.g.*, cyclopentane).

EPA will look at the quality of a party's testing program to determine how much weight will be given to test results in a particular case. For example, EPA will place a higher value on test results if: (1) Multiple samples (rather than a single sample) have been taken from a batch and tested; (2) the party's laboratory has run correlation tests with EPA's laboratory, an independent laboratory, or a national exchange program; and/or (3) a party's testing program includes regular verification using a component of known RVP. Texas, of course, in carrying out its own enforcement program, can use the above criteria or any other appropriate criteria to enforce the D/FW RVP regulations.

(3) *Comment:* A commenter stated that establishing local volatility requirement is a poor precedent and that EPA preemption authority should not allow for a fragmented set of requirements.

Response: EPA has determined that the approval of the D/FW area volatility regulation is necessary to achieve the ozone standard. While the approval covers only the nine county D/FW metropolitan area, oil companies are not prohibited from supplying a larger area with the 9.0 psi fuel. Border issues such as this are not unique to the D/FW area volatility SIP. They occur anywhere there is a dividing line between two volatility classes.

Also, there is little difference between the 9.0 psi fuel which is required by the Texas regulation and the 9.5 psi fuel which is required by the federal volatility regulation from June through September. In fact, the current Federal volatility standards already require 9.0 psi fuel in West Texas from June 1 through September 15. In the Phase 2 federal volatility regulations, EPA has set-up a mechanism for allowing localized issues to result in minor changes to the federal standards. In publishing that regulation, EPA acknowledged that reliance will be placed on states to include minor standards changes which they believe will enhance local air quality and/or economic efficiency of the program.

(4) *Comment:* One commenter requested a minimum of 45 days lead time for the regulations to be effective at service stations.

Response: Although one commenter stated that 45 days were necessary, no other oil companies or regulated parties submitted such a request. EPA should not delay action on a SIP revision in such a manner as would thwart the State's intent in requesting the SIP revision. Texas' submittal of the RVP SIP revision was clearly aimed at getting its regulatory program in place for the 1990 ozone season. Thus, it is important to have the effective date as early as possible in order to maximize the air quality benefits of the program in 1990.

The 9.0 psi standard approval in this SIP action is very close to the 9.5 psi standard in place in East Texas until September 15. Given this and the fact that only one commenter believed that any lead time was necessary, EPA has decided to make this regulation effective 30 days from publication.

Final Action

EPA is approving the revision to the D/FW Interim Post–82 Ozone SIP to control gasoline volatility in the entire D/FW CMSA. EPA is also finding that this SIP revision meets the requirements of section 211(c)(4)(C) of the Act for an exception to federal preemption. The control period of the Texas rules is May 1 through September 16 of each year, beginning in 1990.

Under 5 U.S.C. 605(b), I certify that this SIP approval will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements [See section 307(b)(2)].

Effective Date

The effective date is September 4, 1990.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401–7642.

EPA is today approving the Texas SIP revision pertaining to its State gasoline volatility program.

Dated: July 13, 1990.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart SS—Texas

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2270 is amended by adding paragraph (c)(72) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(72) Revisions to the plan for attainment of the standard for ozone in Dallas and Tarrant counties were submitted by the Governor on March 5, 1990 limiting the volatility of gasoline.

(i) *Incorporation by reference.* (A) Revisions to the Texas Air Control Board Regulation V (31 TAC chapter 115), Control of Air Pollution from Volatile Organic Compounds, Rule 115.242–249 as adopted by the Texas Air Control Board on December 8, 1989.

(B) Texas Air Control Board Order No. 89–13, as adopted December 8, 1988.

[FR Doc. 90–17899 Filed 8–2–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–1–FRL–3814–9]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Non-CTG RACT Determination for Boston Whaler, Inc., in Norwell

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from certain processes at Boston Whaler, Inc., in Norwell, Massachusetts. The intended effect of this action is to approve a source-specific RACT determination. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on September 4, 1990.

ADDRESSES: Copies of the document relevant to this action are available for public inspection during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., room 2313, Boston, MA 02203; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: On September 8, 1988 (53 FR 34782), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. Using parallel processing rulemaking procedures, EPA proposed approval of a conditional Plan Approval issued by the Department of Environmental Protection (DEP) which imposed VOC control methods as RACT for Boston Whaler Inc.'s facility located in Norwell, Massachusetts (Boston Whaler, Norwell.) This final rulemaking action approves the formal SIP revision submitted by the DEP on November 28, 1989. This notice is divided into three parts:

I. Background Information.

II. Summary of SIP Revision Including the Changes Made to Secure Final EPA Approval.

III. Public Comments.

I. Background Information

On November 9, 1983 (48 FR 51488), EPA approved Massachusetts Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," as part of the Commonwealth of Massachusetts 1982 Ozone Attainment Plan. This regulation requires the Massachusetts DEP to determine and impose RACT on all facilities with the potential to emit one hundred tons per year (TPY) or more of VOC that are not already subject to Massachusetts' VOC regulations developed pursuant to the EPA Control Techniques Guidelines (CTG) documents.

On June 29, 1987 the Massachusetts DEP submitted a SIP revision for parallel processing. This SIP revision was composed of a Plan Approval for Boston Whaler, Norwell which defined VOC control requirements as RACT. On September 8, 1988, EPA proposed approval of the Plan Approval with the understanding that the DEP would amend it as outlined in the NPR prior to final rulemaking. On November 28, 1989, the DEP formally submitted an Amended Plan Approval dated October 19, 1989 and a Plan Approval Correction dated November 17, 1989, which amended the original Plan Approval and incorporated all the provisions required by EPA's NPR.

II. Summary of SIP Revisions Including the Changes Made To Secure Final EPA Approval

Boston Whaler, Norwell manufactures fiberglass boats. The processes at Boston Whaler are not covered by any CTGs, therefore, these processes are subject to 310 CMR 7.18(17). The SIP revision for this source includes an Amended Plan Approval dated October 19, 1989 and a Plan Approval Correction dated November 17, 1989 requiring RACT at Boston Whaler, Norwell. The DEP has calculated that VOC emissions at Boston Whaler, Norwell declined from 105 TPY to 97 TPY (a 7.6% reduction, despite a significant increase in production). Boston Whaler, Norwell achieved a 51% reduction in VOC emissions on a per unit of production basis during the time period in which RACT has been imposed. The emission reductions achieved from each process are discussed in the Technical Support Document prepared for this action.

RACT is being imposed on the production processes, which are divided into three categories: 1. hull fabrication and small parts, 2. clean-up operations, and 3. other VOC emitting operations.

The details of each RACT requirement were outlined in the NPR and will not be restated here. EPA's NPR required that six issues be addressed in the Amended Plan Approval prior to final rulemaking. The DEP's October 19, 1989 Amended Plan Approval (including the Plan Approval Correction) satisfied the NPR's requirement as summarized below.

(1) The October 19, 1989 Amended Plan Approval places explicit limits on the styrene content of the gelcoats and resins used. The Amended Plan Approval also specifies which VOC containing materials Boston Whaler may use at the facility, and requires prior notification if Boston Whaler uses any different materials.

(2) The Amended Plan Approval requires that only airless non-methyl ethyl ketone (MEK) spray guns be used to apply gelcoat and only airless spray guns be used to apply laminating resins and chopped glass reinforcing fibers.

(3) The October 19, 1989 Amended Plan Approval requires Boston Whaler, Norwell to keep all cleaning solvent dip tanks and container lids closed at all times, except when the containers cannot be kept closed during use, such as during the flushing of supply lines and spray guns.

(4) The October 19, 1989 Amended Plan Approval specifies operating requirements for the solvent recovery system. The Amended Plan Approval requires that Boston Whaler, Norwell achieve a minimum solvent recovery of 70% by volume from the waste organic cleaning solvent for each batch recovery operation and maintain a maximum coolant temperature of 20 °C (68 °F) at all times. The Amended Plan Approval also contains a requirement that waste organic cleaning solvent and the solvent recovery system's residue be stored in closed containers at all times to prevent evaporation. This requirement also applies to all waste organic solvent Boston Whaler stores prior to disposal through any method other than use of the solvent recovery system.

(5) The October 19, 1989 Amended Plan Approval specifies that the water-based cleaning solvent will be used to clean brushes, rollers, hands and any other cleaning operations not otherwise specified in the Amended Plan Approval. In addition, the Amended Plan Approval specifies the following for each solvent Boston Whaler uses at the Norwell facility: The name; the emission rate in pounds of VOC per gallon of cleaning solvent to be met continuously; designated areas for the application of each solvent; and a maximum daily consumption in gallons of VOC per day.

(6) The October 19, 1989 Amended Plan Approval limits the mixed laminating resins content of naphtha/mineral spirits and dimethylaniline. The Amended Plan Approval also limits the amount of MEK contained in the mixed gelcoats.

Other specific requirements of the RACT determination and the rationale for EPA's action are explained in the NPR and will not be restated here. EPA has reviewed the Amended Plan Approval and has determined that the level of control required by this Plan Approval represents RACT for Boston Whaler, Norwell. Since the DEP has addressed each of the issues raised in the NPR, EPA is approving the Amended Plan Approval as a revision to the Massachusetts SIP.

III. Public Comments

EPA received one letter of public comment on its proposed approval of the DEP's SIP submittal. The comment letter was submitted by Boston Whaler, Inc. A summary of each significant comment and of EPA's responses can be found below.

Comment: Boston Whaler stated that when equipment is cleaned within a container, the container is kept closed. However, when certain equipment is cleaned using a container (e.g., supply lines and certain parts of the spray guns), it is not possible to entirely enclose it within the container.

Response: It is EPA's intention that Boston Whaler, Norwell reduce VOC emissions by keeping tank and container lids closed whenever possible. EPA's requirement was not intended to restrict the cleaning of equipment. EPA agrees with the approach taken in the Amended Plan Approval to include exceptions for those instances, such as flushing of supply lines and spray guns, where the container lids cannot physically be kept closed during use.

Comment: Boston Whaler stated that it does not believe that EPA has the authority, or intention, to require Boston Whaler to operate a solvent recovery system. Boston Whaler wanted the plan approval to incorporate any condition that may be necessary in the event that it decides not to operate a solvent recovery system. Boston Whaler also objected to the requirement that a maximum weight percentage of VOC content be met on a continuous basis because it would impose a substantial, unnecessary monitoring burden on the company. Boston Whaler believes that EPA's objective can be met effectively by specifying a minimum percent recovery of solvent to be met on a continuous basis.

Response: EPA agrees that the proper storage and disposal of waste solvent is an adequate way to insure minimum VOC emission loss to the environment. The issue is not whether EPA has the authority or intention to require operation of a solvent recovery system, but rather, whether the proposed measures minimize the amount of VOC emitted into the environment. The Amended Plan Approval, therefore, requires waste solvent to be stored in closed containers, even if the waste solvent is not disposed of using the solvent recovery system. EPA agrees with the approach in the Amended Plan Approval whereby the solvent (methyl acetate/methanol and acetone) recovery or disposal must meet the following requirements to ensure equivalent emission reductions:

(1) A minimum recovery requirement of 70% by volume of solvent in the waste organic cleaning solvent for each batch recovery operation;

(2) A maximum coolant temperature requirement of 20 °C (68 °F) at all times;

(3) A requirement that waste organic cleaning solvent (before being recovered) and solvent recovery system residue (before being sent out as a waste product) must be stored in closed containers at all times to prevent evaporation; and

(4) A requirement that Boston Whaler, Norwell record the weight (in pounds) of recovered, clean solvent.

Comment: Boston Whaler objects to the statement that "The final Plan Approval must specify what portion of the solvent cleaning of equipment is done with the newly introduced water-based cleaning solvent, and must require Boston Whaler to use this cleaner in designated areas where emissions reductions from its use were accounted for during RACT implementation." Because this solvent is used throughout the facility, Boston Whaler would rather limit the use of this solvent to the cleaning of brushes, rollers and hands.

Response: Boston Whaler misinterpreted EPA's intent in specifying the "areas" responsible for the emission reductions. EPA was concerned that emission reductions be accounted for by process type or "area," but not by the physical locations where solvents are used in the facility. EPA agrees with the approach taken in the Amended Plan Approval where the use of water-based solvent is designated for the cleaning of brushes, rollers and hands, and any other cleaning applications not otherwise specified in the final Plan Approval.

Comment: Boston Whaler stated that the solvents are used in a number of

different areas in the plant for a variety of different uses. On a daily basis, Boston Whaler uses the solvents to clean internal gun parts. Periodically, the solvents are used to clean pumps and mechanical equipment. In addition, Boston Whaler stated that the solvent is used in the comprehensive plant clean-up that occurs during shut down. Due to the diversity of its uses, Boston Whaler stated that the solvent cannot possibly be limited to designated areas of the plant. Boston Whaler further commented that substantial administrative burden would be placed on the company if it is subjected to a daily limit on solvent consumption.

Response: This comment is no longer an issue since the Amended Plan Approval requires that Boston Whaler keep daily records of the usage and emissions of each material containing VOCs (except those items in the "Other VOCs" category which Boston Whaler will track monthly). To further ensure emission reductions, the Commonwealth has limited the amount of solvent that Boston Whaler can issue for use in the facility each day. In response to the objection to specifying designated "areas" of the plant for application of VOC-containing materials, the Amended Plan Approval specifies uses or applications in which Boston Whaler may use these materials.

Comment: Boston Whaler further stated that it has eliminated the use of MEK to dilute and carry gelcoat catalyst. Since the company has accomplished this task, it would like EPA to remove the requirement of a specific maximum feed ratio of gelcoat catalyst to fiberglass resin and use instead a prohibition of MEK to dilute and carry gelcoat catalyst. Boston Whaler believes that EPA's intention in specifying a maximum feed ratio of gelcoat catalyst to fiberglass resin was to address reductions in MEK that were achieved through the use of new gelcoat guns. If the proposed requirement was not intended to address MEK, but directed to another RACT issue, then Boston Whaler requested that EPA clarify the requirement and propose it again for public comment.

Response: EPA's intent in requiring a specfic maximum feed ratio of gelcoat catalyst to fiberglass resin was to limit the amount of VOC in the mixed gelcoat. The NPR should have stated, "* * * a specific maximum feed ratio of gelcoat catalyst to *gelcoat* * * *" and not fiberglass resin. EPA's intent in specifying this requirement was to ensure that emission reductions achieved through installation of the new application equipment occurs at all times. This requirement is satisfied in the Amended Plan Approval by limiting the VOCs in the mixed gelcoat to styrene and MEK–P used as a gelcoat catalyst and through the use of non-MEK spray guns. Furthermore, no VOC is permitted to be used to dilute the catalyst. The Amended Plan Approval also contains restriction on the mixed gelcoat by requiring that only 3% by weight of the MEK–P can be added to the gelcoat, as applied.

Final Action: EPA is approving the Massachusetts Amended Plan Approval dated and effective October 19, 1989 and the Plan Approval Correction dated and effective November 17, 1989, which together impose RACT on Boston Whaler's Norwell facility as a revision to the Massachusetts SIP.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: July 18, 1990.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart W—Massachusetts

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1120 is amended by adding paragraph (c)(85) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(85) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on November 28, 1989.

(i) *Incorporation by reference.* (A) Letter from the Massachusetts Department of Environmental Protection dated November 28, 1989 submitting a revision to the Massachusetts State Implementation Plan.

(B) A Plan Approval 4P89005 Correction dated and effective November 17, 1989 and the Amended Plan Approval, 4P89005 dated and effective October 19, 1989 imposing reasonably available control technology on Boston Whaler Inc., in Norwell, Massachusetts.

(ii) *Additional materials.* (A) Nonregulatory portions of the State submittal.

3. Table 52.1167 is amended by adding the following information to entry 310 CMR 7.18(17) as follows:

§ 52.1167 [Amended]

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comment/unapproved sections
•	•	•	•	•	•	•
310 CMR 7.18(17)	Reasonably Available Control Technology (RACT).	November 17, 1989.....	[Date of publication in FR].	[*FR* citation from published date].	(85)	RACT for Boston Whaler in Norwell. Amended Plan Approval 4P89005 dated October 19, 1989 and Plan Approval 4P89005 Correction dated Nov. 17, 1989.
•	•	•	•	•	•	•

[FR Doc. 90–17904 Filed 8–2–90; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 52

[A-1-FRL-3814-2]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Non-CTG RACT Determination for Boston Whaler, Inc., in Rockland, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from certain processes at Boston Whaler, Inc., in Rockland, Massachusetts. The intended effect of this action is to approve a source-specific RACT determination. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on September 4, 1990.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., room 2313, Boston, MA 02203; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: On September 8, 1988 (53 FR 34784), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. Using parallel processing rulemaking procedures, EPA proposed approval of a conditional Plan Approval issued by the Department of Environmental Protection (DEP) which imposed VOC control methods as RACT for Boston Whaler Inc.'s facility located in Rockland, Massachusetts (Boston Whaler, Rockland). This final rulemaking action approves the formal SIP revision submitted by the DEP on November 28, 1989.

This notice is divided into three parts:

I. Background Information
II. Summary of SIP Revision Including the Changes Made to Secure Final EPA Approval
III. Public Comments

I. Background Information

On November 9, 1983 (48 FR 51488), EPA approved Massachusetts Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," as part of the Commonwealth of Massachusetts 1982 Ozone Attainment Plan. This regulation requires the Massachusetts DEP to determine and impose RACT on all facilities with the potential to emit one hundred tons per year (TPY) or more of VOCs that are not already subject to Massachusetts' VOC regulations developed pursuant to the EPA Control Techniques Guidelines (CTG) documents.

On June 29, 1987, the Massachusetts DEP submitted a SIP revision for parallel processing. This SIP revision was composed of a Plan Approval for Boston Whaler, Rockland which defined VOC control requirements as RACT. On September 8, 1988, EPA proposed approval of the Plan Approval with the understanding that the DEP would amend it as outlined in the NPR prior to final rulemaking. On November 28, 1989, the DEP formally submitted an Amended Plan Approval dated October 19, 1989, and a Plan Approval Correction dated November 17, 1989, which amended the original Plan Approval and incorporated all the provisions required by EPA's NPR.

II. Summary of SIP Revisions Including the Changes Made To Secure Final EPA Approval

Boston Whaler, Rockland manufactures fiberglass boats. The processes at Boston Whaler, Rockland are not covered by any CTGs, therefore, these procedures are subject to 310 CMR 7.18(17). The SIP revision for this source includes an Amended Plan Approval dated October 19, 1989, and a Plan Approval Correction dated November 17, 1989, requiring RACT at Boston Whaler, Rockland. The DEP has calculated that VOC emissions at Boston Whaler, Rockland declined from 101 TPY to 95 TPY (a 5.1% reduction, despite a significant increase in production). Boston Whaler, Rockland achieved a 38% reduction in VOC emissions on a per unit of production basis during the time period in which RACT has been imposed. The emission reductions achieved from each process are discussed in the Technical Support Document prepared for this action.

RACT is being imposed on the production processes, which are divided into four categories: 1. Hull fabrication and small parts; 2. wood operations; 3. clean-up operations; and 4. other VOC emitting operations. The details of each RACT requirement were outlined in the NPR and will not be restated here. EPA's NPR required that seven issues be addressed in the Amended Plan Approval prior to final rulemaking. The DEP's October 19, 1989, Amended Plan Approval (including the Plan Approval Correction) satisfied the NPR's requirements as summarized below.

(1) The October 19, 1989, Amended Plan Approval places explicit limits on the styrene content of the gelcoats and resins used. The Amended Plan Approval also specifies which VOC-containing materials Boston Whaler may use at the facility, and requires prior notification if Boston Whaler uses any different materials.

(2) The Amended Plan Approval requires that only airless non-methyl ethyl ketone (MEK) spray guns be used to apply gelcoat and only airless spray

guns be used to apply laminating resins and chopped glass reinforcing fibers.

(3) The October 19, 1989, Amended Plan Approval requires Boston Whaler, Rockland to keep all cleaning solvent dip tanks and container lids closed at all times, except when the containers cannot be kept closed during use, such as during the flushing of supply lines and spray guns.

(4) The October 19, 1989, Amended Plan Approval specifies operating requirements for the solvent recovery system. The Amended Plan Approval requires that Boston Whaler, Rockland achieve a minimum solvent recovery of 70% by volume from the waste organic cleaning solvent for each batch recovery operation and maintain a maximum coolant temperature of 20 °C (68 °F) at all times. The Amended Plan Approval also contains a requirement that waste organic cleaning solvent and the solvent recovery system's residue must be stored in closed containers at all time to prevent evaporation. This requirement also applies to all waste organic cleaning solvent Boston Whaler stores prior to disposal through any method other than use of the solvent recovery system.

(5) The October 19, 1989 Amended Plan Approval specifies that the water-based cleaning solvent will be used to clean brushes, rollers, hands and any other cleaning operations not otherwise specified in the Amended Plan Approval. In addition, the Amended Plan Approval specifies the following for each cleaning solvent Boston Whaler uses at the Rockland facility: The name; the emission rate in pounds of VOC per gallon of cleaning solvent to be met continuously; designated areas for the application of each solvent; and a maximum daily consumption in gallons of VOC per day.

(6) The October 19, 1989 Amended Plan Approval limits the naphtha/mineral spirits and dimethylaniline content in the mixed laminating resins. The Amended Plan Approval also limits the amount of MEK contained in the mixed gelcoats.

(7) The Amended Plan Approval specifies limits, in pounds of VOC per gallon of solids, for each finish used in the wood division.

Other specific requirements of the RACT determination and the rationale for EPA's action are explained in the NPR and will not be restated here. EPA had reviewed the Amended Plan Approval and has determined that the level of control required by this Plan Approval represents RACT for Boston Whaler, Rockland. Since the DEP has addressed each of the issues raised in the NPR, EPA is approving the Amended Plan Approval as a revision to the Massachusetts SIP.

III. Public Comments

EPA received one letter of public comment on its proposed approval of the DEP's SIP submittal. The comment letter was submitted by Boston Whaler, Inc. A summary of each significant comment and of EPA's responses can be found below.

Comment: Boston Whaler stated that when equipment is cleaned within a container, the container is kept closed. However, when certain equipment is cleaned using a container (e.g., supply lines and certain parts of the spray guns), it is not possible to entirely enclose it within the container.

Response: It is EPA's intention that Boston Whaler, Rockland reduce VOC emissions by keeping tank and container lids closed whenever possible. EPA's requirement was not intended to restrict the cleaning of equipment. EPA agrees with the approach taken in the Amended Plan Approval to include exceptions for those instances, such as flushing of supply lines and spray guns, where the container lids cannot physically be kept closed during use.

Comment: Boston Whaler stated that it does not believe that EPA has the authority, or intention, to require Boston Whaler to operate a solvent recovery system. Boston Whaler wanted the plan approval to incorporate any condition that may be necessary in the event that it decides not to operate a solvent recovery system. Boston Whaler also objected to the requirement that a maximum weight percentage of VOC content be met on a continuous basis because it would impose a substantial, unnecessary monitoring burden on the company. Boston Whaler believes that EPA's objective can be met effectively by specifying a minimum percent recovery of solvent to be met on a continuous basis.

Response: EPA agrees that the proper storage and disposal of waste solvent is an adequate way to insure minimum VOC emission loss to the environment. The issue is not whether EPA has authority or intention to require operation of a solvent recovery system, but rather whether the proposed measures minimize the amount of VOC emitted into the environment. The Amended Plan Approval, therefore, requires waste solvent be stored in closed containers, even if the waste solvent is not disposed of using the solvent recovery system. EPA agrees with the approach in the Amended Plan Approval whereby the solvent (methyl acetate/methanol and acetone) recovery or disposal must meet the following requirements to ensure equivalent emission reductions:

(1) A minimum recovery requirement of 70% by volume of solvent in the waste organic cleaning solvent for each batch recovery operation;

(2) A maximum coolant temperature requirement of 20 °C (68 °F) at all times;

(3) A requirement that waste organic cleaning solvent (before being recovered) and solvent recovery system residue (before being sent out as a waste product) must be stored in closed containers at all times to prevent evaporation; and

(4) A requirement that Boston Whaler, Rockland record the weight (in pounds) of recovered, clean solvent.

Comment: Boston Whaler objects to the statement that "The final Plan Approval must specify what portion of the solvent cleaning of equipment is done with the newly introduced water-based cleaning solvent, and must require Boston Whaler to use this cleaner in designated areas where emission reductions from its use were accounted for during RACT implementation." Because this solvent is used throughout the facility, Boston Whaler would rather limit the use of this solvent to the cleaning of brushes, rollers and hands.

Response: Boston Whaler misinterpreted EPA's intent in specifying the "areas" responsible for the emission reductions. EPA was concerned that emissions reductions be accounted for by process type of "area" but not by the physical locations where the solvents are used in the facility. EPA agrees with the approach taken in the Amended Plan Approval where the use of water-based solvent is designated for the cleaning of brushes, rollers and hands, and any other cleaning applications not otherwise specified in the Amended Plan Approval.

Comment: Boston Whaler stated that the solvents are used in a number of different areas in the plants for a variety of different uses. On a daily basis, Boston Whaler uses the solvents to clean internal gun parts. Periodically, the solvents are used to clean pumps and mechanical equipment. In addition, Boston Whaler stated that the solvent is used in the comprehensive plant clean-up that occurs during shut down. Due to the diversity of its uses, Boston Whaler stated that the solvent cannot possibly be limited to designated areas of the plant. Boston Whaler further commented that substantial administrative burden would be placed on the company if it is subjected to a daily limit on solvent consumption.

Response: This comment is no longer an issue since the Amended Plan

Approval requires that Boston Whaler keep daily records of the usage and emissions of each material containing VOCs (except those items in the "Other VOCs" category which Boston Whaler will track monthly). To further ensure emission reductions, the Commonwealth has limited the amount of solvent that Boston Whaler can issue for use in the facility each day. In response to the objection to specifying designated "areas" of the plant for application of VOC-containing materials, the Amended Plan Approval specifies uses or applications in which Boston Whaler may use these materials.

Comment: Boston Whaler further stated that it has eliminated the use of MEK to dilute and carry gelcoat catalyst. Since the company has accomplished this task, it would like EPA to remove the requirement of a specific maximum feed ratio of gelcoat catalyst to fiberglass resin and use instead a prohibition of MEK to dilute and carry gelcoat catalyst. Boston Whaler believes that EPA's intention in specifying a maximum feed ratio of gelcoat catalyst to fiberglass resin was to address reductions in MEK that were achieved through the use of new gelcoat guns. If the proposed requirement was not intended to address MEK, but directed to another RACT issue, then Boston Whaler requested that EPA clarify the requirement and propose it again for public comment.

Response: EPA's intent in requiring a specific maximum feed ratio of gelcoat catalyst to fiberglass resin was to limit the amount of VOC in the mixed gelcoat. The NPR should have stated, "* * * a specific maximum feed ratio of gelcoat catalyst to gelcoat * * *" and not fiberglass resin. EPA's intent in specifying this requirement was to ensure that emission reductions achieved through installation of the new application equipment occurs at all times. This requirement is satisfied in the Amended Plan Approval by limiting the VOCs in the mixed gelcoat to styrene and MEK–P used as a gelcoat catalyst. Furthermore, no VOC is permitted to be used to dilute the catalyst. The Amended Plan Approval also contains a restriction on the mixed gelcoat by requiring that only 3% by weight of the MEK–P can be added to the gelcoat, as applied.

Comment: Boston Whaler objects to the requirement of specifying emission limits for varnishes and hardeners used in the Wood Division of its Rockland facility because this task is overly complex and it does not accurately reflect the operation of the Wood Division. Boston Whaler believes that the purpose of EPA's requirement was to ensure that maximum emission reductions are continuously achieved, therefore the company believes that this can be accomplished by specifying a maximum amount of VOCs per gallon of solids as applied for each coating used in the Wood Division.

Response: EPA agrees with the approach taken in the Amended Plan Approval where limits are specified for each finish in pounds of VOC per gallon of solids used in the Wood Division. These finishes must meet the limits specified in the Amended Plan Approval at all times.

Final Action: EPA is approving the Massachusetts Amended Plan Approval dated and effective October 19, 1989 and the Plan Approval Correction dated and effective November 17, 1989, which together impose RACT on Boston Whaler's Rockland facility as a revision to the Massachusetts SIP.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 18, 1990.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1120 is amended by adding paragraph (c)(86) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(86) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on November 28, 1989.

(i) *Incorporation by reference.* (A) Letter from the Massachusetts Department of Environmental Protection dated November 28, 1989 submitting a revision to the Massachusetts State Implementation Plan.

(B) A Plan Approval 4P89006 Correction dated and effective November 17, 1989 and the Amended Plan Approval (4P89006) dated and effective October 19, 1989 imposing reasonably available control technology on Boston Whaler Inc. in Rockland, Massachusetts.

(ii) *Additional materials.* (A) Nonregulatory portions of the State submittal.

3. Table 52.1167 is amended by adding the following information to entry 310CMR 7.18(17) as follows:

TABLE 52.1167—EPA-Approved Rules and Regulations

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
•	•	•	•	•	•	•
310 CMR 7.18(17)	Reasonably Available Control Technology (RACT).	November 17, 1989.....	[Date revision is published in *FR*].	[FR citation from published date].	(86)	RACT for Boston Whaler in Rockland. Amended Plan Approval (4P89006) dated October 19, 1989 and Plan Approval 4P89006 Correction dated November 17, 1989.
•	•	•	•	•	•	•

[FR Doc. 90-17905 Filed 8-2-90; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 61

[FRL-3814-6]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: This notice announces the delegation of authority by EPA to the state of Iowa for the implementation and enforcement of the asbestos demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR part 61, subpart M. The NESHAP delegation now includes all categories promulgated through March 7, 1990, except for those covering radon (subparts B, Q, R, T, and W), radionuclides (subparts H, I, and K), and benzene (subparts L, Y, BB, and FF).

EFFECTIVE DATE: August 3, 1990.

ADDRESSES: All requests, reports, applications, submittals and such other communications required to be submitted under 40 CFR part 61, including notifications required to be submitted under subpart A of the regulations, for affected facilities or activities in Iowa should be sent to Chief, Air Quality and Solid Waste Protection Bureau, Iowa Department of Natural Resources, Henry A. Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319. A copy of all notices required by subpart A also must be sent to Director, Air and Toxics Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley, Air Planning and Development Section, Air Branch, U.S. EPA, Region VII, at the above address or by calling (913) 551-7610 (FTS 276-7610).

SUPPLEMENTARY INFORMATION: Section 112(d) of the Clean Air Act allows the Administrator of the EPA to delegate to any state government authority to implement and enforce the standards promulgated by the agency under 40 CFR part 61. EPA retains concurrent authority to implement and enforce the delegated standards. The delegation shifts the primary responsibility for implementation and enforcement of the standards from EPA to the state government.

On August 20, 1984, EPA and the state of Iowa entered into a delegation of authority agreement whereby Iowa automatically receives authority to implement and enforce federal NSPS and NESHAP standards upon the adoption of the standards by the state government. (See 50 FR 933)

Prior to August 20, 1984, EPA delegated to the state of Iowa authority to implement and enforce the standards for numerous categories in various delegation and extension of authority actions. The action described below does not affect these previous delegation or extension of authority actions.

On June 13, 1990, Iowa revised its rules to adopt, by reference, the standards for the asbestos demolition and renovation portions of the NESHAP regulations, 40 CFR part 61, subpart M. The adoption action and regulation changes became effective on July 18, 1990. The IDNR informed EPA of the adoption action in a letter dated June 15, 1990. EPA subsequently acknowledged the adoption and the corresponding delegation of authority in a letter to IDNR on July 11, 1990. The delegation occurred under the terms of the above-mentioned August 20, 1984, automatic delegation of authority agreement.

EPA hereby notifies interested individuals that, effective (insert date of publication), EPA delegates the authorization to implement and enforce the federally established standards for 40 CFR part 61, subpart M (demolition and renovation) to the state of Iowa.

This notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: July 17, 1990.

Morris Kay,

Regional Administrator.

[FR Doc. 90-18168 Filed 8-2-90; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3816-6]

Ocean Dumping; Final Designation of Site Located Offshore of Tutuila Island, American Samoa

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction of effective date.

SUMMARY: The **Federal Register** publications on February 6, 1990, 55 FR 3948, and on May 16, 1990, 55 FR 20274, pertain to the final rule for designating an ocean disposal site southeast of Tutuila Island, American Samoa for the disposal of fish processing wastes are hereby corrected. This correction applies to the effective date of the designated site.

The three-year special ocean dumping permits for StarKist Samoa, Inc. and VCS Samoa Packing Company, Inc. become effective on July 31, 1990. The effective date of the ocean disposal site is also July 31, 1990.

DATES This designation shall become effective on July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Cotter, Ocean Dumping Coordinator (W-7-1), U.S. Environmental Protection Agency, Region IX, 1235 Mission Street, San Francisco, California 94103, or by telephone at (415) 705-2162.

Dated: July 20, 1990.

Daniel W. McGovern,

Regional Administrator, Region IX.

In consideration of the foregoing, subchapter H of chapter 1 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 revising paragraph (b)(74), to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(74) American Samoa Fish Processing Waste Disposal Site-Region IX.

Effective Date: July 31, 1990.

[FR Doc. 90-18169 Filed 8-2-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 372

[OPTS-400044A; FRL-3772-3]

Ozone Depleting Chemicals; Toxic Chemical Release Reporting; Community Right-To-Know; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On January 9, 1990, EPA received a petition from three State Governors and the Natural Resources Defense Council to add seven ozone depleting chemicals to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). Because this petition was submitted by State Governors, the statute required that these chemicals be added to the list unless EPA acted within 180 days by initiating rulemaking to add the chemicals or by publishing an explanation of why the chemicals do not meet the statutory criteria for listing. Because EPA did not initiate rulemaking to add the chemicals or deny the petition by the statutory deadline of July 8, 1990, the addition of these chemicals has taken effect. EPA affirms its belief that these chemicals do meet the statutory criteria for listing and should be included on the list. The first reports for these chemicals will be due July 1, 1992, to cover the 1991 reporting year.

EFFECTIVE DATE: This rule is effective August 3, 1990.

FOR FURTHER INFORMATION CONTACT: Robert J. Israel, Petitions Coordinator, Emergency Planning and Community Right-to-Know, Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202, In Washington, DC and Alaska, 202-479-2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This petition is submitted under section 313(d) and (e)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99-499, "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition the Agency to add chemicals to or delete chemicals from the list. If a State Governor petitions EPA to add a chemical to the list, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator:

(1) Initiates a rulemaking to add the chemicals to the list, in accordance with section 313(d)(2), or

(2) Publishes an explanation of why the Administrator believes the petition does not meet the statutory requirements under section 313(d)(2) to warrant addition to the list.

II. Description of Petition

On January 9, 1990, EPA received from Governor Thomas Kean of New Jersey, Governor Mario Cuomo of New York, and Governor Madeleine Kunin of Vermont, as well as the Natural Resources Defense Council (NRDC), a petition to add seven ozone depleting chemicals to the section 313 list of toxic chemicals. Specifically, the seven chemicals are trichlorofluoromethane (CFC-11) (CAS Registry Number 75-69-4), dichlorodifluoromethane (CFC-12) (CAS Registry Number 75-71-8), dichlorotetrafluoroethane (CFC-114) (CAS Registry Number 76-14-2), (mono)chloropentafluoroethane (CFC-115) (CAS Registry Number 76-15-3), bromochlorodifluoromethane (Halon 1211) (CAS Registry Number 421-01-2), bromotrifluoromethane (Halon 1301) (CAS Registry Number 75-63-8), and dibromotetrafluoroethane (Halon 2402) (CAS Registry Number 124-73-2).

The petition is based on two EPA documents, "Assessing the Risk of Trace Gases that Can Modify the Stratosphere" (Ref. 1) and "Regulatory Impact Analysis: Protection of Stratospheric Ozone" (Ref. 2). These documents were prepared in support of an EPA rulemaking of August 12, 1988 (53 FR 30566), limiting production and consumption of eight chlorofluorocarbons (CFCs) and halons because of their depleting effect on stratospheric ozone. Seven of those eight chemicals are the subject of this petition; the eighth, CFC-113 (Freon 113), is already on the section 313 list.

The petitioners contend that the petitioned chemicals satisfy section 313(d)(2)(B) because they are known to cause cancer and other chronic health effects in humans through depletion of the stratospheric ozone layer and the resulting increase in penetration of UV-B radiation. The petitioners also claim that these chemicals satisfy section 313(d)(2)(C) because they cause significant adverse effects on the environment. The two documents cited above provide support for these assertions.

III. Summary of EPA's Review

A. Introduction

EPA has already extensively evaluated the risks of ozone depletion and the role of CFCs and halons in that depletion and published its findings in the two documents cited above. Based on these documents, EPA concluded that continued growth in CFCs and halons would result in substantial ozone depletion which would have serious human health and environmental consequences. This conclusion led to the decision to promulgate a rule limiting production and consumption of eight CFCs and halons, including the seven chemicals which are the subject of this petition.

EPA's concerns for these chemicals do not focus on direct toxicity, but rather on the depleting effect these chemicals have on stratospheric ozone and the increase in penetration of UV-B radiation which will result. The seven CFCs and halons are known to release chlorine or bromine radicals into the stratosphere. Chlorine and bromine radicals act as catalysts to reduce the net amount of stratospheric ozone. Stratospheric ozone shields the earth from ultraviolet-B (UV-B) radiation (i.e., 290 to 320 nanometers). Decreases in total column ozone will increase the

percentage of UV-B radiation, especially at its most harmful wavelengths, reaching the earth's surface. Because CFCs and halons remain in the atmosphere for many decades to over a century, emissions today will influence ozone levels far into the future. Exposure to UV-B radiation is known to cause various adverse human health and environmental effects, which are summarized in the following sections.

B. Chronic Human Health Effects

Exposure to UV-B radiation has been implicated by laboratory and epidemiologic studies as a cause of two types of nonmelanoma skin cancers: squamous cell cancer and basal cell cancer. Studies predict that for every 1 percent increase in UV-B radiation, nonmelanoma skin cancer cases would increase by about 1 to 3 percent.

Recent epidemiological studies, including large case control studies, suggest that UV-B radiation plays an important role in causing malignant melanoma skin cancer. Recent studies predict that for each 1 percent change in UV-B intensity, the incidence of melanoma could increase from 0.5 to 1 percent.

Studies have demonstrated that UV-B radiation can suppress the immune response system in animals, and, possibly, in humans.

Increases in exposure to UV-B radiation are likely to increase the incidence of cataracts and could adversely affect the retina.

Results from one modeling study and one chamber study suggest that increased UV-B penetration may increase the rate of tropospheric ozone formation. Available data suggest that ozone exposure may lead to chronic health effects, including morphological changes to, and impaired functioning of, the lungs.

C. Environmental Effects

Aquatic organisms, particularly phytoplankton, zooplankton, and the larvae of many fishes, appear to be susceptible to harm from increased exposure to UV-B radiation because they spend at least part of their time at or near the surface of waters they inhabit.

Increased UV-B penetration has been shown to result in adverse impacts on plants. Field studies on soybeans suggest that yield reductions could occur in some cultivars of soybeans,while evidence from laboratory studies suggest that two out of three cultivars are sensitive to UV-B.

Laboratory studies with numerous other crop species also show many to be adversely affected by UV-B. Increased UV-B has been shown to alter the balance of competition between plants. While the magnitude of this change cannot be presently estimated, the implications of UV-altered, competitive balance for crops and weeds and for nonagricultural areas such as forests, grasslands, and desert may be far reaching.

IV. Summary of Public Comment

On March 21, 1990, EPA issued in the **Federal Register** (55 FR 10473) a notice requesting public comment on this petition and the possible addition of these chemicals to the section 313 list. The public comment period closed May 7, 1990. As of May 31, EPA had received 39 comments on the petition, two of which were in support of the addition and 37 of which were opposed to it.

The majority of the commenters contend that the CFCs and halons that are the subject of this petition should not be listed under section 313 because they exhibit low or no direct toxicity. They assert that Congress intended that the section 313 list of toxic substances include only chemicals that induce direct toxicity, and that Congress did not intend the list to include chemicals which are only indirectly toxic.

The information on health effects induced by these chemicals has been reviewed by the Agency and supports the contention that these chemicals exhibit low or no direct toxicity. However, EPA's concerns for this chemical do not focus on direct toxicity, but rather on indirect toxicity which results from the chemicals' depleting effect on stratospheric ozone and the resulting increase in penetration of UV-B radiation. Because of the adverse human health and environmental effects which would result from this increased UV-B radiation, EPA believes that these chemicals meet the statutory criteria for listing.

The statute and the legislative history do not specifically preclude the consideration of indirect effects in evaluating whether or not a chemical meets the statutory criteria for listing under section 313. In fact, the statute grants the EPA broad discretion in granting or denying petitions to modify the list. EPA believes that indirect effects can and should be considered in determining whether or not a chemical should be subject to reporting under section 313.

Indirect toxicity has been a criterion used to support the denial of petitions on volatile organic compounds (VOCs), specifically, the ethylene and propylene petition (January 27, 1989, 54 FR 4072) and the cyclohexane petition (March 15, 1989, 54 FR 10668). Comparisons between the fate of CFCs and halons and VOCs are given below.

Halogen radicals which are generated from CFCs and halons catalyze the conversion of stratospheric ozone to oxygen. The resulting depletion of this ozone layer results in increased amounts of UV-B radiation reaching the earth's surface. The consequences of increased UB-V radiation are expected to include environmental damage and increased incidence of skin cancer.

Analogous to the fate of CFCs and halons in the stratosphere is the fate of VOCs in the troposphere. VOCs react with pollutants in the troposphere to generate ozone. Ozone is not a direct product of VOCs, i.e. ozone is produced by the reaction of VOCs with oxygen containing compounds. Tropospheric ozone induces a number of health effects.

The Fire Suppression Systems Association, the Fire Equipment Manufacturers' Association, and the Halon Research Institute question the validity of the connection between CFCs and halons and increased UV-B radiation. The Halon Research Institute believes that there "is no clear-cut evidence that UV-B radiation reaching the earth surface has increased. In fact, available data indicates that it has *decreased*." To support this assertion, the commenter cites an article by Scotto, et al. ("Biologically Effective Ultraviolet Radiation: Surface Measurements in the United States, 1974 to 1985," Science, 239, 762 (1988)).

Scotto, et al. present data on surface measurements of UV-B radiation that indicate that there has been a decline in the amount of UV-B penetration in the United States from 1974 to 1985. They do not conclude that the connection between ozone depletion and increased UV-B radiation is specious, but rather that "meteorological, climatic, and environmental factors in the troposphere may play a greater role in attenuating UV-B radiation than was previously suspected." Their conclusions are consistent with the vast majority of the science community who believe that the connection between CFCs and halons and increased UV-B radiation is valid.

Some commenters believe that the CFCs do not belong on the section 313 list of toxic substances because CFC–11 and CFC–12 have been deleted from the Clean Water Act section 307 list. However, CFC–11 and CFC–12 were deleted from the Clean Water Act section 307 list because they are not directly toxic to humans or aquatic organisms, are not persistent in water, and because the amount of these materials released to water is

considered miniscule relative to the amount released to air. Although these chemicals are known to cause ozone depletion, EPA determined that the very small amounts released to water did not warrant the continued presence of these chemicals on the section 307 list. Because the two statutes have different purposes and different criteria for listing, it is not necessary or reasonable for their respective lists to be identical, and a deletion of a chemical from one list does not preclude the addition of that chemical to another statutory list.

Several commenters were concerned that including chemicals that are only indirectly toxic is an overly expansive reading of the statute, under which just about anything could be added to the section 313 list. As discussed above, EPA believes that indirect toxic effects can and should be considered in evaluating whether or not a chemical should be listed under section 313. EPA has broad discretion in determining whether a chemical meets the statutory criteria. The Agency believes it has exercised that discretion responsibly in the past and will continue to do so in the future.

The majority of the commenters also contend that these chemicals should not be listed under section 313 because the potential adverse effects resulting from their release into the environment are not confined to the community in which the release occurs. The effects of stratospheric ozone depletion ultimately will be observed world-wide, not just in the areas which emitted these compounds. While it is true that the effects of CFC and halon releases into the environment are global rather than localized, the statutory criteria for listing under section 313(d)(2)(B) and (C) do not address the location of the effect.

This issue was considered previously in evaluating the petitions on VOCs (ethylene, propylene, and cyclohexane) and sulfuric acid. Although in some areas, such as the Los Angeles basin, releases of VOCs result in localized effects, the toxic effects of ozone at ground level are commonly observed at some distance from the community which emitted the VOCs. Much of the VOC releases do not remain in the vicinity of the facilities that released them.

Analogous to this is the case of sulfuric acid releases to air as acid aerosols. The toxic effects of sulfuric acid aerosols are not confined necessarily to the community which released these aerosols. For example, acid rain in the northeastern part of the United States is largely due to releases of sulfur dioxide, sulfuric acid, and nitrogen oxides from facilities in the midwestern part of the United States. A petition to delete sulfuric acid from section 313 was denied based on this and other concerns (June 18, 1990, 55 FR 24637).

Many commenters believe that the CFCs and halons should not be added to the section 313 list because they are already subject to the reporting and recordkeeping requirements of the Montreal Protocol. Regulations promulgated under the Clean Air Act to implement the Montreal Protocol require producers and importers of CFCs and halons to report the amount of their production and importation. Because these chemicals are extremely stable, it is realistic to view production as equivalent to (eventual) release into the environment. Therefore, release estimates are already available under the Montreal Protocol, and requiring emissions estimates under section 313 would be duplicative and potentially misleading. While EPA agrees that it is realistic to view production of these chemicals as equivalent to eventual release, this does not have any bearing on whether or not a substance is listed under this section.

A number of commenters object to the listing because releases reported from facilities subject to section 313 will be a small fraction of the total releases of these chemicals to the environment. EPA agrees that this is almost certainly true; releases from covered facilities reported under this section will have a small incremental effect on the environment, since total releases to the environment are fixed by the Montreal Protocol through limits on production and consumption. However, this does not have any bearing on whether or not a chemical is listed under this section. The statutory criteria for listing address only the toxicity of the chemical, not the percentage of releases which are likely to occur from covered facilities as opposed to non-covered facilities or activities.

Some commenters are worried that placing these chemicals on the section 313 list will cause them to be considered "toxic" chemicals, and this label will result in disposal problems, increased regulations and handling restrictions, and decreased recycling. EPA does not contend that these chemicals are directly toxic. EPA hopes that industry, government, and the public will recognize and consider differences in degree and type of toxicity of different chemicals when making decisions about those chemicals. However, where EPA believes that a chemical meets the statutory criteria for listing, it cannot choose not to list the chemical simply because its listing may stigmatize the chemical.

The majority of commenters object to the possible automatic addition of these chemicals at the end of the 180-day review period. These commenters want EPA to undertake a formal rulemaking process to allow the public full opportunity to comment and develop information on the cost to industry of complying with the new requirement. EPA believes that the public has had ample opportunity to comment on the toxicity of these chemicals and on whether or not they belong on the section 313 list. Public comment was considered in the development of the regulations promulgated to implement the Montreal Protocol, and an additional comment period is unlikely to bring to light any additional information on the scientific issues surrounding these chemicals. Upon receipt of this petition, EPA published a notice outlining the petition and requested public comment; comments received have not provided any new information to cause EPA to reconsider its position.

V. Explanation of Addition

Effective July 8, 1990, the seven CFCs and halons which are the subject of this petition have been added to the section 313 list. This addition has occurred pursuant to section 313(e)(2), which stipulates that in the case of a petition submitted by a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition unless EPA denies the petition or initiates rulemaking to add the chemical within that time.

EPA's concerns for these chemicals do not focus on direct toxicity, but rather on the depleting effect these chemicals have on stratospheric ozone and the increase in penetration of UV-B radiation which will result. EPA has already conducted extensive analyses of available data on these chemicals in connection with the development of a rule limiting production and consumption of these chemicals in accordance with the Montreal Protocol. Based on the supporting documents for that rule, EPA believes that releases of these chemicals will lead to stratospheric ozone depletion resulting in increased penetration of UV-B radiation. Because this increased UV-B radiation can be reasonably anticipated to lead to cancer and other chronic human health effects and significant adverse environmental effects, EPA believes that these chemicals meet the statutory criteria for listing found in section 313(d)(2)(B) and (C) of EPCRA.

VI. Rulemaking Record

The record supporting this rule is contained in the docket number OPTS–400044A. All documents, including an index of the docket, are available in the TSCA Public Docket office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Executive Order (E.O.) 12291 requires each federal agency to classify as "major" any rule likely to result in:

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

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

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

EPA has determined that this is not a major rule under the terms of E.O. 12291 because it will not have an annual effect on the economy of $100 million or more, will not cause any major increases in costs or prices, and will not have any of the other significant adverse effects specified.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

40 CFR part 372 exempts certain small businesses from reporting; specifically, those facilities with fewer than 10 full-time employees. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. Additionally, facilities which manufacture or process less than 25,000 pounds or otherwise use less than 10,000 pounds of these chemicals annually are not required to report for these chemicals. Therefore, EPA concludes that this rule is not likely to significantly impact a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2070–0093.

The public reporting burden for this collection of information is estimated to average 33 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

VIII. References

(1) Assessing the Risks of Trace Gases that Can Modify the Atmosphere. USEPA. December 1987.

(2) Regulatory Impact Analysis: Protection of Stratospheric Ozone. USEPA. December 1987.

List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: July 26, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

1. The authority citation for part 372 continues to read as follows:

PART 372—[AMENDED]

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. In § 372.65 by adding chemicals to paragraph (a) alphabetically and to paragraph (b) by CAS No. sequence to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

(a) * * *

Chemical Name	CAS No.	Effective Date
* * * * * * *		
Bromochlorodifluoromethane (Halon 1211)	421-01-2	7/8/90
* * * * * * *		
Bromotrifluoromethane (Halon 1301)	75-63-8	7/8/90
* * * * * * *		
Dibromotetrafluoroethane (Halon 2402)	124-73-2	7/8/90
* * * * * * *		
Dichlorodifluoromethane (CFC-12)	75-71-8	7/8/90
* * * * * * *		
Dichlorotetrafluoroethane (CFC-114)	76-14-2	7/8/90
* * * * * * *		
(Mono)chloropentafluoroethane (CFC-115)	76-15-3	7/8/90
* * * * * * *		
Trichlorofluoromethane (CFC-11)	75-69-4	7/8/90
* * * * * * *		

(b) * * *

Cas No.	Chemical Name	Effective Date
*	* * * *	*
75-63-8	Bromotrifluoromethane (Halon 1301).	7/8/90
*	* * * *	*
75-69-4	Trichlorofluoromethane (CFC-11).	7/8/90
75-71-8	Dichlorodifluoromethane (CFC-12).	7/8/90
*	* * * *	*
76-14-2	Dichlorotetrafluoroethane (CFC-114).	7/8/90
76-15-3	(Mono)chloropentafluoroethane (CFC-115).	7/8/90
*	* * * *	*
124-73-2	Dibromotetrafluoroethane (Halon 2402).	7/8/90
*	* * * *	*
421-01-2	Bromochlorodifluoromethane (Halon 1211).	7/8/90
*	* * * *	*

[FR Doc. 90-18170 Filed 8-2-90; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 88-373; FCC 90-253]

Private Land Mobile Radio Services; Permit Business Radio Use of Certain Channels in the 150 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; memorandum opinion and order on reconsideration.

SUMMARY: Upon review of petitions for partial reconsideration of the Report and Order, the Commission has reconsidered its actions and has partially modified certain rules adopted in the Report and Order of this proceeding. The intended effect is to permit greater usage of frequencies in the 150 MHz band.

EFFECTIVE DATE: September 14, 1990. 54 FR 33902, August 17, 1989.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commissioner's *Memorandum Opinion and Order on Reconsideration (MO/O)*, PR Docket No. 88-373, adopted July 9, 1990, and released July 30, 1990. The full text of the *MO/O* 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 may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Memorandum Opinion and Order

1. In July 1989, the Commission adopted a *Report and Order* in this proceeding that permitted Business and Taxicab Radio Service licensees increased use of certain frequencies in the 150 MHz band. Petitions for partial reconsideration of specific aspects of the *Report and Order* were received requesting that we should: (1) Create additional offset channels in the 150 MHz band; (2) permit increased power on two additional Business Radio paging frequencies; (3) discontinue use of the 1950 Census for assigning certain frequencies shared between the Business and Taxicab Radio Services; (4) change four of the frequencies assigned to the Taxicab Radio Service; (5) specify five different Business Radio paging frequencies in Puerto Rico and the Virgin Islands; (6) limit the transmitter power on the newly designated offset frequencies utilized by the Business Radio Service to 110 watts; and (7) permit two-frequency operation on the new Business Radio Service frequencies that are adjacent to taxicab Radio Service frequencies.

2. In the *Memorandum Opinion and Order*, released July 30, 1990, the Commission denied the petitions on the two issues with respect to: (1) Creating additional offset channels in the 150 MHz band; and (2) discontinuing use of the 1950 Census data in assigning certain shared frequencies in the 150 MHz band. On the five other matters, however, the Commission found that the public interest would be served by a modification of the rules adopted in the *Report and Order*. Amended rules were adopted that will: (1) Designate different 150 MHz offset channels than specified in the *Report and Order* for use by Taxicab Radio Service licensees outside of the current list of SMAs; (2) designate different 150 MHz offset channels than originally specified for paging only operations in Puerto Rico and the Virgin Islands; (3) establish a maximum transmitter output power of 110 watts for Business Radio Service licensees operating on specified channels; (4) permit increased power on an additional 150 MHz frequency currently designated for paging; and (5) change the designated use of the four 157 MHz frequencies assigned to the Business Radio Service to mobile only use. Additionally, the adopted rules contain corrections to the frequency tables in the rules adopted in the *Report and Order*.

List of Subjects in 47 CFR Part 90

Business radio service, Taxicab radio service, Radio.

Amendatory Text

Part 90 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 90.75(b) is amended by: (1) Removing frequencies 152.285, 152.435, 157.545 and 157.695; (2) adding frequencies 152.315, 152.345, 157.575 and 157.605; and (3) revising the entries for frequencies 150.845, 150.860, 150.890, 150.935, 150.950, 151.070, 151.085, 151.190, 151.205, 151.310, 151.325, 152.375, 152.405, 157.635, 157.665, and 157.740 in the Business Radio Service Frequency Table to read as follows:

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* *	* *	*
150.845	Base or mobile	8
150.860	do	8
* *	* *	*
150.890	do	8
* *	* *	*
150.935	Base or mobile	8
150.950	do	8
* *	* *	*
151.070	Base	8, 10, 12
151.085	Base or mobile	8
* *	* *	*
151.190	Base	8, 10, 12
151.205	Base or mobile	8
* *	* *	*
151.310	Base	8, 10, 12
151.325	Base or mobile	8
* *	* *	*
152.315	do	1, 9
152.345	do	1, 9
* *	* *	*
152.375	do	1, 9
152.405	do	1, 9
* *	* *	*
157.575	do	1, 9
157.605	do	1, 9
* *	* *	*
157.635	do	1, 9
157.665	do	1, 9
* *	* *	*
157.740	Base	10, 11, 12
* *	* *	*

3. Section 90.93(b) is amended by

revising the entries for frequencies 152.285, 152.315, 152.345, 152.435, 157.545, 157.575, 157.605, and 157.695 in the Taxicab Radio Service Frequency Table to read as follows:

§ 90.93 Taxicab Radio Service.

* * * * *

(b) * * *

TAXICAB RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of Station(s)	Limitations
* * * * *		
152.285	do	
* * * * *		
152.315	do	1, 2
* * * * *		
152.345	do	1, 2
* * * * *		
152.435	do	
* * * * *		
157.545	do	
* * * * *		
157.575	do	1, 2
* * * * *		
157.605	do	1, 2
* * * * *		
157.695	do	
* * * * *		

4. Section 90.555(b) is amended by revising the entries for frequencies 150.845, 150.860, 150.890, 150.935, 150.950, 151.070, 151.085, 151.190, 151.205, 151.310, 151.325, 152.285, 152.315, 152.345, 152.375, 152.390, 152.435, 157.545, 157.560, 157.575, 157.605, 157.620, 157.635, 157.680, and 157.695 in the combined frequency list to read as follows:

§ 90.555 Combined frequency listing.

* * * * *

(b) * * *

Frequency	Services	Special limitations
* * * * *		
150.845	IB, LA	IB use in Puerto Rico and Virgin Islands.
150.860	IB, LA	Do.
* * * * *		
150.890	IB, LA	Do.
* * * * *		
150.935	IB, LA	IB use in Puerto Rico and Virgin Islands.
150.950	IB, LA	Do.
* * * * *		
151.070	IB, PH	Do, paging only.
* * * * *		
151.085	PH, IB	IB use in Puerto Rico and Virgin Islands.
* * * * *		
151.190	IB, PO	Do, paging only.
151.205	PO, IB	IB use in Puerto Rico and Virgin Islands.
* * * * *		
151.310	IB, PO	Do, paging only.
151.325	PO, IB	IB use in Puerto Rico and Virgin Islands.
* * * * *		
152.285	LX	
* * * * *		
152.315	IB, LX	IB outside, LX inside SMAs over 50,000 pop.
* * * * *		
152.345	IB, LX	IB outside, LX inside SMAs over 50,000 pop.
* * * * *		
152.375	IB, LX	IR outside, LX inside SMAs over 50,000 pop.
152.390	LX	
* * * * *		
152.435	LX	
* * * * *		
157.545	LX	
157.560	LX	LX within SMAs over 50,000 pop.
157.575	IB, LX	IB outside, LX inside SMAs over 50,000 pop.
* * * * *		
157.605	IB, LX	IB outside, LX inside SMAs over 50,000 pop.
157.620	IB, LX	IB LX within SMAs over 50,000 pop.
157.635	IB, LX	IB outside, LX inside SMAs over 50,000 pop.
* * * * *		
157.680	IB, LX	LX within SMAs over 50,000 pop.
157.695	LX	
* * * * *		

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-18032 Filed 8-2-90; 8:45 am]

BILLING CODE 6712-02-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 871

RIN 2900-AE70

VA Acquisition Regulation; Loan Guaranty Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs is changing the VA Acquisition Regulation (VAAR) to increase the dollar threshold for repair of homes under VA custody and provide a means for waiving the threshold.

EFFECTIVE DATE: June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Barbara E. Danzig, Acquisition Management Service (93P), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2334.

SUPPLEMENTARY INFORMATION: .

I. Background

Currently, $2,000 may be expended to repair property in VA custody prior to formal conveyance. These expenditures are to make the property ready for sale at a date earlier than would be possible if repairs were delayed pending formal conveyance. The change will raise the allowable expenditures to $3,500 for these repairs. It also allows for approval by the Chief Benefits Director to exceed the $3,500 when appropriate.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment does not come within the term "rule" as defined in the Reguatory Flexibility Act, 5 U.S.C. 601(2), and is, therefore, not subject to the requirements of the Act.

Nevertheless, this amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

IV. Paperwork Reduction Act

This amendment does not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 871

Government procurement.

Approved: June 13, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

48 CFR chapter 8, Department of Veterans Affairs, is amended as set forth below:

PART 871—[AMENDED]

1. The authority citation for part 871 continues to read as follows:

Authority: 38 U.S.C. 210, 40 U.S.C. 486(c), 38 CFR 36.4320, 38 U.S.C. Chs. 31, 32, 33, 34, 35, and 37 and Pub. L. 98–77.

871.101 [Amended]

2. In subpart 871.1, section 871.101, remove the words "formal advertising" and insert in their place the words "sealed bidding".

3. In subpart 871.1, section 871.102, paragraph (c) is revised to read as follows:

871.102 Authorization for repairs to properties.

* * * * *

(c) During the period when the Department of Veterans Affairs has assumed custody of the property from a holder and prior to its conveyance to the Deparment of Veterans Affairs pursuant to 38 CFR 36.4320, repairs are authorized not in excess of $3,500 when appropriate to make the property ready for sale at an earler date than would otherwise be possible if the repair program was delayed until such time as the Department of Veterans Affairs acquired absolute title. In those cases where the expenditure is known or estimated to exceed $3,500, the request, together with the loan guarantee folder, will be forwarded to the Chief Benefits Director for approval.

* * * * *

[FR Doc. 90–18134 Filed 8–2–90; 8:45 am]

BILLING CODE 8320–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274; Sub-No. 13A]

RIN 3120–AB60

Rail Abandonments—National Trails System Improvements Act

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts final rules to implement the National Trails System Improvements Act of 1988, Pub. L. No. 100–470 (Oct. 4, 1988) (Improvements Act). The purpose of the Improvements Act is to further the use of abandoned railroad rights-of-way for recreational trail and other public uses by providing for the retention (16 U.S.C. 1248(c)) and management (16 U.S.C. 1248 (d) and (e)) by the United States of abandoned railroad rights-of-way that originated under Federal land grants.

EFFECTIVE DATE: September 2, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, 202–275–7245 [TDD for hearing impaired: 202–275–1721].

SUPPLEMENTARY INFORMATION: Pursuant to a joint petition filed June 30, 1989, by the Rails to Trails Conservancy *et al.* (petitioners), the Commission instituted a rulemaking proceeding by decision served October 18, 1989 (54 FR 42964, October 19, 1989). The focus of the proposed rulemaking was that portion of the National Trails System Improvements Act of 1988, Pub. L. No. 100–470 (Oct. 4, 1988) (Improvements Act), which amends section 9 of the National Trails System Act, 16 U.S.C. 1248.

We received and considered a number of comments. In light of the intention of Congress that the Commission assist in the implementation of legislation promoting trails use, as well as our obligation to minimize regulatory burdens on railroads, we adopt the rules that follow.

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) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

It is hereby certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Conservation, Environmental protection, National forests, National parks, National trails system, National resources, Public lands—grants, Public lands—rights-of-way, Railroads, Recreation and recreation areas, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 49, chapter X, part 1152 of the Code of Federal Regulations is amended as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for part 1152 is revised to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d), and 1248; and 49 U.S.C. 10321, 10362, 10505, 10903, 10904, 10905, 10906, 11161, and 11163.

§ 1152.20 [Amended]

2. Section 1152.20, paragraph (a)(2)(viii) is amended by adding "(Recreation Resources Assistance Division, National Park Service), and (Land Resources Division, National Park Service)", following "(Bureau of Outdoor Recreation)". Section 1152.20, paragraph (a)(2) is further amended by removing the word "and" preceding "(xii)", substituting a semi-colon for the period following "Railroad Labor Executives' Association," and inserting thereafter "and (xiii) the U.S. Department of Agriculture, Chief of the Forest Service."

* * * * *

§ 1152.21 [Amended]

3. Section 1152.21 is amended by adding the following to the end of the second paragraph of the Notice of Intent to Abandon or To Discontinue Service: "Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it."

* * * * *

§ 1152.50 [Amended]

4. Section 1152.50, paragraph (d)(1) is amended by deleting the word "and" preceding "(ii)", substituting a semi-colon for the period following "Military Traffic Management Command" and inserting thereafter "(iii) the National Park Service, Recreation Resources Assistance Division, (iv) the National Park Service, Land Resources Division, and (v) the U.S. Department of

Agriculture, Chief of the Forest Service." Also, add the following to the end of paragraph (d)(1): "The notice shall include the following statement 'Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.' "

* * * * *

5. Section 1152.50 is amended by adding a new paragraph (e) to read as follows:

§ 1152.50 Exempt abandonments and discontinuances and trackage rights.

* * * * *

(e) *Abandonment petitions for exemption.* Whenever a petitioner intends to seek abandonment authority through a petition for exemption, a copy of the petition shall be served upon the persons receiving notices of exemption under § 1152.50(d). The petition must include the following statement: "Based on information in our possession, the line (does) (does not) contain federally granted right-of-way. Any documentation in petitioner's possession will be made available promptly to those requesting it."

* * * * *

Decided: July 25, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Commissioner Lamboley commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-18110 Filed 8-2-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 603

[Docket No. 70351-0138]

RIN 0648-AA38

Confidentiality of Statistics

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

ACTION: Final rule.

SUMMARY: NOAA issues this rule finalizing the interim regulations regarding confidentiality of statistics submitted to the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Secretary is required by the Magnuson Act to prescribe regulations that will prevent the disclosure of data submitted in compliance with requirements of a preliminary fishery management plan (PMP) or a fishery management plan (FMP). This action prescribes NOAA policies and procedures regarding: (1) Persons having access to confidential statistics, (2) systems required to protect the identity of persons submitting such data, and (3) circumstances under which such data may or may not be released. The intended effect is to prevent misuse of confidential statistics by promulgating regulations which govern the collection, handling and use of statistics collected under authority of the Magnuson Act.

EFFECTIVE DATE: August 3, 1990.

FOR FURTHER INFORMATION CONTACT: Mark C. Holliday (Acting Chief, Fisheries Statistics Division), 301-427-2328.

SUPPLEMENTARY INFORMATION:

Background

Section 303(d) of the Magnuson Act requires the Secretary to issue regulations governing the preservation of confidentiality of statistics submitted pursuant to requirements of a PMP or FMP. The following actions were taken to implement this requirement:

(1) On January 9, 1978, NOAA published proposed regulations on the confidentiality of statistics under the Magnuson Act (43 FR 1480).

(2) As a result of public comments received, and a Magnuson Act amendment (Pub. L. 95-354) requiring collection of data on the capacity of U.S. fish processors to process domestic catch, the proposed regulations were revised and published as an interim final rule on December 7, 1979 (44 FR 70480).

(3) On July 16, 1987, NOAA published a revised interim final rule (52 FR 26685) to give Regional Fishery Management Council (Council) employees access to confidential data under authority granted by Public Law 99-659. Public comments were invited until August 31, 1987. This interim rule was effective from July 16, 1987, to December 31, 1987.

This action makes final the contents of the 1987 interim final rule by replacing the present 50 CFR part 603. The 1987 interim final rule differed from the 1979 interim final rule in the following ways:

(1) Several definitions were added or revised for clarity.

(2) As required by Public Law 99-659, the regulations at § 603.5(a)(3) were revised to clarify language on Federal employee access to, and use of, data required to be submitted to the Secretary under a PMP or FMP.

(3) Section 303(d)(1) of the Magnuson Act as amended by Public Law 99-659 authorized access to confidential statistics by Council employees who are responsible for management plan development and monitoring. Section 603.5(c) was added to implement this provision.

(4) The standard for collection agreements with states was changed from the requirement that the state confidentiality protection be "similar to" to "at least as protective," to eliminate the requirement of states to conform their statutory language to that of NMFS.

Comments and Responses

As described below, an evaluation of public comments filed in response to the 1987 interim final rule indicated no substantive changes were required in the regulatory language. Thus, the contents of the 1987 interim final rule are issued as a final rule with only minor changes for editorial clarity.

1. *Comment:* Three Councils suggested the wording of § 603.5(c) could be misinterpreted to unjustly limit access to confidential data.

Response: Section 603.5(c) has been revised from "may be granted * * *" to "will only be granted * * *."

2. *Comment:* Section 605.4(a)(2) requires the Assistant Administrator to delete all identifying particulars from the statistics consistent with the needs of NMFS and good scientific practice. Several Councils and one state objected to expunging vessel or company identifiers from the records because identifiers are needed to perform biological, sociological and economic analyses required for FMP development and monitoring. Evaluation of limited entry management options, a discretionary management provision of section 303(b)(6) of the Magnuson Act, was cited as a specific analysis requiring retention of individual identifiers.

Response: No change was made. The retention of identifiers for FMP development and monitoring purposes is consistent with the needs of NMFS, Councils and good scientific practice. The controls on use, access and release of data in these regulations and in NOAA and Council confidentiality policies and procedures are sufficient to prevent the disclosure of the identity or business of any person who submits such statistics.

3. *Comment:* One Council objected to the exclusion of Plan Development Teams and Scientific and Statistical

Committees from access to confidential data.

Response: No change was made. Section 303(d)(1) of the Magnuson Act authorizes access to confidential statistics by Council employees who are responsible for management plan development and monitoring. Membership on Council Plan Development Teams and Scientific and Statistical Committees does not constitute Council employment. Thus NOAA has no authority to grant members of those groups access to confidential data. Data for which individual identifiers have been replaced with a random numeric identifier may be accessed by non-Council employees involved in plan development and monitoring as long as the identity or business of any person who submits such statistics is not disclosed.

4. *Comment:* One comment requested a review of internal controls regarding access by Federal or state employees to confidential information and possible conflicts of interest.

Response: NOAA has reviewed its policies on confidentiality of statistics and conflicts of interest and has determined existing policies are adequate.

Classification

The Under Secretary of Commerce for Oceans and Atmosphere, NOAA, has determined that this rule is not a "major" rule under Executive Order 12291 and does not require preparation of a regulatory impact analysis. It prescribes agency policies and procedures and will have no economic impact on the public. For the same reasons, the General Counsel of the Department of Commerce certified to the Small Business Administration when this rule was proposed, that it would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10(5)(c)(3)(i).

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

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

The Assistant Administrator pursuant to section 553(d)(3) of the Administrative Procedure Act finds that because the earlier interim rule has lapsed, delay in implementation of the rule would adversely affect FMP development and monitoring under the Magnuson Act by restricting access of data by state agencies and Council employees and thus would be contrary to the public interest, therefore good cause exists for making this rule immediately effective.

List of Subjects in 50 CFR Part 603

Confidentiality of statistics.

Dated: July 30, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 603 is revised as follows:

PART 603—CONFIDENTIALITY OF STATISTICS

Sec.

603.1 Purpose.
603.2 Definitions.
603.3 Types of statistics covered.
603.4 Collection and maintenance of statistics.
603.5 Access to statistics.
603.6 Control system.
603.7 Release of statistics.

Authority: 5 U.S.C. 301; 16 U.S.C. 1853(d).

§ 603.1 Purpose.

The purpose of this part is to prescribe procedures to protect the confidentiality of statistics required by the Secretary under a PMP or an FMP.

§ 603.2 Definitions.

In addition to the definitions in the Magnuson Act and in part 601 of this chapter, the terms in this part have the following meanings:

Aggregate or summary form means confidential data structured in such a way that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data under § 603.5(a).

Confidential statistics are those submitted as a requirement of a PMP or FMP and that reveal the business or identity of the submitter.

Data, statistics, and information are used interchangeably.

FMP means a fishery management plan developed under the Magnuson Act.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

NMFS means the National Marine Fisheries Service.

NOAA means the National Oceanic and Atmospheric Administration.

PMP means a preliminary fishery management plan developed under the Magnuson Act.

§ 603.3 Types of statistics covered.

This part applies to all pertinent data required to be submitted to the Secretary with respect to any PMP or FMP including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing occurred, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, U.S. fish processors.

§ 603.4 Collection and maintenance of statistics.

(a) *General.* (1) All statistics required to be submitted to the Secretary are provided to the Assistant Administrator.

(2) After receipt, the Assistant Administrator will delete all identifying particulars from the statistics if doing so is consistent with the needs of NMFS and good scientific practice.

(3) Appropriate safeguards as specified by NOAA Directives, or other NOAA or NMFS internal procedures, apply to the collection and maintenance of all statistics, whether separated from identifying particulars or not, so as to ensure their confidentiality.

(b) *Collection agreements with states.* (1) The Assistant Administrator may enter into an agreement with a state authorizing the state to collect statistics on behalf of the Secretary.

(2) NMFS will not enter into a cooperative collection agreement with a state unless the state has authority to protect the statistics from disclosure in a manner at least as protective as these regulations.

§ 603.5 Access to statistics.

(a) *Federal employees.* Statistics submitted as a requirement of a PMP or FMP and that reveal the identity of the submitter will only be accessible to the following:

(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics;

(2) Federal employees who are responsible for PMP or FMP development, monitoring, and enforcement;

(3) Personnel within NMFS performing research that requires confidential statistics;

(4) Other NOAA personnel on a demonstrable need-to-know basis; and

(5) NOAA/NMFS contractors or grantees who require access to confidential statistics to perform functions authorized by a Federal contract or grant.

(b) *State personnel.* Confidential statistics will only be accessible if:

(1) The state has independent legal authority to collect the same statistics on its own behalf (whether the state or NOAA/NMFS actually collects the data); and

(2) The state has entered into a cooperative data collection agreement with the Assistant Administrator.

(c) *Regional Fishery Management Council employees.* Access to confidential data will only be granted to Council employees who are responsible for PMP or FMP development and monitoring.

(d) *Prohibitions.* Persons having access to these data are prohibited from unauthorized use or disclosure, and are subject to the provisions of 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NOAA Directive 88–30.

§ 603.6 Control system.

(a) The Assistant Administrator maintains a control system to protect the identity of submitters of statistics required by a PMP or FMP. The control system:

(1) Identifies those persons who have access to the statistics;

(2) Contains procedures to limit access to confidential data to authorized users; and

(3) Provides for safeguarding the data.

(b) This system requires that all persons who have authorized access to the data be informed of the confidentiality of the data. These persons are required to sign a statement that they:

(1) Have been informed that the data are confidential; and

(2) Have reviewed and are familiar with the procedures to protect confidential statistics.

§ 603.7 Release of statistics.

(a) The Assistant Administrator will not release to the public any statistics required to be submitted under a PMP or FMP in a form that would identify the submitter, except as required by court order. Release as required by court order will be made only after approval of the NOAA Office of General Counsel.

(b) All requests from the public for statistics submitted in response to a requirement of a PMP or FMP will be processed consistent with the NOAA Freedom of Information Act (FOIA) regulations (15 CFR part 903), NOAA Directives Manual 21–25, Department of Commerce Administrative Orders 205–12 and 205–14 and 15 CFR part 4.

[FR Doc. 90–18142 Filed 8–2–90; 8:45 am]
BILLING CODE 3510–22–M

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50 CFR Part 672

[Docket No. 91050–0019]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), is prohibiting further retention of sablefish by vessels fishing with trawl gear in the Central Regulatory Area of the Gulf of Alaska. This action is necessary to prevent the total allowable catch for sablefish in the Central Regulatory Area from being exceeded before the end of the fishing year. The intent of this action is to assure optimum use of groundfish while conserving sablefish stocks.

EFFECTIVE DATES: Noon, Alaska local time (ALT), July 30, 1990, through midnight, ALT, December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR 611.92 and 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Under § 672.24(b)(3)(ii), when the Regional Director determines that the share of sablefish TAC assigned to any gear and for any area or district has been achieved prior to the end of a fishing year, the Secretary of Commerce will publish a notice in the **Federal Register**, as described in § 672.20(c)(3), requiring that sablefish must be treated as a prohibited species by persons using that type of gear for the remainder of that year.

The 1990 TAC specified for sablefish in the Central Regulatory Area is 11,700 mt, of which the trawl share is 2,340 mt (55 FR 3223, January 31, 1990). The Regional Director has determined that the amount of TAC of sablefish for vessels using trawl gear in the Central Regulatory Area has been reached. Therefore, he is issuing this notice requiring sablefish be treated in the same manner as prohibited species and is prohibiting retention of sablefish by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska from noon, ALT, July 30, 1990, through midnight, ALT, December 31, 1990.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. The TAC for sablefish for vessels using trawl gear in the Central Regulatory Area in the Gulf of Alaska will be exceeded unless this notice takes effect immediately.

This action is taken under the authority of 50 CFR 672.20 and 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

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

Joe P. Clem,

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

[FR Doc. 90–18099 Filed 7–30–90; 3:54 pm]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 150
Friday, August 3, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV-90-189PR]

Proposed Increase in 1990-91 Budgeted Expenditures Under the Florida Avocado Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes increasing authorized expenditures by $23,500 for the 1990-91 fiscal year (April 1-March 31) under Marketing Order No. 915, covering avocados grown in South Florida. This action would increase authorized expenditures to $150,500, up from $127,000. This proposed action is needed by the Avocado Administrative Committee (ACC) to pay additional anticipated marketing order expenses. The proposed action would enable the AAC to continue to perform its duties and the marketing order to operate.

DATES: Comments must be received by August 13, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rusmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Marketing Agreement and Marketing Order No. 915 (7 CFR Part 915) regulating the handling of avocados grown in South Florida. This agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the 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 about 42 handlers of Florida avocados subject to regulation under this marketing order, and about 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

A final rule was published in the Federal Register (55 FR 14232, April 17, 1990), authorizing expenditures of $127,000 an assessment rate of $0.16 per bushel (55 pounds) under M.O. 915 for the fiscal year ending March 31, 1991.

The marketing order for Florida avocados administered by the U.S. Department of Agriculture (Department) requires that the assessment rate shall apply to all assessable avocados handled from the beginning of the fiscal year. An annual budget of expenses is prepared by the AAC and submitted to the Department for approval. The members of the AAC are avocado handlers and producers. They are familiar with the AAC's needs and with the costs for goods, services, and personnel in the production area. Therefore, they are in a good position to formulate an appropriate budget, which they discuss and approve at public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by AAC is derived by dividing anticipated expenses by the expected bushels (55 pounds) of assessable avocados shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the AAC's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the AAC shortly before the season begins, and during the season when needed, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals, and any increases, must be expedited so that the AAC will have funds to pay its expenses.

The AAC met June 20, 1990, and unanimously recommended at $23,500 increase in 1990-91 budgeted expenditures to $150,500, up from the $127,000 currently authorized. The AAC needs the extra funds to finance additional research projects, which it will submit to the Department for approval when fully developed. The AAC plans to finance this research by drawing funds from its reserve fund, which is adequate to cover the contemplated additional expenditures. Thus, no increase in the current assessment rate is necessary.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of 10 days is deemed appropriate for this action, because approval of the additional expenses must be expedited. The fiscal

year for these marketing orders began on April 1, 1990, and the AAC's expenses are incurred on a continuous basis.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 915 be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

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

2. Section 915.229 is revised to read as follows:

§ 915.229 Expenses and assessment rate.

Expenses of $150,500 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados is established for the fiscal year ending March 31, 1991. Any unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: July 30, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–18118 Filed 8–2–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 917

[Docket No. FV–90–190]

Proposed Expenses and Assessment Rate for Marketing Order Covering Fresh Pears, Plums, and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the Pear Commodity Committee (Committee) established under Marketing Order 917 for the 1990–91 fiscal year. The proposal is needed for the Committee to incur reasonable operating expenses during the 1990–91 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived primarily from assessments on handlers.

DATES: Comments must be received by August 13, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2085–S, Washington, DC 20090–6456. Comments should reference to docket number, date, and page number of this issue of the Federal Register and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–3919.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing Orders issued pursuant to the 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 45 handlers of California pears under this marketing order, and approximately 300 pear producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Marketing Order 917 requires that the assessment rate for a particular fiscal year shall apply to all assessable pears handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of the regulated commodity. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate and appropriate budget. The 1990–91 budget was formulated and discussed in public meetings. Thus, all directly affected persons had an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of the commodity in 36-pound boxes or equivalents. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have authority to incur reasonable expenses and have funds to pay their expenses.

The Committee met June 28, 1990, and unanimously recommended 1990–91 fiscal year expenditures of $1,138,367 and an assessment rate of $0.25 per 36 pound carton or equivalent of assessable pears shipped under M.O. 917. For comparison, 1989–90 fiscal year expenditures were $834,293 and the assessment rate was $0.22 per carton or equivalent.

The major expenditure item this year in $957,325 for market development, advertising, promotion, and food safety compared to $660,219 in 1989–90. The remaining expenses, which are primarily for program administration, are budgeted at about last year's amounts. A total of $5,000 is included for uncollected assessment accounts. The 1990 crop is expected to be one of the larger crops marketed from California and a comprehensive promotion effort is deemed necessary.

Estimated total income for 1990–91 would amount to $1,089,500, including assessment income of $1,037,500 based on shipments of 4,150,000 cartons of fresh pears, $7,500 from the California Department of Food and Agriculture for export development activities, $32,500 from the Nectarine Administrative Committee and the Plum and Peach

Commodity Committees in recognition of significant staff time devoted to compliance efforts, and $12,000 from other sources such as interest earned on the reserve fund. The reserve fund of $177,259 would be sufficient to cover the anticipated deficit of $48,867.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessment on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for the pear program need to be expedited so the committee has authority to incur reasonable expenses and has sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 917

Marketing agreements, Pears, Plums, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 917 be amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 917 continues to read as follows:

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

2. New § 917.254 is added to read as follows:

§ 917.254 Expenses and assessment rate.

Expenses of $1,138,367 by the Pear Commodity Committee are authorized, and an assessment rate of $0.25 per 36 pound box or equivalent of assessable pears is established, for the fiscal year ending February 28, 1991. Unexpended funds may be carried over as a reserve.

Dated: July 30, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–18119 Filed 8–2–90; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 929

[FV–90–167PR]

Expenses and Assessment Rate for Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 929 for the 1990–91 fiscal year established under the cranberry marketing order. This action is needed for the Cranberry Marketing Committee (Committee), the agency responsible for the local administration of the order, to incur operating expenses during the 1990–91 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 13, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3920.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the 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 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of cranberry handlers and producers may be classified as small entities.

The cranberry marketing order requires that an assessment rate for a particular fiscal year shall apply to all assessable cranberries handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are producers of cranberries. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a

continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses for the 1990–91 fiscal year which begins on September 1, 1990.

The Committee conducted a mail vote and recommended 1990–91 marketing order expenditures of $159,850 and an assessment rate of $0.037 per 100-pound barrel of cranberries shipped. In comparison, 1989-90 marketing year budgeted expenditures were $172,602, and the assessment rate was $0.037 per 100-pound barrel of cranberries shipped. Assessment income for 1990–91 is estimated at $149,850 based on a crop of 4,050,000 barrels of cranberries. Interest income expected to be received is estimated at $10,000, bringing total income to $159,850. Major budget categories for 1990–91 are $70,995 for salaries, $39,500 for travel and meeting expenses, and $34,425 for administrative expenses. Comparable budgeted expenditures for the 1989–90 crop were $71,860, $44,000, and 39,667, respectively.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

PART 929—CRANBERRIES GROWN IN MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

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

2. Section 929.231 is added to read as follows:

§ 929.231 Expenses and assessment rate.

Expenses of $159,850 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.037 per 100 pound barrel of assessable cranberries is established for the fiscal year ending August 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: July 30, 1990.

William J. Doyle,

Associate Deputy Director.

[FR Doc. 90–18120 Filed 8–2–90; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–267; FCC 90–136]

Broadcast Service; Technical Assignment Criteria for the AM Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopts a Notice of Proposed Rule Making (Notice) needed to revitalize the AM service. The proposals contained in this action are designed to: (1) Revise and implement the AM technical standards to bring about a reduction in the interference level in the existing AM band; (2) give broadcasters the ability and the incentive to improve AM service to the public; and (3) encourage those AM stations causing the most interference in the existing band to move their operations to the expanded band, which became internationally available for use on July 1, 1990. This proceeding will coordinate the timing and substance of technical standards, revised through a series of Commission actions, so that they do, in fact, lead to a significantly improved AM broadcast service.

DATES: Comments are due by October 15, 1990, and reply comments are due by November 14, 1990. Non-binding letters of intent to migrate to the expanded AM band must be filed by October 15, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Larry W. Olson, Mass Media Bureau, Policy and Rules Division, (202) 632–6955, or William Hassinger, Mass Media Bureau, (202) 632–6460.

SUPPLEMENTARY INFORMATION:

1. This is a synopsis of the Commission's Notice of Proposed Rule Making (Notice) in MM Docket No. 87–267, FCC 90–136 adopted April 12, 1990, and released July 18, 1990.

2. The complete text of this Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

3. The proposals contained in this decision are part of the Commission's three-pronged initiative designed to transform and revitalize the AM broadcast service by the year 2000. First, the Commision would revise AM technical standards to achieve a reduction in interference in the existing AM band. Second, it would give broadcasters the ability and the incentive to use their own initiative in improving AM service to the public. Third, the Commission would encourage those AM stations causing the most interference in the existing band to migrate to the expanded 1605–1705 kHz band, which became available for use internationally on July 1, 1990.

4. AM radio, as our first national medium of mass communications, made a significant contribution to daily life in America. During the last twenty years, however, channel congestion, interference and low fidelity receivers have taken their toll on the AM band, dulling the competitive edge of this once vital service. As a result, once loyal AM listeners have shifted their allegiance to newer mass media services that offer them higher technical quality. Thus, in July 1987, the Commission adopted a Notice of Inquiry (NOI) in this proceeding (FCC 87–245, 52 FR 31795, August 24, 1987) aimed at identifying the service's most pressing problems and the sources of and solutions to those problems. In November 1989, the Commission conducted a day-long *en banc* hearing, with participants from the broadcast industry, the radio manufacturing industry, and the listening public. Their response, both to the *NOI* and to the hearing, reaffirms our conviction that a concerted effort by this Commission, the broadcasting community and radio manufacturers can rejuvenate the AM radio service. In this Notice, we set forth our comprehensive strategy to reach this objective, a strategy requiring coordinated action by both the Commission and the broadcast industry.

5. One principal point must be recognized at this juncture. In developing the proposals contained in this Notice, our focus has been on what measures will, in our judgment, attain the objective of restoring the AM service rather than on measures that might more directly benefit one or more segments of the industry itself. Therefore, we acknowledge that the actions we propose in this Notice will not satisfy those whose primary focus has been on the advancement of one particular segment of the industry. Nevertheless, in this rulemaking we are dealing with no less an issue than the survival of the AM service. In light of that fact, the Commission trusts that those commenters whose interests are not fully realized by these proposals will perceive that we have attempted to balance their individual perspectives and needs with the overarching need to revitalize the AM service as a whole.

6. To provide specific structures for the revitalization of the AM service, we have defined two models, one for the new spectrum between 1605 and 1705 kHz, and another for the existing band between 535 and 1605 kHz. These models will serve as two focal points for defining the future of the AM service. Our intention is to encourage and approve those measures which move the service in the direction of achieving the models; similarly, we intend to discourage and disapprove proposals that do not.

7. Model I has the advantage that it will apply in a part of the spectrum as yet unused by broadcasters. Therefore, we can select for it those characteristics that are both desirable and immediately attainable.

Model I: 1605–1705 kHz

Fulltime operation with stereo modulation
Competitive technical quality
10 kW daytime power
1 kW nighttime power (more, if circumstances permit)
Non-directional antenna (or simple directional array)
400–800 kilometers (249–497 miles) separation between co-channel stations

A model I station should possess a daytime service radius of 56 to 72 kilometers (35–45 miles), free from co-channel and adjacent channel interference. Due to skywave interference, this service radius, in most cases, will be less during the night, with distances depending on actual separations, powers, and number of operating stations. The allotment separations will vary, depending on within which geographic region the station is located.

8. The model for the existing broadcast band, however, must reflect the fact that the band is densely populated with stations having wide variations in power, spacing, antenna pattern and protection from interference. Because these and other considerations make it very difficult to define ideal or uniform characteristics, we have selected for our second model those attributes toward which the service should aspire as a minimum.

Model II: 535–1605 kHz

Fulltime operation with stereo modulation
Competitive technical quality
Daytime coverage—6400 square kilometers (2500 square miles), free of co-channel and adjacent channel interference
Nighttime coverage—at least 15% of daytime coverage, free of co-channel and adjacent channel interference
Simplified antenna arrays

In both models the term "competitive technical quality" means a level of audible quality that is competitive with FM broadcasting when heard in the typical automobile and home environment. We seek to achieve that quality while preserving and building on AM's distinctive ability to cover large distances without disruptions caused by shadowing and multipath interference.

9. We seek comment on both of these models, particularly with regard to our inclusion of stereo broadcasting. In the expanded band (Model I), should all stations be required to transmit in stereo or should a commitment to transmit in stereo be treated as a preference factor? In the existing band (Model II), should stereo transmissions become mandatory as a part of any measure to increase service and reduce interference or after a certain number of years?

10. The Commission believes that it is not in the public interest and that it would in fact intensify the problems faced by the AM service to simply continue adding new stations. Consequently, our comprehensive strategy to move from a troubled to a model service depends on a reduction in the density of stations. The particular plan we have developed calls for the Commission to use three weapons from its regulatory arsenal to attack interference and congestion on AM channels. First, we intend to revise and implement the AM technical standards in such a manner as to achieve a reduction in the interference to primary service areas with which AM broadcasters must presently contend. Through a series of discrete rulemaking proceedings, we have already begun this task. (See Notice of Proposed Rule Making) in MM Docket 88–508, 53 FR 45948, November 15, 1988; Notice of Proposed Rule Making in MM Docket 88–509, 53 FR 45524, November 10, 1988; Notice of Proposed Rule Making in MM Docket 88–510, 53 FR 48664, December 2, 1988; Notice of Proposed Rule Making in MM Docket 88–511, 53 FR 47235, November 22, 1988; and Notice of Proposed Rule Making in MM Docket 88–376, 53 FR 36870, September 22, 1988.) We have taken final action in three of these proceedings. (See Report and Order in MM Docket 88–376, 54 FR 19572, May 5, 1989; Report and Order in MM Docket 88–510, FCC 90–137, adopted April 12, 1990; and Report and Order in MM Docket 88–508, FCC 90–138, adopted April 12, 1990.) In this docket, however, we will coordinate the timing and substance of revised technical standards so that they do, in fact, lead to a significantly improved AM broadcast service.

11. New technical standards applied to the existing band must reflect an awareness of a station's interference protection and radiation rights that were initially established on the basis of more relaxed standards. The process of restoration, however, requires that new stations or modifications to existing stations provide greater protection to other AM broadcasters than has been required in the past. The creation of technical standards striking a new balance between service and interference can achieve this. The Commission makes several proposals in this area, including proposals to: (1) Use a migration process to the expanded band based on a method that ranks existing band stations according to the total nighttime interference they cause; (2) eliminate § 73.37(b) of the rules, which permits interference within the normally protected contour of a station that is the only station licensed to that community; (3) change the first adjacent channel protection value to 16 dB with no change in the second and third adjacent channel protection requirements; (4) substantially revise the method of determining nighttime interference; (5) reclassify AM stations to conform with the nomenclature used in international agreements to which the U.S. is a party, and make associated changes to protected contours; [1] (6) tentatively conclude that split frequency operations would be inconsistent with our efforts to improve AM service; (7) generally apply to the operations in the expanded band, the same technical

[1] In general, Class I stations would be renamed Class A stations; Class II and Class III stations would be renamed Class B; and Class IV stations would become Class C. In addition, a fourth class, Class D, would be created for daytime only and Class II–S and III–S stations.

standard which apply to the existing AM band; and (8) require only 50% nighttime city coverage (using the RSS method without exclusion) when we attempt to match applicants and allotments in the expanded band.

12. Second, we intend to give broadcasters both the ability and the incentive to use their own initiative to improve AM radio service to the public. Again, we have begun this effort. In a companion Report and order to this Notice (See the Report and Order in MM Docket 89–46, FCC 90–137, adopted April 12, 1990), we authorize licensees to undertake private negotiations to reduce interference among AM stations. To encourage broadcasters to use this tool, we now propose that the Commission issue tax certificates to broadcasters agreeing to surrender their licenses to reduce interference to co-channel or adjacent channel stations. To create an additional incentive for licensees to reduce interference, we also propose a limited relaxation of our multiple ownership rules. We proposed to permit ownership of AM stations with overlapping principal city contours if the licensee agrees to adjust operation of either station to reduce co-channel or adjacent interference to other AM broadcasters. We seek comment on several issues relating to this effort. For example: (a) Whether the use of tax certificates in this case would be consistent with our past uses of this tool; (b) what are the tax implications of voluntary license surrender agreements, *i.e.*, how could they be structured to constitute a sale of property under 26 U.S.C. 1071; (c) whether we should require a showing that interference will be reduced by some prescribed amount as a prerequisite to our issuing the certificate; and (d) when that certificate should issue. Also, should the Commission likewise issue tax certificates to licenees receiving payment from other licensees to reduce their service area, and whether and how such an agreement to reduce coverage would constitute a sale of property falling within the scope of—26 U.S.C. 1071 and how any tax certificate would apply in such a situation. Comments are further sought on what measure might be appropriate to reduce and to resolve quickly and fairly conficts among groups of contingent applications designed to improve the AM service.

13. Finally, as a result of the 1979 International Telecommunication Union World Administrative Radio Conference (WARC) and the later, companion Regional Administrative Radio Conference (RARC), the western hemisphere has been assigned an additional 10 channel allocation, 1605–1705 kHz. With few exceptions, the United States has been allotted 1620, 1640, 1660, 1680, and 1700 kHz for nationwide use. This allocation offers use a unique opportunity to reduce congestion and interference on existing AM channels. It is an opportunity that we intend to seize. Thus, the third step in our plan to improve AM service will be to encourage those AM stations making the most significant contribution to congestion and interference in the existing band to move their operations to one of the new channels. This Notice proposes principles to govern the allocation of stations to those new channels, as well as the eligibility criteria and preferences designed to achieve this objective. In this regard, the Notice proposes, in part, to: (1) Modify parts 2 and 90 of the Commission's Rules, to permit Travelers Information Stations to be assigned to any of the ten channels between 1605 and 1705 kHz; (2) limit the additional spectrum, at least initially, to existing station operators, thus leading to the reduction of congestion and interference in the existing AM band, with first preference given to fulltime stations; (3) consider ahead of all other daytime-only operations, the requests of stations proposing to migrate to the expanded band that would also provide a first local fulltime aural service to cities with populations of 100,000 or more; (4) assign staions at predetermined distances with generally fixed technical parameters, with flexible station separations; and (5) develop factors for ranking stations based upon the extent to which the migration of each petitioner would improve service quality in the existing band.

14. In this Notice, we have outlined our three pronged attack on the problems confronting the existing AM service. We have proposed changes to our technical standards, changes to some non-technical requirements, and our planned use of the expanded band. Such a combined approach, we believe, is necessary to improve the AM service. This proceeding covers a wide range of issues with no simple answers. We request comments on the issues and proposals addressed in this Notice and encourage full participation of station licensees, their engineering and legal representatives and receiver manufacturers. The comments should specifically address the issues summarized in this document and defined in full in the complete text of the Notice. We will, however, consider all relevant comments regarding improvement of the AM service.

Paperwork Reduction Act Statement

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ex Parte Consideration

15. This is a non-restricted proceeding. *See* §§ 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Comment Information

16. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 15, 1990, and reply comments on or before November 14, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Non-binding letters of intent to migrate to the expanded AM band must be filed by October 15, 1990.

Initial Regulatory Flexibility Act Analysis

17. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, this proceeding should favorably affect the 5,000 AM operators as well as AM listeners and radio manufacturers, by revitalizing the AM radio industry, sharpening its competitive edge and thus enabling it to better serve the AM audience. It is intended to reduce interference and congestion currently handicapping AM radio station operators. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

18. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Inquiry, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance

with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

19. *It is ordered,* That, pursuant to section 5(c)(1) of the Communications Act as amended, 47 U.S.C. 155(c)(1) and 0.201(d)(2) of the Commission's Rules, 47 CFR 0.201(d)(2), the Mass Media Bureau shall prepare and the Bureau Chief shall sign orders terminating MM Docket No. 88–376, MM Docket No. 88–509, and MM Docket No. 88–511.

List of Subjects in 47 CFR Parts 73

Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–18020 Filed 8–2–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petitions to List a Tallapoosa River Crayfish and Cladonia perforata (Perforate Reindeer Lichen)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on petitions.

SUMMARY: The Service announces 90-day and 12-month findings for two petitions to amend the Lists of Endangered and Threatened Wildlife and Plants. (A 90-day finding has been made for the crayfish *Cambarus englishi* that substantial information has not been presented to indicate that listing the species may be warranted. In the case of *Cladonia perforata*, the perforate reindeer lichen, the Service has made a 12-month finding that the requested action is warranted but precluded by other actions to amend the lists.

DATES: The findings announced in this notice were made in June 1990. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments or questions regarding the crayfish petition may be submitted to the U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213 (telephone 601/965–4900, FTS 490–4900). Information, comments or questions regarding the lichen petition should be submitted to the U.S. fish and Wildlife Service, 3100 University Boulevard, South, Suite 120, Jacksonville, Florida 32216 (telephone 904/791–2580. FTS 946–2580). The petitions, findings, and supporting data are available for public inspection, by appointment, during normal business hours at the addresses listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Hartfield at the Jackson, Mississippi, Field Office listed above, or Mr. Dave Martin at the Jacksonville, Florida, Field Office listed above.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register.

The Service has received and made a 90-day finding on the following petition for Dr. Byron J. Freeman. It was dated February 23, 1990, and was recevied by the Service on February 28, 1990. It requested the Service to place the crayfish *Cambarus englishi* on the list of Endangered and Threatened Wildlife.

The petition stated that *Cambarus englishi* is endemic to the Tallapoosa River system in Georgia and Alabama, has a restricted range, and faces a significant threat to its continued existence in the upper portion of its range. The known range was indicated to be Haralson County, Georgia, and Clay, Cleburne, and Tallapoosa Counties, Alabama. The petition stated that the primary threat to the Georgia portion of the range is the proposed Haralson County reservoir. The proposed reservoir would purportedly inundate approximately 18 river miles and affect downstream habitat through altered water releases from the reservoir The petition also indicated the habitat was lost in Alabama in the 1980's due to the construction of Harris Reservoir, which impounded portions of both the Tallapoosa and Little Tallapoosa Rivers. Other information supplied with the petition suggested *Cambarus englishi* to be restricted to main stem riffle areas of the Tallapoosa River proper.

In assessing this petition, the Service supplemented information supplied by the petitioner with other information available from various experts, from collection records and with actual field work conducted by personnel of the Jackson, Mississippi, Field Office. The following summarzies the available information.

Historically, collection effort for *C. englishi* has been very limited. Published papers by H.H. Hobbs, Jr. (1972, 1981, 1989) and R.W. Bouchard (1978) confirm basic range information supplied by the petitioner. Recent contacts with Bouchard and Hobbs, and with Jan Clark at the U.S. National Museum revealed that the specific localities referenced in Bouchard's and Hobbs' publications include two main stem Tallapoosa River collections of the species in Georgia, one main stem river collection in Cleburne County, Alabama, one in Enitachopco Creek, Clay County, Alabama, and one in Hilabee Creek, Tallapoosa County, Alabama. The tributary collections greatly extend the potential range of the species in the Tallapoosa system.

The Jackson Field Office contacted ten museums or other institutions that might have crayfish holdings in an attempt to better determine the abundance and distribution of the species. Only the U.S. National Museum had collections where *C. englishi* was identified. Conversations with various personnel at these institutions indicated almost unanimous agreement that the Tallapoosa drainage is severely undercollected for crayfish.

In an effort to determine the extent and location of potential habitat for *C. englishi*, biologists from the Jackson Field Office spent two days during April 1990 checking streams in the Tallapoosa drainage. A total of 51 river and tributary road crossings were visited in Haralson County, Georgia, and Cleburne, Randolph, Clay, Tallapoosa, Elmore and Macon Counties, Alabama. Potential *C. englishi* habitat (rocky riffles with strong currents) was observed in tributaries and unimpounded reaches of the Tallapoosa River below Georgia Route 100 in Haralson County, Georgia and at most sites visited in Cleburne, Clay, Randolph and Tallapoosa Counties, Alabama.

Although bad weather and high water were not conducive to sampling, nine limited collections of crayfish were made. Six of the collections were identified by Field Office biologists Paul Hartfield as containing *C. englishi* and were confirmed by Dr. J.F. Fitzpatrick, University of South Alabama, Mobile, Alabama. One collection was from the type locality in Georgia, and another was from a previously recorded site on Enitachopco Creek, Clay County, Alabama. The other four were new collection records for the species: Tallapoosa River at Alabama Route 66,

Cleburne County, Alabama; Little Tallapoosa River at Lamar Bridge, Randolph County, Alabama; Fox Creek at Alabama Route 48, Randolph County, Alabama; and Crooked Creek below Cragford, Clay County, Alabama. It is likely the *C. englishi* occurs in many other Tallapoosa River tributaries where there is appropriate habitat, and the species apparent rarity is due, at least in part, to a lack of collecting effort in the system.

The known historic range of *C. englishi* extends from just above Georgia Route 100 in Haralson County, Georgia, to the mouth of Hillabee Creek, Tallapoosa County, Alabama, a main stem Tallapoosa River distance of approximately 150 miles. At least 34 perennial tributaries with potential habitat for the species occur between these two points. Harris Dam has impounded 22 miles of what may be considered historic habitat in the Tallapoosa River. In addition, 16 miles of the Little Tallapoosa, and the lower portions of Wedowee, Fox, and Mad Indian Creeks, and other smaller tributaries, have been flooded by Harris Reservoir. Although Martin Reservoir lies almost entirely below the historic range of the species, its headwaters impound the mouth of Hillabee Creek and several miles of main stem river upstream of Hillabee Creek. Taking into account the numerous tributaries between Hillabee Creek and the most upstream known site for the species, and at least 120 miles of unimpounded main stem river, potential habitat remains abundant within the known range of the species. No crayfish survey has been done in this river system, and of existing collections from the system, at least six lots remain unidentified.

The petition cited a proposed reservoir in Haralson County, Georgia, as the primary threat to *C. englishi*. The site for the reservoir is above the uppermost known locality for the species. Sampling upstream of this point has confined the absence of *C. englishi*. Crayfish populations below the reservoir could be impacted by reservoir releases, and by changes in the flow regime and water quality caused by construction. However, this potential impact would affect only a limited portion of the known range of the species.

For purposes of a 90-day finding, Service draft petition management guidelines define substantial information as an amount of information that would lead a reasonable person to believe that the measure proposed in the peitition may be warranted. The guidelines further define substantial information as the amount of information that is reasonably close to the amount of evidence that would indicate the requested action is warranted. This is interpreted to mean information very near that required to support the preparation of a proposed rule. Information supplied by the petition to list *C. englishi* clearly does not meet that standard. No serious threats are demonstrated in light of the additional information gathered by the Service. As discussed above, there is an apparent abundance of potential habitat for this species in the Piedmont drainage of the Tallapoosa River. Information needed to adequately assess the status of this species includes: the amount of available tributary habitat; the number and extent of tributary populations; the occurrence and status of *C. englishi* main stem populations between Martin and Harris Reservoirs; and identification of threats to the species, including an evaluation of the effects of reservoir releases on downstream populations.

On the basis of the best scientific and commercial information currently available, the Service found that this petition did not present substantial information that the requested action may be warranted. However, the Service is open to additional information about this species as it may become available.

Section 4(b)3(B) of the Act requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, the Service should make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) Not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposal. Such findings are to be published promptly in the Federal Register.

A petition from Ms. Ann Buckley dated May 28, 1989, was received by the Service on June 5, 1989. It requested the Service to list the lichen *Cladonia perforata* as an endangered species. An administrative finding that the action requested may be warranted was made on September 11, 1989, and was published in the Federal Register of October 18, 1989 (54 FR 42813).

The petitioner and Mr. Ted Hendrickson summarized historical knowledge of *Cladonia perforata* and presented the results of their own search for it in a 1988 paper in *The Bryologist*. Alexander W. Evans had named the lichen in 1952, based on a collection from Eglin Air Force Base, Santa Rosa Island, in "Escambia County"—actually Okaloosa County. Dr. Mason E. Hale, Jr. and Sherry K. Pittam of the Smithsonian Institution pointed out (*in litt.*, December 1989) that Evans collected lichens of the Cladoniae in many Florida counties and examined many herbaria, so his failure to find more sites for the lichen "* * * suggests that the range and occurrences of this lichen are truly limited."

In 1968, B.J. Moore reported collecting the lichen in sand pine scrub in Highlands County, Florida. In 1986, Buckley and Hendrickson began a search for this lichen at Archbold Biological Station in Highlands County, where they found it on 6 of the Station's 84 Florida rosemary "balds." The balds are small, very dry sand hills, with scattered Florida rosemary bushes surrounded by lichens growing on the ground in full sun, along with several endemic species of vascular plants, including the endangered *Eryngium cuneifolium* and *Hypericum cumulicola*. Searches of rosemary balds outside the Archbold Station revealed a few more sites for the lichen.

In March 1989, Gerould Wilhelm of the Morton Arboretum and James Burkhalter of Pensacola searched all of Santa Rosa Island for the lichen and found it at one site, owned by Eglin Air Force Base, where hundreds of square meters are covered by lichen. The site is occupied by salt-sprayed dwarfed sand pine, myrtle oak, live oak, Florida rosemary, and other lichen species.

In Highlands County, the six sites for *Cladonia perforata* at Archbold Biological Station are threatened to some extent by fire, which destroys ground-dwelling lichens. Fires in the spring of 1989 threatened several populations. In Highlands County outside Archbold Biological Station, sand pine scub vegetation inhabited by *Cladonia perforata* and other endangered and threatened plants and animals is rapidly being destroyed, and the rate of destruction is increasing.

On Santa Rosa Island, the portion of Eglin Air Force Base with the lichen population is a public recreation area. Limited trampling of the area by visitors may help perpetuate the lichens, but excessive trampling would be a threat. Santa Rosa Island is subject to overwash and other disturbances during hurricanes.

Cladonia perforata is easily identified in the field if one has seen it or a good illustration, such as the one in *The Biology of Lichens* by Mason Hale (1967). The small number of known sites, and especially the small number of known sites in those areas that were

carefully searched specifically for this lichen, strongly indicate that listing of this lichen may be warranted. Before a listing proposal is prepared, however, sand pine scrub vegetation in other parts of Florida (and possibly oak scrub vegetation in southeastern Georgia) should be searched. Most of the areas that should be searched have been visited by biologists seeking other plant and animal species, so an effective search can readily be organized.

On the basis of the best scientific and commercial information presently available, the Service found that the action requested by this petition is warranted, but precluded by work on other species having higher priority for listing.

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expenditious progress in revising the lists. Expeditions progress is being made in lasting endangered and threatened species and is reported annually in the **Federal Register**. The most recent progress report was published on April 25, 1990 (55 FR 17475).

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Author

The notice was prepared by Thomas W. Turnipseed, Division of Endangered Species, U.S. Fish and Wildlife Service, 75 Spring Street S.W., Atlanta, Georgia 30303, (404/331–3583 of FTS 481–3583.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Dated: July 19, 1990.

Suzanne Mayer,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–18136 Filed 8–2–90; 8:45 am]

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50 CFR Part 17

RIN 1018–AB 42

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Two Na Pali Coast Plants: Hedyotis st. johnii (Na Pali Beach Hedyotis) and Schiedea apokremnos (Ma'oli'oli)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list two plants, *Hedyotis st.-johnii* and *Schiedea apokremnos*, as endangered species under the authority contained in the Endangered Species Act of 1973, as amended (Act). These species are known only from the northwest (Na Pali) coast of the island of Kauai, Hawaii. *Hedyotis st.-johnii* is known from 5 populations totaling about 250 individuals, and *S. apokremnos*' 5 known populations total about 100 plants. The greatest immediate threat to the survival of *S. apokremnos* is predation and habitat degradation by feral goats. As a result of past goat activity, *H. st.-johnii* is almost entirely restricted to sites inaccessible to goats where the plants are now threatened by competition from alien plant species. The small number and size of populations are a considerable threat to both species, as the limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the extant individuals. Fire and landslides are environmental disturbances that pose potential threats to these species. A determination that *H. st.-johnii* and *S. apokremnos* are endangered would implement the Federal protection and recovery provisions provided by the Act. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by October 2, 1990. Public hearing requests must be received by September 17, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to Ernest F. Kosaka, Field Supervisor, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Joan E. Canfield, at the above address (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

Hedyotis st.-johnii was first collected in 1947 by Harold St. John, E.J. Britten, and R.S. Cowan on the vertical sea cliffs between Kalalau and Honopu valleys on Kauai. The next collection was made by B.C. Stone in 1956 from the same location. Two years later Stone and I. Lane (1958) described the plant as a new species, naming it in honor of its discoverer. All subsequent collections have been from a four and a half mile long section of the Na Pali coast: Between Kalalau and Honopu beaches, and from Nualolo Valley, Nualolo Kai, and Milolii Beach. *Hedyotis st.-johnii* is still extant in all of those areas except perhaps Nualolo Kai, which has not been resurveyed in 11 years (Carolyn Corn, State botanist, Division of Forestry and Wildlife, Hawaii Department of Natural Resources; Robert Hobdy, botanist, Maui District, Division of Forestry and Wildlife, Hawaii Department of Natural Resources and Steven Perlman, botanist, National Tropical Botanical Garden, Hawaii, pers. comms., March 6, 1990). A total of about 250 individuals has been seen, with some populations numbering as low as 1 plant (Corn 1984, Hawaii Heritage Program 1989a). Similar, inccessible habitat might harbor as yet undiscovered individuals (C. Corn and R. Hobdy, pers. comms., March 6, 1990). Known only from State-owned land, *H. st.-johnii* is restricted to Na Pali Coast State Park.

Schiedea apokremnos was first collected in the early 1900's by J.M. Lydgate from an unrecorded locality on Kauai. Harold St. John made the next collection at Nualolo Kai on the Na Pali coast in 1965. Five years later, he described the taxon as a new species (St. John 1970), naming it for the plant's habitat of steep cliffs. All subsequent collections have been from Kaaweiki

Ridge and three areas along a six and a half mile long section of the Na Pali coast: Milolii Valley, Kalalau Beach, and between Kaalahin and Manono ridges. The species is probably extant at all locations except Nualolo Kai, although the Kalalau and Milolii populations have not been revisited for over six years (C. Corn, Timothy Flynn, botanist, National Tropical Botanical Garden, Hawaii and R. Hobdy, pers. comms., February 28–March 1, 1990). A total of about 100 plants has been seen, with only the Kaaalahina-Manono population numbering more than 5 individuals (Corn 1984; Hawaii Heritage Program 1989b and 1989c; T. Flynn and S. Perlman, pers. comms., March 1–6, 1990). As with *Hedyotis st.-johnii*, more plants could exist in similar, inaccessible habitat (R. Hobdy and S. Perlman, pers. comms., March 1–6, 1990). In addition, a *Schiedea* recently collected from a gulch near the head of Kalalau Valley, if identified as *S. apokremnos*, would extend the known range of this species (R. Hobdy, pers. comm., March 6, 1990). Like *H. st.-johnii*, *S. apokremnos* is known strictly from State-owned land; the Kaaweiki population is in Puu Ka Pele Forest Reserve, all others are in Na Pali Coast State Park.

Hedyotis st.-johnii is a succulent perennial herb of the Rubiaceae family with slightly woody, trailing, quadrangular stems up to 1 foot (3 decimeters) long. The fleshy leaves are clustered toward the base of the stem and are broadly ovate to broadly elliptic, 2–6 inches (5.5–15 centimeters) long and about 2 inches (3.5–7.5 centimeters) wide. Clusters of flowers are borne on 3–6 inch (7–15 centimeters) long flowering stems. The leafy, broadly ovate calyx lobes are about 0.1 inch (3–4 millimeters) long and wide, enlarging in fruit to about 0.4 inch (8–11 millimeters) long and wide. The green petals are fused into a tube about 0.2 inch (5–8 millimeters) long and wide. The fruit consists of kidney-shaped capsules with dark brown to blackish angular seeds. *Hedyotis st.-johnii* is distinguished from related species by its succulence, basally clustered fleshy leaves, shorter floral tube, and a large leafy calyx lobes when in fruit (Wagner *et al.* 1990).

Schiedea apokremnos is a low, branching shrub 8–20 inches (2–5 decimeters) tall, of the Caryophyllaceae family. The leaves are oppositely arranged, oblong, somewhat fleshy and glabrous, about 1–2 inches (3–5 centimeters) long and 0.2–0.5 inch (0.6–1.2 centimeters) wide. The flowers lack petals and are in clusters with green and often purple-tinged bracts and sepals; the sepals are about 0.1 inch (2–3 millimeters) long. The round to kidney-shaped seeds are produced in capsules. *Schiedea apokremnos* is distinguished from related species by shorter sepals, nectaries, and capsules (Wagner *et al.* 1990).

Hedyotis st.-johnii and *Schiedea apokremnos* grow in the crevices of near-vertical coastal cliff faces. Although *H. st.-johnii* is confined to north-facing, nearly vertical sea cliffs within the spray zone below 250 feet (75 meters) elevation, *S. apokremnos* extends 0.3 mile inland, occupying cliffs and rock outcrops from 200 to 1100 feet (60–330 meters) elevation (Carr 1982; Hawaii Heritage Program 1989a; C. Corn and T. Flynn, pers. comms., March 1–6, 1990). Sparse dry coastal shrub vegetation with *Artemisia australis* and *Pluchea symphytifolia* is typical of the habitat of *H. st-johnii* and lower elevation sites of *S. apokremnos* (Hawaii Heritage Program 1989a, 1989c; S. Perlman, pers. comm., March 6, 1990). Other associates of *H. st.-johnii* include *Lipochaeta succulenta, Capparis sandwichiana*, and *Panicum* sp. (Stone and Lane 1958; R. Hobdy, pers. comm., March 6, 1990). Other low elevation associates of *S. apokremnos* are *Chamaesyce celastroides, Lobelia niihauensis*, and *Eragrostis variabilis* (Hawaii Heritage Program 1989b). In constrast, *S. apokremnos'* upper elevation site is dominated by the introduced *Leucaena leucocephala*, with *Wilkesia hobdyi, Lipochaeta connata*, and *Lobelia niihauensis* (T. Flynn, pers. comm., March 1, 1990).

The greatest immediate threat to the survival of *Schiedea apokremnos* is predation and habitat degradation by feral goats. As a result of past goat activity, *Hedyotis st.-johnii* is almost entirely restricted to sites inaccessible to goats where the plants are now threatened by competition from alien plant species. Alien plants are a threat to at least one population of *S. apokremnos* as well. The small size of most populations and a restricted distribution are serious potential threats to these two species. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the extant individuals. Landslides and fire pose additional potential threats to both species. Some *S. apokremnos* individuals are functionally females and must be cross-pollinated to set seed. This reproductive strategy may threaten populations with few individuals (Stephen Weller, botanist, pers. comm., February 28, 1990.)

Federal action on *Hedyotis st.-johnii* and *Schiedea apokremnos* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on 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. *Hedyotis st.-johnii* was included in the Smithsonian report, and considered endangered; *S. apokremnos* was not included. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. *Hedyotis st.-johnii* was treated in the July 1, 1975, notice as under petition for listing as endangered. As a result of this review, on June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species, including *H. st.-johnii*, to be endangered pursuant to section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the Federal Register (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480), including *Hedyotis st.-johnii* as a Category 1 candidate, meaning that the Service had substantial information indicating that proposing for listing was appropriate. In the updated Notice of Review for plants published by the Service on September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183), *Schiedea apokremnos* was included along with *H. st.-johnii* as a Category 1 candidate. Section 4(b)(3)(B) of the Act, as amended, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. The latter was the case for *H. st.-johnii* and *S. apokremnos* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section

4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, and 1989. Publication of the present proposal constitutes the final 1-year finding.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hedyotis st.-johnii* B. Stone & Lane (Na Pali beach hedyotis) and *Schiedea apokremnos* St. John (ma'oli'oli) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Feral goats and cattle have altered and degraded the vegetation of much of Kauai, including the valleys and slopes where *Hedyotis st.-johnii* and *Schiedea apokremnos* have been collected (Corn *et al.* 1979, Hawaii Heritage Program 1990). An estimated 1650 goats inhabited the Na Pali Coast in 1982; they are still abundant throughout the portion of the coast that *H. st.-johnii* and *S. apokremnos* inhabit (Hawaii Heritage Program 1990, Tomich 1986). The restriction of these two species to inaccessible cliffs suggests that goat predation may have eliminated them from more accessible locations, as is the case for other rare plants of the Na Pali coast (Corn *et al.* 1979; R. Hobdy, pers. comm., March 6, 1990). While browsing on *S. apokremnos* and vegetation adjacent to both species, goats disturb the ground, limiting seedling development, accelerating erosion, reducing habitat, and creating sites for invasion by more aggressive introduced plant species (Carr 1982, Corn *et al.* 1979, U.S. Fish and Wildlife Service 1989). *Leucaena leucocephala* and *Hyptis pectinata* are common invasive alien species at the Kaaweiki site of *S. apokremnos* (T. Flynn, pers. comm., March 1, 1990). The other populations of *S. apokremnos* and some populations of *H. st.-johnii*, confined to sparsely vegetated cliff crevices, are apparently not threatened by alien plants (R. Hobdy, pers. comm., March 6, 1990). However, alien plants do constitute the primary threat to other populations of *H. st.-johnii*, with *Pluchea symphytifolia* the main competitor (C. Corn and S. Perlman, pers. comms., March 6, 1990). Landslides are another potential threat to *H. st.-johnii* and *S. apokremnos* (C. Corn, pers. comm., March 6, 1990). Vegetation was destroyed by a recent landslide near Honopu Beach on a cliff similar to the habitat of *H. st.-johnii* (C. Corn, pers. comm., March 6, 1990). Corn *et al.* (1979) consider fire an immediate serious threat to the rare plants of the cliff faces and valleys of the Na Pali coast. Under dry conditions, human-set fires would spread rapidly and destroy these plants due to the strong prevailing winds and dry fuel load on cliff ledges (Corn *et al.* 1979). Fire poses a potential and growing threat to *H. st.-johnii* and *S. apokremnos*, especially as recreational use in the State Park increases (Corn *et al.* 1979). Because of their inaccessible location, however, it is unlikely that these two species would be otherwise threatened by proposed park development (C. Corn and Wayne Souza, planner, pers. comms., March 5–6, 1990).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a factor, but unrestricted scientific collecting or excessive visits resulting from increased publicity could seriously affect the species. The co-occurrence at one site of *Schiedea apokremnos* and *Wilkesia hobdyi*, currently proposed for listing as an endangered species (U.S. Fish and Wildlife Service 1989), could bring additional publicity and visitation. Disturbance to the accessible areas by trampling would promote erosion and greater ingress by competing alien species.

C. *Disease or predation.* Predation by feral goats is probably the greatest present threat to the survival of *Schiedea apokremnos* (T. Flynn, R. Hodby, and S. Perlman, pers. comms., March 1–6, 1990). Goat browsing on this species has been observed at the Kaaweiki population for the past several years (T. Flynn, pers. comm., March 1, 1990). At precisely the same locality, grazing damage by increasing numbers of goats is recognized as a serious present threat to another rare species, *Wilkesia hobdyi* (Carr, 1982, U.S. Fish and Wildlife Service 1989). The most accessible population of *Hedyotis st.-johnii*, behind Kalalau Beach, is threatened by goat predation (S. Perlman, pers. comm., March 6, 1990). Other than that site, however, goat predation apparently already has eliminated *H. st.-johnii*, elsewhere at all sites goats are capable of reaching (C. Corn, R. Hobdy, and S. Perlman, pers. comms., March 6, 1990). No evidence of disease or predation by other species has been reported for either species.

D. *The inadequacy of existing regulatory mechanisms.* All populations of *Hedyotis st.-johnii* and *Schiedea apokremnos* are located on State-owned park or forest reserve land. State regulations prohibit the removal, destruction, or damage of plants found on these lands. However, those regulations are difficult to enforce due to limited personnel. Hawaii's Endangered Species Act (HRS, section 195D–4(a)) states, "Any species of wildlife or plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter * * *." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, section 195D–5(c)). Funds for these activities could be made available under section 6 of the Act (State Cooperative Agreements) if two species were listed as threatened or endangered. Listing of *H. st.-johnii* and *S. apokremnos* will therefore protect the species and reinforce and supplement the protection available to the species under State law. The Act also would offer additional protection to the two species in that it is now a violation of the Act if any person removes, cuts, digs up, damages or destroys an endangered plant in an area not under Federal jurisdiction in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* The small size of the extant populations (totaling 100 individuals of *Schiedea apokremnos* and 250 of *Hedyotis st.-johnii*) is in itself a considerable threat to these species. A single fire, landslide, or other man-caused or natural environmental disturbance could destroy a significant percentage of the known individuals. The limited gene pool may depress reproductive vigor. Reproduction of *S. apokremnos* also may be potentially threatened by the species' breeding system: Some progeny of one individual are known to be unisexual, requiring cross-pollination to set seed (S. Weller, pers. comm., February 28, 1990). If those plants do not flower simultaneously or are too widely separated for pollination, no seed will be set.

The Service has carefully assessed the best scientific and commercial

information available regarding the past, present, and future threats faced by these two species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Hedyotis st.-johnii* and *Schiedea apokremnos* as endangered. For the two species, only about 250 and 100 individuals respectively are known in the wild, and they face threats from feral goat predation and habitat degradation. Small population size, competing alien plants, fires, and landslides pose additional threats. Given these circumstances, the determination of endangered status is warranted. See the following "Critical Habitat" section for a discussion of why critical habitat is not being proposed.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species are proposed to be listed as endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these two species. Such a determination would result in no known benefit to the species. The publication of descriptions and maps that are required in a proposal for critical habitat would potentially increase the degree of threats of trampling (causing erosion and invasion of alien plants), vandalism, and taking at the Kaaweiki site for *Schiedea apokremnos*. *Hedyotis Hedyotis st.-johnii* might be subject to an increased threat of taking and vandalism as well. Publication of critical habitat descriptions and maps would make *H. st.-johnii* and *S. apokremnos* more vulnerable to taking and vandalism and would increase enforcement problems. All involved parties and the landowner have been notified of the location and importance of protecting the habitat of these two species. Protection of the species' habitat will be addressed through the recovery process and through section 7 consultation. Therefore, it would not now be prudent to designate critical habitat for *H. st.-johnii* and *S. apokremnos*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. 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 State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federals 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) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There are no known Federal activities that may affect either of these species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to *Hedyotis st.-johnii* and *Schiedea apokremnos*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; or to remove and reduce to possession the species from areas under Federal jurisdiction or maliciously damage or destroy any such species on any such area; or remove, cut, dig up, damage or destroy any such species on an area not under Federal jurisdiction in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because these two species are 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, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104 or FTS 921–2232).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or othe relevant data concerning any threat (or lack thereof) to *Hedyotis st.-johnii* and *Schiedea apokremnos*;

(2) The location of any additional populations of these two species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the two species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on the proposed listing of *Hedyotis st.-johnii* and *Schiedea apokremnos* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received by September 17, 1990. Such requests must be made in writing and addressed to the Field Supervisor, Honolulu Field Station (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as

amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Corn, C.A. 1984. Na Pali botanical findings, July 16–21, 1984. Div. of Forestry and Wildlife, Dept. of Land and Natural Resources, Honolulu, Hawaii. Unpubl. rep. 119 pp.

Corn, C., G. Clarke, L. Cuddihy, and L. Yoshida. 1979. A botanical reconnaissance of Kalalau, Honopu, Awaawapuhi, Nualolo, and Milolii Valleys and Shorelines—Na Pali, Kauai. Endangered Species Program, Div. of Forestry and Wildlife, Dept. of Land and Natural Resources, Honolulu, Hawaii. Unpubl. rep. 34 pp.

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Hawaii Heritage Program. 1989b. Element Occurrence Record for *Schiedea apokremnos*, dated July 9, 1989, Honolulu. Unpubl. 2 pp.

Hawaii Heritage Program. 1989c. Global Element Ranking Form for *Schiedea apokremnos*, dated September 5, 1989, Honolulu. Unpubl. 2 pp.

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St. John, H. 1970. The "staminodia" of the genus *Schiedea* (Caryophyllaceae) and three new Hawaiian species. Hawaiian plant studies 32 [i.e., 33] Pacific Sci. 24:245–254.

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Tomich, P.Q. 1986. Mammals in Hawaii. 2nd ed. Bishop Museum Special Publ. 76. Bishop Museum Press, Honolulu. 375 pp.

U.S. Fish and Wildlife Service. 1989. Proposed rule for *Wilkesia hobdyi* (Dwarf iliau). Federal Register 54(189):40444–40447.

Wagner, W.L., D.R. Herbst, and S.H. Sohmer. 1990. Manual of the flowering plants of Hawai'i. University of Hawaii Press and Bishop Museum Press, Honolulu.

Author

The primary author of this proposed rule is Dr. Joan E. Canfield, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulations Promulgation

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

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families Caryophyllaceae and Rubiaceae, respectively, 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					
Caryophyllaceae—Pink family:						
*	*	*	*	*		
Schiedea apokremnos	Ma'oli'oli	U.S.A. (HI)	E		NA	NA
*	*	*	*	*		
Rubiaceae—Coffee family						
*	*	*	*	*		
Hedyotis st.-johnii	Na Pali beach hedyotis	U.S.A. (HI)	E		NA	NA
*	*	*	*	*		

Dated: June 27, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–18167 Filed 8–2–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 150
Friday, August 3, 1990

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

Cooperative State Research Service

Science and Education; Competitive Research Grants Office Advisory Committee Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, the Cooperative State Research Service announces the following meeting:

Name: Science and Education Competitive Research Grants Office Advisory Committee.

Date: August 28, 1990.

Time: 9 a.m. to 5 p.m.

Place: U.S. Department of Agriculture, room 338–C, Aerospace Building, 901 D Street, SW., Washington, DC 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as the time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To advise the Secretary of Agriculture with respect to the research to be supported, priorities to be adopted and emphasized, and the procedures to be followed in implementing those programs of research grants to be awarded competitively.

Contact Person For Agenda and More Information: Dr. William D. Carlson, Associate Administrator, Office of Grants and Programs Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 324–A Administration Building, Washington, DC 20250, Telephone 202–475–5720.

Done at Washington, DC, this 18th day of July 1990.

John Patrick Jordan,

Administrator.

[FR Doc. 90–18122 Filed 8–2–90; 8:45 am]

BILLING CODE 3410–MT–M

Forest Service

Steen Creek, Landore, and Deep Copper Timber Sales, Payette National Forest, ID; Intent To Prepare Environmental Impact Statement

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 Steen Creek, Landore, and Deep Copper Timber Sales, Council Ranger District, Payette National Forest, Idaho. The proposed sales would construct roads and harvest timber within the portions of two roadless areas that the Forest Plan allocated to timber management: the Indian Creek and Hells Canyon/Seven Devils roadless areas.

The agency invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). In addition, the agency gives notice of the full environmental analysis and decision-making process that is beginning on the proposal so that interested and affected people know how they may participate and contribute to the final decision.

The Forest Service is holding a public scoping meeting to gather comments from the public on what issues the EIS should address. The meeting is Wednesday, August 1 at 7 p.m. in Council, Idaho. Forest Service officials will explain the proposed actions and planning process, and accept public input on the issues.

DATES: Comments on the scope of the analysis must be received by September 3, 1990.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Pete Walker, EIS Team Leader, Payette National Forest, P.O. Box 1062, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Pete Walker, phone 208 634–1471.

SUPPLEMENTARY INFORMATION: The Payette National Forest Plan (1988) provides Forest-wide direction for management of the resources of Payette National Forest, including roadless areas. The environmental impact statement for the Forest Plan (1988) analyzed a range of development and non-development alternatives for the Indian Creek and Hells Canyon-Seven Devils roadless areas. The Plan allocates portions of the areas to timber management and assigns them to Management Areas #1 and 3. Several timber sales are being proposed for 1993, including the Steen Creek sale in the Indian Creek roadless area, and the Landore and Deep Copper sales in the Hells Canyon/Seven Devils roadless area.

As well as Forest-wide direction, the Plan gives specific direction for these management areas. It requires integrated management of the multiple resources including recreation, range, soil and water, fish, wildlife, timber, and fire/fuels to meet the desired future condition of the Forest.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and review of the DEIS.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and task assignment.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat.

The Forest Service has conducted internal scoping on the proposed timber sales and has identified preliminary issues and concerns that fall into these categories:

- Access
- Economics and socio-economics
- Fisheries
- Range
- Recreation
- Roadless/wilderness
- Timber
- Watershed
- Wildlife

The second major opportunity for public input is the DEIS. The DEIS will

analyze a range of alternatives to the proposed action, including the no-action alternative and alternative amounts of road building and timber harvesting. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 1991. EPA will then publish a notice of availability of the DEIS in the **Federal Register**. Public comments are invited.

The comment period on the DEIS will be 60 days from the date the EPA's notice of availability appears in the **Federal Register**. It is important that those interested in the management of the affected areas participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. Federal court decisions have established that reviewers of draft EIS's must structure their participation of the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)), and that 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 in the final EIS (FEIS).

Comments on the DEIS will be analyzed and considered by the Forest Service in preparing the FEIS, which is scheduled to be completed in September 1991. In the FEIS 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 FEIS, and applicable laws, regulations, and policies in making the decision and stating the reasons for it in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Veto J. LaSalle, Forest Supervisor of Payette National Forest, McCall, Idaho, is the responsible official for this EIS.

Dated: July 23, 1990.

Phil Gilman,

Acting Forest Supervisor.

[FR Doc. 90-17955 Filed 7-30-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 900406-0199]

Foreign Availability Determination: Polyimides

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of positive determination.

SUMMARY: Under the authority of the Export Administration Act of 1979, as amended (EAA), the Department of Commerce has determined that foreign availability of certain powder form of polyimide resins and manufactures, made from powder, controlled under ECCN 1746A (a) of the Commodity Control List (CCL)) (15 CFR 799.1, Supp. 1), exists to Western destinations. The Commerce Department has initiated action to amend the CCL.

FOR FURTHER INFORMATION CONTACT: Anatoli Welihozkiy, Acting Director, Office of Foreign Availability, Room SB-097, Department of Commerce, Washington, DC 20230; Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION:

Background

Sections 5 (f) and (h) of the EAA require the Department of Commerce to review claims of foreign availability of items controlled for national security purposes. Part 791 of the Export Administration Regulations (EAR) (15 CFR part 730 *et seq.*) implements these sections and establishes foreign availability procedures and criteria. The Secretary of Commerce or his designee determines whether foreign availability exists within the meaning of the EAA.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to affected countries if the Secretary or his designee determines that items of comparable quality are available in fact to such countries from a foreign source in quantities sufficient to render the controls ineffective.

On February 28, 1990, OFA initiated a foreign availability assessment of pyromellitic dianhydride-oxydianiline resin, a polyimide polymer, and parts and shapes manufactured thereof, to Western destinations. These items are controlled under ECCN 1746A (a) of the CCL. The Department published a notice of the initiation of this assessment in the **Federal Register** (55 FR 23118).

OFA provided its assessment and recommendation to the Assistant Secretary for Export Administration. The Assistant Secretary has considered the assessment and other relevant information and has determined that foreign availability to Western destinations exists within the meaning of section 5 of the EAA for certain powder forms of polyimide resin, parts and shapes, made from powder, having the following or equivalent chemical composition: a base polymer derived from the monomers of pyromellitic dianhydride and 4,4'-oxydianiline (or 4,4'-diaminodiphenyl ether or bis-(4-aminophenyl)-ether), and polyimides having equivalent physical and mechanical properties, such as a base polymer derived from the monomers of benzophenone tetracarboxylic dinahydride and 3,3'-methyldianiline. This determination does not apply to those polyimides used as a resin matrix for advanced composites. All interested government agencies, including the Departments of State and Defense, were provided an opportunity to review and comment on the assessment and determination.

The Department intends to amend the EAR by removing national security controls from exports of these items to Western destinations as soon as possible. Until such time, current export controls will remain in effect.

If OFA receives new evidence concerning this foreign availability determination, OFA may reevaluate its assessment. Inquiries concerning the scope of this assessment should be sent to the Director of the Office of Foreign Availability at the above address.

Dated: July 30, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 90-18112 Filed 8-2-90; 8:45 am]

BILLING CODE 3510-DT-M

Patent and Trademark Office

Advisory Commission on Patent Law Reform; Establishment

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of establishment.

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101-6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment

of the Advisory Commission on Patent Law Reform is in the public interest in connection with the performance of duties imposed on the Department by law.

The Commission will advise the Secretary through the Assistant Secretary and Commissioner of Patents and Trademarks on what, if any, changes are needed in the U.S. patent system.

The Commission will consist of no more than fifteen members to be appointed by the Secretary to assure a balanced representation among executives from corporations which rely heavily on patents, members of the patent bar, academia, and the general public.

The Commission will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The charter will be filed under the Act, fifteen days from the date of publication of this notice.

Interested persons are invited to submit comments regarding the establishment of this Commission to Edward R. Kazenske, Assistant to the Commissioner and Director of Interdisciplinary Programs, Office of the Assistant Secretary and Commissioner of Patents and Trademarks, Department of Commerce, Washington, DC 20231; telephone 703/557–3071.

Dated: July 27, 1990.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 90–18111 Filed 8–2–90; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

July 27, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 3, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 340/640, 342/642 and 347/348 are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 21073, published on May 22, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 27, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 15, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on June 1, 1990 and extends through May 31, 1991.

Effective on August 3, 1990, you are directed to increase the limits established in the directive of May 15, 1990 for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and Costa Rica:

Category	Adjusted 12-mo limit (dozen) [1]
340/640	676,545
342/642	249,750
347/348	1,000,110

[1] The limits have not been adjusted to account for any imports exported after May 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–18148 Filed 8–02–90; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

July 27, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting certain import limits.

EFFECTIVE DATE: August 3, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 360 is being increased for carryforward and swing. The limit for Categories 613/614 is being reduced to account for the swing being applied to Category 360.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48293, published on November 22, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 27, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive of November 16, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month peirod which began on January 1, 1990 and extends through December 31, 1990.

Effective on August 3, 1990, you are directed to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Pakistan:

Category	Adjusted 12-mo limit [1]
360	1,610,250 numbers.
613/614	12,905,952 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-18147 Filed 8-2-90; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 4, 1990.

ADDRESSES: 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 June 15, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 24299) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning the capability of a qualified workshop to provide these services at a fair market price and the impact of the additions on the current or most recent contractor, the Committee has determined that the services listed below are 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 actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1990:

Janitorial/Custodial
Armed Forces Reserve Center, 151 Vo-Tech Road, Lexington, Kentucky
Janitorial/Custodial
Social Security Administration, Warehouses 5 & 7, GSA Center, Auburn, Washington.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-18158 Filed 8-2-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities and military resale commodities to produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 4, 1999.

ADDRESSES: 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) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comment on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities, military resale commodities and services listed below from workshops for the blind or other severely handicapped. It is proposed to add the following commodities, military resale commodities and services to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Bag, Storage
1430-01-133-8435
(Remaining Government Requirement)
Strap, Assembly
4935-00-888-7207
(Remaining Government Requirement)
Strap, Set
4935-00-888-7208
(Remaining Government Requirement)
Strap Set, Webbing
4925-00-824-5469
(Remaining Government Requirement)
Strap, Webbing
1430-01-174-5095
4935-00-922-2480
(Remaining Government Requirement)
Cap, Utility, Camouflage
8405-01-109-3990
8405-01-109-3991
8405-01-109-3992
8405-01-109-3993
8405-01-109-3994
8405-01-109-3995

Military Resale Item No. and Name

No. 757—Pillow, Bed, Standard Size
No. 758—Pillow, Bed, Queen Size
No. 759—Pillow, Bed, King Size

Services

Food Service Attendant
Camp Williams
Camp Douglas, Wisconsin
Janitorial/Custodial
at the following Denver, Colorado locations:
Colonnade Center
1244 Speer Boulevard
Colonnade Center Parking Facility
1300 Fox Street

Janitorial/Custodial
Gaithersburg U.S. Army Reserve Center, 8791 Snouffers School Road, Gaithersburg, Maryland
Janitorial/Custodial
Maus-Warfield U.S. Army Reserve Center, 1850 Baltimore Road, Rockville, Maryland
Janitorial/Custodial
U.S. Army Reserve Center, Greenwood, South Carolina
Janitorial/Custodial
Federal Building, 115 4th Avenue SE., Aberdeen, South Dakota.

Beverly L. Milkman,
Executive Director.
[FR Doc. 90-18159 Filed 8-2-90; 8:45 am]
BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act of 1974; Announcement of System of Records

AGENCY: Consumer Product Safety Commission.

ACTION: Announcement of System of Records.

DATES: Comments must be received on or before October 2, 1990.

ADDRESSES: Comments should be sent to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Richard W. Allen, Assistant General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207. Telephone: (301) 492-6980.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission is establishing a system of records to encompass the investigative activities of its Office of the Inspector General.

The system of records will become effective October 2, 1990, unless comments are received which justify a contrary determination.

A proposed regulation exemption this system of records from certain provision of the Privacy Act appeared in the Federal Register of August 2, 1990.

The President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget have been notified of this system.

Dated: July 27, 1990.
Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

CPSC-6

SYSTEM NAME:

Office of the Inspector General Investigative Files—CPSC-6.

SYSTEM LOCATION:

Office of the Inspector General Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are or have been the subject of an Office of the Inspector General investigation relating to the programs and operations of the Commission including, but not limited to, current and former employees, contractor or subcontractor personnel, as well as other individuals whose actions affect the Commission, its programs, or its operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

All records relevant to an Inspector General investigation including correspondence; internal staff memoranda; copies of subpoenas issued during the investigation; affidavits, statements from witnesses, transcripts of any testimony taken in the investigation and accompanying exhibits; documents and records obtained during the investigation; interview notes and working papers of the Office of the Inspector General's staff; opening reports, progress reports, and final reports containing findings and recommendations of appropriate action; and other investigatory information or data relating to alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, 5 U.S.C. App.

PURPOSE(S):

This system is maintained for the purposes of conducting and documenting investigations conducted by the Office of the Inspector General, or other investigative agencies assisting the Office of the Inspector General, regarding CPSC personnel, programs, and operations; documenting the outcome of Inspector General reviews of allegations and complaints received by the Office of the Inspector General concerning CPSC personnel, programs, and operations; aiding in the prosecution or imposition of criminal, civil, or administrative sanctions against subjects of Inspector General investigations; reporting the results of investigations to the Chariman of the Commission and CPSC managers for their use in operating and evaluating their programs; and compiling information necessary to fulfill any reporting requirements by the Inspector General Act.

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

Information in the system may be disclosed:

(1) To an appropriate governmental agency, whether federal, state, or local, where there is an indication of a violation or a potential violation of law, regulation, or order, whether civil or criminal in nature, which that agency is charged with investigating or enforcing.

(2) To Federal, state, or local governmental authorities in order to obtain information or records relevant to an Inspector General investigation.

(3) To Federal, state or local governmental authorities maintaining civil, criminal, or other relevant information, such as current licenses, to obtain information relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the award of a contract, or the issuance of a grant or other benefit.

(4) To Federal, state, or local governmental authorities in response to their request in connection with the hiring or retention of an employee, disciplinary or other administrative action concerning an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the award of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

(5) To non-governmental parties where those parties may have information the Office of the Inspector General seeks to obtain in connection with an investigation.

(6) To independent auditors or other private firms with which the Ofice of the Inspector General has contracted to carry out an independent audit or investigation, or to collate, aggregate, or otherwise refine data collected in the system of records. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

(7) To the Office of the General Counsel of the Commission, the Department of Justice, or other law enforcement authorities, for disclosure by such parties to extent relevant and necessary, when the defendant in litigation is:

(a) The Commission, any component of the Commission, or any employee of the Commission acting in his or her official capacity;

(b) The United States where the litigation, if successful, is likely to affect the operations of the Commission; or

(c) Any Commission employee sued in his or her individual capacity where the Department of Justice and/or the Office of the General Counsel of the Commission agree to represent such employee.

(8) To a court or adjudicative body where the Commission is a party to the litigation or has in interest in such litigation, the records are relevant and necessary to the litigation, and disclosure of the records is compatible with the purpose for which the records were collected.

(9) To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual, but only to the extent the record would be legally accessible to that individual.

(10) To other Commission employees in the course of employee disciplinary proceedings.

(11) To debt collection agencies for the purpose of collecting delinquent debts owned to the Commission, as authorized by the Debt Collection Act (31 U.S.C. 3718), and subject to applicable Privacy Act safeguards.

(12) To the Office of Personnel Management, the Office of Government Ethics, the Merit Systems Protection Board, the Office of the Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority or its General Counsel, those records or portions thereof which are relevant and necessary to carrying out their authorized functions.

(13) To any direct recipient of federal funds, such as a contractor, where information in a record reflects serious inadequacies by the recipient's personnel and disclosure of the record is for purpose of permitting the recipient to take corrective action beneficial to the Government.

(14) To a grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the supoena or request has been specifically approved by a court.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosure may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy, on computer diskettes, and in a multiuser computer system.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. Paper records and computer diskettes are kept in limited access areas during duty hours and in safe-type file cabinets in locked offices at all other times. Highly sensitive records are created on a typewriter, or a stand-alone word processor without permanent internal storage, and are stored on paper or diskettes. Less sensitive records may be created and stored in password protected computer files.

RETENTION AND DISPOSAL:

The Investigative Files are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of Inspector General, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information is supplied by: individuals including, where practicable, those to whom the information relates; witnesses, corporations and other entities; records of individual and of the Commission; records of other entities such as federal, foreign, state or local bodies and law enforcement agencies; documents; correspondence relating to litigation; transcripts of testimony; and miscellaneous other sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All portions of this system of records which fall within 5 U.S.C. 552a(k)(2) (investigatory materals compiled for law enforcement purposes) and 5 U.S.C. 552a(k)(5) (investigatory materials solely compiled for suitability determinations) are exempt from 5 U.S.C. 552a(c)(3), (mandatory accounting of disclosures); 5 U.S.C. 552a(d), (access by individual to records that pertain to them); 5 U.S.C. 552a(e)(1), (requirement to maintain only such information as is relevant and necessary to accomplish an authorized agency purpose); 5 U.S.C. 552a(e)(4)(G), (mandatory procedures to nofity individual of the existence of records pertaining to them); 5 U.S.C. 552a(e)(4)(H), (mandatory procedures to notify individuals how they can obtain access to and contest records pertaining to the); 5 U.S.C. 552a(e)(4)(I), (mandatory disclosure of record source categories); and the Commission's regulations in 16 CFR part 1014 which implement these statutory provisions.

[FR Doc. 90–18102 Filed 8–2–90; 8:45 am]

BILLING CODE 6355–01–M

Privacy Act of 1974; Announcement of System of Records

AGENCY: Consumer Product Safety Commission.

ACTION: Announcement of System of Records.

DATES: Comments must be received on or before October 2, 1990.

ADDRESSES: Comments should be sent to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207. Telephone: (301 492–6980.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Act requires that firms identify and report to the Commission consumer products which could present substantial risks of injury, 15 U.S.C. 2064. The Commission also independently reviews consumer complaints and other data to identify such hazards. Corrective action may be initiated if staff preliminarily determines

the existence of a substantial product hazard. The Commission is establishing a system of records within the Directorate for Compliance and Administrative Litigation to manage its product hazard correction activities, from the receipt of information about a suspected product hazard, through the collection and evaluation of evidence, to ultimate resolution.

The system of records will become effective October 2, 1990, unless comments are received which justify a contrary determination.

The President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget have been notified of this system.

Dated: July 27, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

CPSC—14

SYSTEM NAME:

Corrective Actions Tracking System—CPSC—14.

SYSTEM LOCATION:

Division of Corrective Actions, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, DC 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CPS Compliance officers and CPSC attorneys in the Directorate for Compliance and Administrative Litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are two types of records in the system. The first type of record includes various kinds of abbreviated descriptive and status information about samples of consumer products collected as potential evidence of substantial product hazards. This kind of record identifies the compliance officer responsible for the sample, the name of the product, and the manufacturer of the sample.

The second type of record includes management information about investigations opened to deal with potentially hazardous products, including the name and manufacturer of the product, the compliance officer and attorney assigned to the case, the status and priority of the case, various dates which document the progress of the case, and the corrective action taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2064; 16 CFR parts 1115 and 1118.

PURPOSE(S):

15 U.S.C. 2064 authorizes the Consumer Product Safety Commission to order the manufacturer, distributor, or retailer of a consumer product of take corrective action whenever the Commission determines that the product creates a substantial risk of injury to the public. Where appropriate, the Commission may attempt to negotiate a voluntary agreement with a manufacturer, distributor, or retailer to take corrective action. The Commission's Division of Corrective Actions uses this system of records to manage its substantial product hazard correction activities, from the receipt of information about a suspected product hazard, through the collection and evaluation of evidence, to ultimate resolution. It is also used to monitor staff workloads and evaluate staff performance.

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

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained by a computer data base management system. Hard copy printouts of all or selected groups of records are made from time to time.

RETRIEVABILITY:

Records are retrievable by any field, including compliance officer and attorney name.

SAFEGUARDS:

Access to records and to fields within records, is controlled by passwords. Records are accessible only by members of the Commission's Corrective Action and Administrative Litigation Divisions. Only members of the Division of Corrective Actions and a designated clerical person may enter data, other than a preliminary determination date and the file closing date, which can only be entered by supervisory personnel.

RETENTION AND DISPOSAL:

Old records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Corrective Actions, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by manufacturers, distributors, or retailer of consumer products, Commission compliance officers, Commission attorneys and other Commission staff.

[FR Doc. 90-18103 Filed 8-2-90; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Public Hearing on Draft Environmental Impact Statement for the Proposed Closure of Eaker AFB, Arkansas

The public hearing on the Draft Environmental Impact Statement (DEIS) for the proposed closure of Eaker AFB, Arkansas, has been changed from August 24, 1990 to August 15, 1990. This change has been made at the request of the civic leaders of Bytheville, Arkansas. The public review and comment schedule announced earlier remains the same with the exception of this change.

In an earlier letter, we erroneously stated that Eaker AFB was proposed for closure by December 1992. The date should have been late 1993. We apologize for any inconveience this may have caused.

Information concerning the amended public hearing for Eaker AFB is given below:

Date: August 15, 1990

Location: Ritz Theater Blytheville, Arkansas

Time: 7 p.m.

The review and comment period ends on September 10, 1990. Please forward any comments to: LT COL Tom Bartol, Director, Programs & Environmental

Division, AFRCE-BMS/DEP, Norton AFB, CA., (714) 382-4891.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-18184 Filed 8-2-90; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Public Meetings on the Amendment to Pacific Northwest Coordination Agreement and Canadian Entitlement Allocation Agreement

AGENCY: Bonneville Power Administration (DOE).

ACTION: Notice of additional scoping meeting on a draft environmental impact statement (EIS).

SUMMARY: In a July 19, 1990, notice, the Corps of Engineers (Corps), the Bureau of Reclamation (Reclamation), and the Bonneville Power Administration (BPA) announced their intent to hold public meetings August 6 to August 21, 1990, to consider the scope of a Draft EIS on two proposed contracts: (1) A renewed Pacific Northwest Coordination Agreement (Coordination Agreement); and (2) a renewed Canadian Entitlement Allocation Agreement (Allocation Agreement). The three agencies have decided to hold an additional scoping meeting in the State of Idaho.

All interested parties are invited to attend.

Date and Location: August 23, 1990, 7-10 p.m., Shilo Inn Ballroon, 760 Lindsay Blvd., Idaho Falls, Idaho.

Comments on the scope of the Draft EIS should be submitted to the address below by close of business, Thursday, September 20, 1990. The Draft EIS is expected to be available for public review in summer, 1992.

ADDRESSES: Written comments should be addressed to: Columbia River System Operation Review Interagency Team, P.O. Box 2988, Portland, Oregon, 97208-2988.

FOR FURTHER INFORMATION CONTACT:

Witt Anderson, Special Assistant—Columbia River System Operation Review, North Pacific Division, Corps of Engineers, P.O. Box 2870, Portland, OR, 97208-2870, (503) 326-5189

Roy Fox, Coordination and Review Manager—BPA-PG, P.O. Box 3621, Portland, OR, 97208, (503) 230-4261

Robert Barbo, Special Assistant to the Regional Director—Columbia River Operation, Bureau of Reclamation, 550 West Fort Street, Boise, ID, 83724, (208) 334-1393

Information may also be obtained from:

Jerry Schmunk, Public Affairs Office, North Pacific Division, Corps of Engineers, P.O. Box 2870, Portland, OR, 97208, (503) 326-3768

Mark Danley, Public Involvement Specialist—BPA, P.O. Box 12999, Portland, OR, 97212, (503) 230-3478; toll-free 800-452-8429 (in Oregon); 800-547-6048 (in other Western States)

Regional Public Affairs Officer—Bureau of Reclamation, 550 West Fort Street, Boise, ID, 83724, (208) 334-1938

Issued in Portland, Oregon on July 25, 1990.

James J. Jura,

Administrator, Bonneville Power Administration.

[FR Doc. 90-18173 Filed 8-2-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP90-167-000]

Oklahoma-Arkansas Pipeline Co; Intent To Prepare Draft Environmental Impact Statement for the Oklahoma-Arkansas Pipeline Project and Request for Comments on Environmental Issues

July 27, 1990.

Notice of Intent

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) has determined that the approval of the Oklahoma-Arkansas Pipeline Project proposed by Oklahoma-Arkansas Pipeline Company (Oklahoma-Arkansas) would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to the Commission's Rules of Practice and Procedure, 18 CFR 380.6(a)(3), an environmental impact statement (EIS) will be prepared.

The FERC will be the lead Federal agency and will produce an EIS satisfying the requirements of the National Environmental Policy Act.

By this notice, the FERC staff is requesting written comments to identify significant issues or concerns related to the Oklahoma-Arkansas Pipeline Project to determine the scope of issues, including alternatives that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before July 31, 1990 in accordance with the instructions provided at the end of this notice.

Proposed Action

On October 27, 1989, Oklahoma-Arkansas filed an application, pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity under the Optional Certificate Procedures of 18 CFR, subpart E of part 157, to construct, own, and operate an interstate natural gas pipeline system. The proposed pipeline would begin in Pittsburg County, Oklahoma and would extend eastward for 352 miles through Arkansas to its terminus in Tate County, Mississippi.

The Oklahoma-Arkansas Pipeline Project would be used to transport up to a maximum capacity of 500,000 decatherms per day (Dthd) of natural gas from the Arkoma basin producing area in Oklahoma and Arkansas to interconnection points with existing facilities of Texas Eastern Transmission Corporation (TETCO) in central Arkansas (259,000 Dthd) and of Trunkline Gas Company (Trunkline) in western Mississippi (241,000 Dthd).

Oklahoma-Arkansas contends that construction of the proposed pipeline would provide a cost efficient means to connect numerous and diverse markets, including the expanding Northeastern United States, with the substantial new gas reserves located in the Arkoma basin. Oklahoma-Arkansas further contends that insufficient pipeline capacity currently exists to transport these available supplies to interstate pipelines.

In addition, the proposed pipeline could provide access to five other interstate pipelines including ANR Pipeline Company, Mississippi River Transmission Corporation, Arkla Energy Resources, Texas Gas Transmission Corporation, and Natural Gas Pipeline Company of America. Additional capacity of 280,000 Dthd, beyond the 500,000 Dthd proposed in this application, could be provided by the installation of two new 11,000-horsepower compressor stations. However, no compression or connections with the above-mentioned pipelines are currently proposed.

The general location of the proposed Oklahoma-Arkansas Pipeline Project is shown in figure 1.[1] The proposed

[1] Figure 1 is not being printed in the Federal Register, but copies are available from the Commission's Public Reference Branch at (202) 208-1371. A copy of figure 1, a brief description of the proposed construction procedures, and a mail-in form to request a copy of the DEIS are attached to each mailed copy of the notice.

facilities would traverse 3 counties in Oklahoma, 11 counties in Arkansas, and 2 counties in Mississippi, and would include 240 miles of new 36-inch-diameter pipeline and 112 miles of new 30-inch-diameter pipeline (see table 1). Metering facilities would be located at the interconnection points with the existing TETCO Bald Knob Compressor Station, in White County, Arkansas and with the Trunkline Independence Compressor Station, in Tate County, Mississippi. No compression, storage or processing facilities are proposed as part of this application.

Major rivers crossed by the proposed pipeline would include the Poteau River in Oklahoma, the Arkansas and White Rivers in Arkansas, and the Mississippi River, at the Arkansas/Mississippi state border. No national or state forests would be crossed by the project although the White River is proposed to be crossed within the Hurricane Lake State Game Area.

TABLE 1.—COUNTIES CROSSED BY THE PROPOSED OKLAHOMA-ARKANSAS PIPELINE PROJECT

State and county	Pipe diameter	Approximate miles
Oklahoma:		
Pittsburg	36"	2.0
Latimer	36"	37.6
La Flore	36"	29.1
Arkansas:		
Sebastian	36"	23.6
Logan	36"	45.0
Franklin	36"	1.3
Johnson	36"	0.6
Pope	36"	25.5
Conway	36"	21.0
Faulkner	36"	20.9
White	36"	33.4
White	30"	10.0
Woodruff	30"	21.5
St. Francis	30"	38.3
Crittenden	30"	7.6
Mississippi:		
De Soto	30"	31.9
Tate	30"	2.7

Oklahoma-Arkansas would construct and operate the proposed facilities in accordance with all applicable regulations. These include: 49 CFR part 192, "Transportation of Natural Gas by Pipeline: Minimum Federal Safety Standards"; applicable regulations of the Occupational Safety and Health Administration (OSHA); and other applicable Federal, state and local regulations and permit requirements.

Oklahoma-Arkansas proposes to use a 66-foot-wide construction right-of-way which would be retained in its entirety for the permanent right-of-way. A 25-foot-wide strip would be used along one side of the right-of-way for excavated material. The remaining 41 feet would be used for access, pipe laydown and assembly, and passage for construction equipment. Additional temporary work areas would be required at railroad, major road, wide stream or river crossings, and where unfavorable construction conditions exist. Based on data provided by Oklahoma-Arkansas, construction and operation of the proposed pipeline would affect an estimated 526 acres of woodland, 2,180 acres of farmland, pasture and cropland, and 110 acres of wetland. Approximately 40 percent (140 miles) of the proposed route parallels existing utility and transportation corridors. A more detailed description of the proposed construction procedures is attached to the notice distributed by the FERC.

Environmental Issues

Based on preliminary analyses of the application for authorization of the proposed facilities and the environmental information provided by Oklahoma-Arkansas, the FERC staff has identified a number of issues which will be specifically addressed in the EIS. These issues include but are not limited to:

Soils & Geology	Erosion control and revegetation.
	Effect on crop and pasture land.
	Geological hazards and impact on exploitable mineral resources.
Water Resources	Effect of construction on potable water supplies such as Booneville Lake in Sebastian County, Arkansas.
	Effect of construction on wetlands, water quality, and on extraordinary resource waters such as: Cadron Creek, Cache River, and Second Creek in Faulkner, White, and St. Francis Counties, Arkansas.
Wildlife/Fisheries	Impact on wildlife/fisheries.
	Impact on threatened and endangered species.
Land Use	Impact on homes, future development, public lands, and public recreation areas such as the Hurricane Lake State Game Area in White County, Arkansas; and Horn Lake Pass recreation area in DeSoto County, Mississippi.
Aesthetics	Effect of the appearance of rights-of-way and aboveground facilities on neighborhoods and scenic areas.
Cultural Resources	Effect of the project on properties listed on or eligible for the National Register of Historic Places.
	Effect on Indian Land.
Alternatives	Route variations to avoid specific resources.
	Alternative routes.

Comments are solicited on any specific additional topics of environmental concern related to the proposed project. After comments in response to this notice are received and analyzed and the various issues investigated, the staff will publish a draft EIS (DEIS) for the Oklahoma-Arkansas Pipeline Project. The DEIS will be based on the FERC staff's independent analysis of the proposal.

Cooperating Agencies

Any Federal or state agencies desiring cooperating agency status should send a request describing how they would like to be involved and designating one contact per agency to Ms. Lois B. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

The request should reference Docket No. CP90–187–000 and should be received by August 31, 1990. An additional copy of the request should be sent to the FERC project manager identified at the end of this notice.

Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agency. Cooperating agencies are also welcome to suggest format and content

modifications to facilitate ultimate adoption of the FEIS.

Notice and DEIS Distribution

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, parties in this proceeding, and other interested individuals. Maps of the proposed route have been provided to administrative officials of each affected county and municipality identified in table 1.

The DEIS will be available for public comment. A 45-day comment period will be allotted.

Any person may file a motion to intervene on the basis of the Commission staff's DEIS (18 CFR 380.10(a) and 385.214). After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a final EIS (FEIS) will then be published by the Commission staff and distributed. The FEIS will contain the staff's responses to comments received on the DEIS and will comprise part of the record to be considered by the Commission in this proceeding.

Comment Procedure

Comments on the scope of the EIS should be filed as soon as possible but no later than August 31, 1990. All written comments must reference Docket No. CP90-187-000 and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Lonnie Lister, Project Manager, Federal Energy Regulatory Commission, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426.

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Lister, telephone (202) 208-2191.

Organizations and individuals receiving this Federal notice have been selected to ensure public awareness of this project and public involvement in the review process under the National Environmental Policy Act. The DEIS will be sent automatically to the appropriate Federal and state agencies, and the FERC service list for comment. However, to reduce printing and mailing costs and related logistical problems, the DEIS will only be distributed to those other organizations, local agencies, and individuals who return the attached request form.

Lois D. Cashell,

Secretary.

Attachment

General Construction Procedures

Normal overland pipeline construction techniques would be used to construct the proposed pipeline. Construction would begin with the clearing and grading of the 66-foot-wide right-of-way to prepare a relatively level strip to accommodate construction equipment. Rotary wheel ditching machines, backhoes or rippers would be used to excavate a trench approximately 2 feet wider than the pipe diameter at the bottom of the trench and deep enough to provide the minimum depth of cover required by the U.S. Department of Transportation (DOT) (normally 36 inches deeper than the diameter of the pipe). Blasting would be required in areas of unrippable consolidated rock. In cultivated lands, topsoil would be segregated and stored separately.

After trenching, the pipe segments would be strung along the right-of-way, bent to conform to the contours of the trench, welded together, coated, inspected, and lowered into the trench. The trench would then be backfilled using previously excavated materials if they are suitable for contact with the pipeline. Any material unsuitable for backfilling would be disposed of in a public or private waste disposal area. Topsoil that was conserved would be replaced to its original horizon and the right-of-way would be restored to its original contours as much as practicable.

The new pipeline would then be divided into segments and hydrostatically tested to assure its integrity in accordance with DOT regulations. Test water of good quality would be acquired from farm ponds, streams, rivers or municipal drinking water systems, and would be pumped into the pipeline. Once the water has filled the pipeline, pumps would be used to pressurize the pipe section to the necessary test pressure. Any leaks detected would be repaired and the test restarted. Upon test completion, the water would be displaced from the pipeline using pipeline pigs, compressed air, or other gas. The water would be discharged onto a metal splash plate or similar energy dissipation device and filtered through hay bales or vegetation to minimize erosion. No chemical additives would be used at any time during the testing procedure or to dry the pipelines after testing is complete.

Following testing, all surplus material, equipment, and miscellaneous debris would be removed. The right-of-way would be restored to its original contours as much as practicable, and reseeded, fertilized and mulched in accordance with erosion and sedimentation control plans. In forested areas where requested by the landowner or land managing agency, gates or other barriers would be erected to extend a reasonable distance beyond the limits of the right-of-way as necessary to limit access and prevent unauthorized off-road vehicular use of the rights-of-way.

Special Construction Procedures

All crossings of interstate highways, national and state roads, and railroads would be bored. Private and light duty roadways would be crossed by open cut, if the method is approved by the owner or appropriate road management agency. Open cut crossing involves temporary closing of the road to all traffic, or excavating one-half at a time, or constructing an adequate detour around the crossing area.

Construction methods for crossing small wetlands would be similar to those used on dry land except that the area would be stabilized during clearing and grading. Construction through large wetland areas would involve the use of the "push-pull" technique where the trench would be excavated using a dragline or clamshell dredge and the weighted pipeline segments (welded together in separate staging areas) would be pushed or pulled into place using flotation devices. Once the pipeline segment is in position, the flotation devices would be removed allowing the pipe to sink to the bottom of the trench. The trench would then be backfilled and the area restored to its original contours so as not to alter the wetland hydrology.

Small stream or river crossings would be trenched using a backhoe, clam dredge, dragline or similar equipment located on one side of the stream. To minimize instream construction time, the stream crossing pipeline segment would be preassembled in a separate work area at least 50 feet from the stream edge. Once the trench is excavated, the pipeline segment would be floated into place and the trench backfilled. The banks would then be stabilized and seeded to prevent erosion. Trench plugs would be used at the streambanks to prevent the stream flow from diverting into the pipeline trench and to prevent upslope runoff from carrying sediment into the stream. Temporary culvert or crushed stone bridges would be used at

all stream crossings which would be crossed by equipment during pipeline construction. The applicant proposes that prior to construction, appropriate state fish and game agencies would be contacted to determine construction scheduling and mitigative measures to be employed to minimize impact on fisheries and wildlife habitat.

Major river crossings of over 500 feet may require the use of floating excavation equipment or the use of directional drilling or boring. Oklahoma-Arkansas has not yet identified which method would be used for the Arkansas, White, and Mississippi River crossings. All wetlands, stream and river crossings would be conducted in accordance with applicable U.S. Army Corps of Engineers and state permits.

Operation and Maintenance

The proposed pipeline right-of-way would be maintained in a generally cleared condition to facilitate visual inspection and access. Previous land uses would generally be allowed to continue following construction. Air quality and noise impacts would be limited to construction activities because the proposed project involves no new compression.

Any significant failure of the proposed facilities would activate sensing equipment on the system. Automatic or manual response to this signal would result in activation of block valves and cause shutdown of the affected portion of the system.

[FR Doc. 90-18113 Filed 8-2-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP90-1781-000, et al.]

Michigan Gas Storage Company, et al.; Natural Gas Certificate Filings

July 27, 1990.

Take notice that the following filings have been made with the Commission:

1. Michigan Gas Storage Co.

[Docket No. CP90-1781-000]

Take notice that on July 20, 1990, Michigan Gas Storage Company (Michigan Gas), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP90-1781-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by sale to Consumers Power Company (Consumers) certain facilities in Macomb County, Michigan, under the authorization issued in Docket No. CP84-451-000 pursuant to section 7 of the Natural Gas act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Michigan Gas requests permission and approval to abandon by sale to Consumers, a local distribution company, (1) 4.1 miles of 16-inch pipeline of its Line # 600 extending from the Utica City Gate, Van Dyke Road Station in Shelby Township, Macomb County, Michigan to the Hall Road Valve Site in the city of Sterling Heights, Macomb County, Michigan, (2) the Hall Road Valve Site, (3) 5.64 miles of 8-inch pipeline of its Line # 40 exending from the Hall Road Valve Site to the Mt. Clemens City Gate, Dunham Road Station in Clinton Township, Macomb County, Michigan and (4) the Mt. Clemens City Gate. Michigan Gas states that the requested abandonment by sale will include all properties, rights of way and facilities associated with the above facilities.

Michigan Gas States that Consumers is the only customer served by its line # 600, Line # 40, the Mt. Clemens City Gate, Dunham Road Station and Hall Road Valve Site as described in Docket No. CP90-1781-000. Michigan Gas further states that the pipelines are presently used to deliver gas to Consumers at Michigan Gas' Hall Road Valve Site and Mt. Clemens City Gate, Dunham Road Station in an emergency or back-up mode only. Michigan Gas states that it will continue to deliver gas to Consumers at the Utica City Gate, Van Dyke Road Station located at the north end of the Section of Line # 600 which is to be sold. It is stated that the abandonment will relieve Michigan Gas of the obligation to operate and maintain the seldom used facilities without a reduction in service to Consumers and will allow Consumers to strengthen its distribution system while avoiding the construction of new facilities to serve new and existing customers in the rapidly developing metropolitian area.

Comment date: September 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. TexPar Energy, Inc.

[Docket No. CI90-147-000]

Take notice that on July 24, 1990, TexPar Energy, inc. (TexPar) of 2020 Springdale Road, P.O. Box 587, Waukesha, Wisconsin 53187, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing the sale for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction including imported gas and gas sold to TexPar pursuant to interstate pipeline discount sales authority, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: August 16, 1990, in accordance with Standard Paragraph J at the end of this notice.

3. Vesta Energy Co.

[Docket No. CI87-429-002]

Take notice that on July 11, 1990, Vesta Energy Company (Vesta) of 2400 Fourth National Bank Building, 15 West Sixth Street, Tulsa, Oklahoma 74119, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its unlimited-term blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI87-429-001 to include authorization to make sales for resale in interstate commerce of imported gas and gas obtained through interstate pipeline discount interruptible sales programs, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: August 16, 1990, in accordance with Standard Paragraph J at the end of this notice.

4. Northern Natural Gas Co.; U-T Offshore System

[Docket Nos. CP90-1811-000; CP90-1812-000]

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuat to §§ 157.205 and 284.223 of the Commission's Regulations under the National Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each

[1] These prior notice requests are not consolidated.

shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg. annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP90-1811-000 (7-25-90)	Northern Natural Gas Company, P.O. Box 1188, Houston, TX, 77251-1188.	Shell Gas Trading Company.	50,000 37,500 18,250,000	Off. TX, TX, Off. LA, Off. MS.	Off. LA, Off. TX, TX.	6-1-90 IT-1	CP86-435-000 ST90-3582-000
CP90-1812-000 (7-25-90)	U-T Offshore System, P.O. Box 1396, Houston, TX, 77251.	Sun Operating Limited Partnership.	3,601Mcf 3,601Mcf 1,314,365Mcf	Off. LA	LA	5-4-90 FT	RM88-14-001 &RM88-15-000 ST90-3821-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Northern Natural Gas Co., Division of Enron Corp.; Texas Gas Transmission Corporation; Texas Gas Transmission Corp.; Northern Natural Gas Co., Division of Enron Corp.

Docket Nos. CP90-1790-000; CP90-1791-000; CP90-1792-000; CP90-1793-000

Take notice that Northern Natural Gas Company, Division of Enron Corp., 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, and Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301 (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-435-000 and Docket No. CP88-686-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: September 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP90-1790-000 (7-23-90)	Adobe/Midland Joint Venture (Marketer).	50,000 37,500 18,250,000	TX	TX	6-2-90 IT-1 Interruptible	ST90-3636 6-2-90
CP90-1791-000 (7-24-90)	Polaris Pipeline Corporation.	100,000 20,000 6,000,000	Various	Various	11-22-88 IT Interruptible	ST90-3793 7-4-90
CP90-1792-000 (7-24-90)	CH4 Trading Company	50,000 50,000 18,250,000	Various	Various	5-30-90 IT Interruptible	ST90-3794 7-2-90
CP90-1793-000 (7-24-90)	Shell Gas Trading Company (Marketer).	80,000 60,500 29,200,000	OTX, OLA	OTX, OLA, TX	6-1-90 IT-1 Interruptible	ST90-3581 6-1-90

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

6. Texas Eastern Transmission Corporation; Northern Natural Gas Co.; Northern Natural Gas Co.; Tennessee Gas Pipeline Co.; Northwest Pipeline Corp.

[Docket Nos. CP90-1782-000;[3] CP90-1784-000, CP90-1785-000, CP90-1787-000, CP90-1789-000]

Take notice that on July 20, 1990, and July 23, 1990, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the Applicants' address, the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each

[3] These prior notice requests are not consolidated.

shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg, annual	Points of		Start up date rate schedule	Related dockets [2]
				Receipt	Delivery		
CP90-1782-000 (7-20-90)	Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, TX, 77252-2521.	Consolidated Fuel Corp.	1,000 1,000 365,000	Various existing points.	MO	5-22-90 IT-1	CP88-136-000 ST90-3411-000
CP90-1784-000 (7-23-90)	Northern Natural Gas Company, 1400 Smith St., P.O. Box 1188, Houston, TX, 77251-1188.	Enron Gas Marketing, Inc.	10,000 7,500 3,650,000	Various existing points.	Various existing points.	5-16-90 IT-1	CP86-435-000 ST90-3308-000
CP90-1785-000 (7-23-90)	Northern Natural Gas Company, 1400 Smith St., P.O. Box 1188, Houston, TX, 77251-1188.	Cibola Corporation	10,000 75,000 36,500,000	Various existing points.	Various existing points.	6-1-90 IT-1	CP86-435-000 ST90-3507-000
CP90-1787-000 (7-23-90)	Tennessee Gas Pipe Line Co.	Voss Energy Group, Inc.	75,000Dth 75,000Dth 27,375,000Dth	AL and MS	AL	6-30-90 IT	CP87-115-000 ST90-3921-000
CP90-1789-000 (7-23-90)	Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, UT, 84158-9000.	K N Gas Marketing, Inc.	5,000 1,000 365,000	Various existing points.	Various existing points.	6-1-90 IT-1	CP86-578-000 ST90-3962-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. Panhandle Eastern Pipe Line Co.

[Docket No. CP90-1783-000]

Take notice that on July 23, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-1783-000 a request pursuant to §§ 157.205, 157.211 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Phillips 66 Natural Gas Company (Phillips), a marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, and to operate a meter under Panhandle's blanket certificate issued in Docket No. CP83-83-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport, on an interruptible basis, up to 35,000 dt equivalent of natural gas on a peak day, 35,000 dt equivalent on an average day and 12,775,000 dt equivalent on an annual basis for Phillips. Panhandle states that it would perform the transportation service for Phillips under Panhandle's Rate Schedule PT. Panhandle indicates that it would receive the gas at designated points on its system in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma and Texas and would deliver equivalent volumes of gas, less fuel used an unaccounted for line loss, for Phillips' account at an interconnection with Missouri Pipeline Company, an intrastate pipeline, in Pike County, Missouri.

In order to facilitate the transportation service, Panhandle requests authorization to operate as a facility subject to the jurisdiction of the Commission under section 7 of the Natural Gas Act a delivery meter which was constructed under Natural Gas Policy Act section 311 authorization in order to effect deliveries of gas under section 311. It is stated that the transportation service will commence upon the completion of the 45-day notice period for the instant request.

Comment date: September 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Mississippi River Transmission Corp.; Southern Natural Gas.; Carnegie Natural Gas.

[Docket Nos. CP90-1773-000; CP90-1774-000; CP90-1775-000; CP90-1776-000]

Take notice that on July 19, 1990, Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124; Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202-2563; and Carnegie Natural Gas Company, 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, (Applicants), filed requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under their respective blanket certificates issued in Docket No. CP89-1121-000, CP88-316-000, and Docket No. CP88-363-000, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[4]

The Applicants have provided applicable information for each transaction, including the shipper's identity; the peak day, average day, and annual volumes; the receipt and delivery points; the appropriate transportation rate schedule for the service; the related ST docket numbers and service initiation dates of the 120-day transactions under § 284.223(a) of the Regulations, as summarized in the attached appendix.

Comment date: September 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No.	Shipper (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Rate schedule service type	ST docket, start up date
CP90-1773-000	American Steel Foundries, A Division of AMSTED Industries, Inc. (End-user).	1,000 1,000 365,000	AR, IL, LA, OK, TX	IL	FTS Firm	ST90-3673 6-7-90
CP90-1774-000	Rheox, Inc. (End-user)	450 450 164,250	AR, IL, LA, OK, TX	MO	FTS Firm	ST90-3672 6-1-90
CP90-1775-000	Superior Natural Gas Corporation (Marketer).	50,000 25,000 9,125,000	AL, LA, OLA, MS, TX, OTX.	MI	IT Interruptible	ST90-3322 5-30-90
CP90-1776-000	Guardian Industries, Inc. (End-user).	3,000 1,000 [2] 365,000	PA	PA	ITS Interruptible	ST90-3639 6-1-90

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Volumes are in dekatherms.

9. TransColorado Gas Transmission Co.

[Docket No. CP90-1777-000]

Take notice that on July 20, 1990, TransColorado Gas Transmission Company (TransColorado), 12055 West 2nd Place, Lakewood, Colorado 80228, filed in Docket No. CP90-1777-000, an application pursuant to section 7(c) of the Natural Gas Act and subparts E and F of part 157 and subpart G of part 284 of the Commission's Regulations for an optional certificate of public convenience and necessity and blanket certificates of public convenience and necessity authorizing TransColorado to: (1) Engage in the transportation of natural gas in interstate commerce as a natural gas company; (2) construct, own and operate a new natural gas pipeline to be used in the transportation of up to approximately 300,000 Dekatherms per day (Dtd) of natural gas; (3) transport gas on a self-implementing basis with pregranted abandonment authority; (4) charge initial rates for transportation through the proposed facilities; (5) construct and operate certain facilities and make minor changes in services from time to time, with pregranted abandonment authority; and (6) permit shipper to assign firm capacity.

TransColorado proposes to construct and operate

(a) 270 miles of 22-inch pipeline from the Big Hole area of Rio Blanco County, Colorado, to Ignacio, La Plata County, Colorado;

(b) 41 miles of 24-inch pipeline from Ignacio, Colorado to Blanco, New Mexico, terminating at anticipated points of interconnection with El Paso Natural Gas Company (El Paso) and Transwestern Pipeline Company (Transwestern);

(c) One 4,750 horsepower turbine compressor near Olathe, Colorado, and two 2,700 horsepower reciprocating compressors near Dolores, Colorado; and

(d) Miscellaneous measuring and regulating facilities.

TransColorado estimates that the proposed facilities would cost $150,994,460, including line pack. TransColorado states that these proposed facilities will be installed to transport up to 300,000 Dtd of natural gas from the western slope of Colorado and the Rocky Mountain region to the El Paso and Transwestern systems for ultimate redelivery to Southwest, Midwest, and California markets.

As part of its application, TransColorado has included pro forma copies of its FERC Gas Tariff, Original Volume No. 1 which contains a statement of rates, Rate Schedule FT covering firm service, Rate Schedule IT covering interruptible service, general terms and conditions delineating the specific operating procedures to be followed by TransColorado and its customers, and form of service agreements applicable to service provided under Rate Schedules FT and IT.

TransColorado explains that it is actively negotiating the terms of precedent agreements with potential shippers and intends, after issuance of an acceptable certificate order, to conduct a 30-day open season for all uncommitted firm capacity and for interruptible service on its transportation system. It is stated that TransColorado proposes to permit any firm shipper to assign its firm transportation rights under the applicable service agreement to a third party who may in turn reassign those rights to other parties.

TransColorado initially proposes a constant cost of service with levelized rates over two distinct periods for years 1 through 15 and years 16 through 25. TransColorado further explains that its maximum and minimum rates applicable to firm and interruptible services assume a 15 percent return on equity, a 12 percent cost of debt, a capital structure of 30 percent equity and 70 percent debt, a 25-year project life and a 90 percent throughput level. TransColorado proposes the following rates:

	Maximum rates	Minimum rates
Years 1-15		
Rate Schedule FT:		
Reservation	$5.67886 per dt per month.	$0.00
Commodity	$0.29455 per dt	.01
Rate Schedule IT:		
Commodity	$0.29455 per dt	.01
Years 16-25		
Rate Schedule FT:		
Reservation	$3.97201 per dt per month.	0.00
Commodity	$0.17444 per dt	.01
Rate Schedule IT:		
Commodity	$0.17444 per dt	.01

TransColorado states that the costs associated with providing firm transportation service were allocated between the reservation and commodity components through application of a modified fixed-variable rate design and that the transportation commodity rate and the monthly transportation reservation rate, when combined, will not exceed the maximum transportation commodity rate.

TransColorado seeks blanket certificate authorizations to provide open-access transportation service pursuant to 18 CFR part 284, subpart G, and to construct and operate certain facilities and amend existing certificate authorizations and abandon facilities and services, pursuant to 18 CFR part 157, subpart F.

TransColorado states that it has filed an environmental report in compliance

with the Commission's Alternative Method and Format for Filing Environmental Report (Code 502) included as part of Order No. 493 and that a Draft Environmental Impact Statement, presently being prepared, will be completed and available for public comment by December 31, 1990.

It is stated that the majority of the proposed route would involve public lands administered by the U.S. Department of the Interior, Bureau of Land Management (BLM) and/or the U.S. Forest Service. For this reason, it has been determined that the BLM will act as the lead federal agency for the preparation of the required National Environmental Policy Act document. The BLM announced din the Federal Register on March 8, 1990 (55 FR 8606), their Intent to Prepare an Environmental Impact Statement (EIS) on TransColorado's proposal. Rather than preparing a separate EIS, the FERC will participate in the environmental review process as a cooperating agency on the EIS being prepared by the BLM.

Comment date: August 17, 1990, in accordance with Standard Paragraph F at the end of this notice.

10. Williston Basin Interstate Pipeline Co.; Northern Natural Gas Co.; Division of Enron Corp.; Northern Natural Gas Co.; Division of Enron Corp.; Algonquin Gas Transmission Co.

[Docket No. CP90–1765–000; CP90–1767–000; CP90–1768–000; CP90–1769–000]

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg. annual	Points of		Start up date rate schedule	Related [2] dockets
				receipt	delivery		
CP90–1765–000 (7–19–90)	Williston Basin Interstate Pipeline Co., Suite 200, 304 East Rosser Avenue, Bismarck, ND 58501.	Coastal Gas Marketing Co.	51,300 25,000 18,724,500	ND, MT, WY	WY, ND, SD	7–1–90, IT–1	CP89–1118–000, ST90–3714–000
CP90–1767–000 (7–19–90)	Northern Natural Gas Co., Division of Enron Corp., 1400 Smith St., P.O. Box 1188, Houston, TX 77251–1188.	Mobil Natural Gas, Inc.	100,000 75,000 36,500,000	OK, TX, KS, NM, WI, IA.	KS, TX, OK, WI, IA, IL, NE, MI, MN, SD.	6–1–90, IT–1	CP86–435–000, ST90–3635–000
CP90–1768–000 (7–19–90)	Northern Natural Gas Co., Division of Enron Corp., 1400 Smith St., P.O. Box 1188, Houston, TX 77251–1188.	Gas Trak Corp	55,000 41,250 20,075,000	OK, TX, KS, NM, WI, IA, SD, IL.	KS, TX, OK, WI, IA, IL, NE, MN, SD.	5–31–90, IT–1	CP86–435–000, ST90–3508–000
CP90–1769–000 (7–19–90)	Algonquin Gas Transmission Compnay, 1284 Soldiers Field Road, Boston, MA 02135.	Catamount Natural Gas, Inc.	68,163 68,163 24,879,495	NJ, MA	MA	3–21–90, AIT–1	CP89–948–000, ST90–3901–000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by

sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .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 the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-18114 Filed 8-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-333-000]

Filing, Palisades Generating Co.

July 27, 1990.

Take notice that on July 17, 1990, Palisades Generating Company (Palisades) tendered for filing copies of Revised Amendment No. 1 to the Power Purchase Agreement between Consumers Power Company and PGC.

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, 385.214). All such motions or protests should be filed on or before August 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any 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. 90-18126 Filed 8-2-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Special Research Branch Program Notice 90-6; Atmospheric Chemistry Program

AGENCY: Office of Energy Research, DOE.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Department of Energy (DOE) hereby announces its interest in receiving applications for Special Research Grants to support theoretical and experimental studies under its Atmospheric Chemistry Program.

The Atmospheric Chemistry Program is a scientific effort whose primary goal is to provide DOE with the advanced information, pertaining to the atmospheric environment, that is necessary for long-range energy planning in fulfillment of the U.S. National Energy Strategy. In attacking this goal the Atmospheric Chemistry Program places primary emphasis on the continental and oceanic fate of energy-related air pollutants. All aspects of atmospheric pollutants, from their emission to their ultimate deposition at the Earth's surface (hereafter referred to as the "atmospheric source-receptor system"), are included in this research area. Examples of individual source-receptor phenomena are homogeneous and heterogeneous atmospheric chemistry, wet-removal processes, and air-surface exchange.

This notice requests applications for grants to support: (1) The conduct of field, laboratory, and theoretical investigations of important physicochemical mechanisms determining the fates of energy-related air pollutants; and (2) the development of advanced models and simulation techniques describing the fates of energy-related air pollutants during the source-receptor sequence.

It is anticipated that up to five grants will be awarded for these activities during FY 1991. Grant awards will generally cover a three-year period, with the possibility of being renewed.

DATES: Applications should be sent to the address below by November 30, 1990. The technical portion of the proposal should not exceed 25 double spaced pages. Technical appendices may be included, if desired, but are not encouraged.

ADDRESSES: Completed applications referencing Program Notice 90-6 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, Office of Energy Research, ER-64, room G-232, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Dr. Ari Patrinos, Atmospheric and Climate Research Division, Office of Health and Environmental Research, ER-76, Washington, DC 20545, (301) 353-4375.

SUPPLEMENTARY INFORMATION: The intent of this program is to draw upon creative talents of researchers working on energy-related air pollution issues. Accordingly, few constraints are placed on the two basic research areas given above. (1) The physicochemical mechanism area is intended to include subjects such as the measurement of rate and equilibrium parameters for important molecular processes, the measurement of physical transformation processes such as aerosol growth and decay, and the theoretical description of such processes using advanced

mechanistic models that are either analytical or numerical in nature. (2) The source-receptor simulation area is intended to include the development of advanced computational methods (*e.g.*, numerical integration schemes) and/or submodels for describing macroscopic elements of the source-receptor sequence.

The DOE Atmospheric Chemistry Program is a coordinated scientific effort, which, in addition to the organizations to be covered under this notice of availability, includes research elements from the following federal laboratories: Argonne National Laboratory (ANL), Brookhaven National Laboratory (BNL), Atmospheric Turbulence and Diffusion Division (ATDD) of the National Oceanic and Atmospheric Administration/Air Resources Laboratories (NOAA/ARL), Lawrence Berkeley Laboratory (LBL), Oak Ridge National Laboratory (ORNL), and the Pacific Northwest Laboratory (PNL). Any applicant may choose to coordinate proposed scientific plans with one or more of these laboratories. Although such collaborative efforts are encouraged, applications without collaboration are welcome.

Primary activities of each DOE laboratory are summarized as follows:

ANL—Air/surface exchange, homogeneous photochemistry
BNL—Laboratory measurements and interpretation of physicochemical phenomena, homogeneous photochemistry, interpretation of atmospheric field data
ATDD—Air/surface exchange
LBL—Heterogeneous atmospheric chemistry
ORNL—Air/surface exchange, with emphasis on biological receptors
PNL—Source-receptor process modeling, aircraft and surface measurements of source-receptor phenomena

DOE is currently in the process of documenting its National Energy Strategy, which is intended to provide a comprehensive and coordinated approach to energy policy analysis, strategic planning, and supporting research (Ref. Interim Report, National Energy Strategy: A Compilation of Public Comments. U.S. Depatment of Energy DOE/S–0066P April, 1990). Environmental considerations compose an important component of this strategy, and successful applicants for participation in the DOE Atmospheric Chemistry Program must demonstrate how their proposed research will advance current understanding on key elements of these issues.

It is anticipated that approximately $500,000 will be available in FY 1991 to fund these efforts, with similar or increased funding expected in subsequent years subject to the availability of funds in those years. Allocation of these funds to specific research elements will depend on the number and the quality of applications received. Information concerning submission of applications, eligibility, limitations, evaluations, and selection processes may be found in the OER Application and Guide for the Special Research Grants Program, 10 CFR part 605. Applications are requested to obtain this application kit from the U.S. Department of Energy, Acquisition and Assistance Management Division, Office of Energy Research, ER–64, Washington, DC 20585. Telephone requests may be made by calling (301) 353–5544. (The catalog of Federal Domestic Assistance Number for this program is 81.049).

Issued in Washington, DC on July 12, 1990.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 90–18174 Filed 8–2–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $1,250,000, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Meadows Realty Company (formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc. The OHA has determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V, and in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for Refund submitted for a portion of the funds allocated to the refined products pool must be filed in duplicate, postmarked no later than May 31, 1991. Applications should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All Applications for Refund from the refined product pool should display a reference to case number KEF–0133.

Applications for Refund from the crude oil pool should be clearly labeled "Application for Crude Oil Refund" and should be mailed to subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Applications for Refund from the crude oil pool must be filed in duplicate and postmarked no later than March 31, 1991. Any party who has previously filed an Application for Refund in crude oil proceedings should not file another Application for Refund from the crude oil pool. The previous crude oil Application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 100 Independence Ave. SW., Washington, DC 20585, (202) 586–2390.

SUPPLEMENTARY INFORMATION: In accordance with section 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $1,250,000 that has been remitted by Meadows Realty Company (formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc. (hereinafter collectively referred to as San Joaquin) to the DOE to settle possible violations of the federal petroleum price and allocation regulations. The DOE is currently holding the funds in an interest-bearing account pending distribution.

The OHA has decided to divide the funds into a refined products pool and a crude oil pool. The OHA will distribute these funds in accordance with the DOE's subpart V refund procedures, and in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986). Applications for Refund from the refined product pool will be accepted from customers who purchased controlled refined petroleum products from San Joaquin during the Consent Order period. Applications for Refund from the refined product pool must be post marked no later than May 31, 1991 to meet the filing deadline.

Applications for refund from the crude oil pool of funds must be post marked no later than March 31, 1991. As we stated in the Decision, any party who has previously submitted a refund

Application in the crude oil refund proceedings should not file another Application for Refund in the crude oil proceedings. That previous Application will be deemed filed in all crude oil proceedings as the procedures are finalized.

Dated: July 27, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firm: Meadows Realty Company (Formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc.
Date of Filing: April 28, 1989.
Case Number: KEF-0133.

In this determination, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the formal opening of the Meadows Realty Company (Formerly San Joaquin Oil Company), and San Joaquin Refining Co., Inc. refund claims proceeding.

On April 28, 1989, the Economic Regulatory Administration (ERA) of the DOE filed a Petition with the OHA requesting that the OHA formulate and implement procedures for distributing funds obtained from Meadows Realty Company (Formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc. under the terms of a Consent Order between those firms and the DOE. 10 CFR part 205, subpart V. The ERA's petition requests that the OHA establish special procedures to make refunds to remedy the effects of alleged regulatory violations that were settled by the Meadows Realty Company (Formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc. Consent Order. On March 8, 1990 the OHA issued a Proposed Decision and Order (PDO) that tentatively set forth procedures for disbursement of the Consent Order funds. 55 FR 9755 (March 15, 1990). We provided for a 30-day period for the submission of comments regarding the proposed procedures. No comments were received concerning the proposed procedures. Accordingly, this Decision adopts the proposed procedures as final procedures for the distribution of the Meadows Realty Company (Formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc. Consent Order funds.

I. Background

San Joaquin Oil Company (SJOC) was engaged in the refining of crude oil and the sale of refined petroleum products during the period of September 1973 through May 1, 1978. SJOC was a "refiner" as that term is defined in 6 CFR 150.352 and 10 CFR 212.31. SJOC was therefore subject to the price regulations set forth in 6 CFR part 150, subpart L and 10 CFR part 212, subpart E. San Joaquin Refining Co., Inc. (SJRC) acquired all of the assets of SJOC on May 1, 1978, and thereafter engaged in the refining of crude oil and the sale of refined petroleum products during the remainder of the regulatory period which ended on January 28, 1981. SJOC (now Meadows Realty Company) and SJRC are hereinafter collectively referred to as San Joaquin. The ERA conducted an audit of San Joaquin's compliance with the Mandatory Petroleum Price Regulations contained in 6 CFR part 150, subpart L and 10 CFR part 212 during the period September 1973 thorugh April 1975 (the audit period). As a result of this audit, the ERA issued a Proposed Remedial Order (PRO) to San Joaquin on June 4, 1982 which alleged that San Joaquin overcharged its customers in sales of refined petroleum products during the audit period. Following proceedings before the OHA, the PRO was remanded to the ERA for recalculation of the overcharge amounts. On February 27, 1987, the ERA issued a revised PRO to San Joaquin.

In order to settle and finally resolve all civil and administrative claims and disputes between the DOE and San Joaquin, the DOE and San Joaquin entered into a Consent Order which became final on June 17, 1988. 53 FR 22705 (June 17, 1988). The Consent Order settles the liability of San Joaquin regarding all administrative claims and disputes, whether or not previously asserted, between the DOE and San Joaquin concerning San Joaquin's compliance with the federal petroleum price and allocation regulations during the period September 1973 through January 27, 1981 (the Consent Order period). The Consent Order states that San Joaquin has made no admission nor the DOE any finding that San Joaquin violated any statute or regulation.

Pursuant to the Consent Order, San Joaquin agreed to pay to the DOE the amount of $1,250,000 plus interest from January 1, 1988. The Consent Order funds have been placed in an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE. This Decision and Order sets forth the OHA's final procedures for distributing these funds to qualified purchasers of San Joaquin's covered petroleum products.

II. Allocation of the Consent Order Funds

As we indicated above, the Consent Order settles:

> All civil and administrative claims and disputes, whether or not heretofore asserted, between [the] DOE and San Joaquin concerning San Joaquin's compliance with [the] federal petroleum price and allocation regulations (as defined herein) during the period September 1973 through January 27, 1981 * * *

Consent Order at ¶ 101. The phrase federal petroleum price and allocation regulations is defined by the Consent Order as:

> All pricing and allocation requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, and all applicable DOE regulations codified in 6 CFR part 150, subpart L, and 10 CFR parts 205, 210, 211, 212 and 213, including all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, forms, and reporting and certification requirements regarding such regulations.

Consent Order at ¶ 204. The above language provides for a global settlement, and was intended to cover any potential violations by San Joaquin of the regulations governing crude oil as well as refined products. The OHA finds further support for this interpretation because the Consent Order governs the period from September 1973 through January 27, 1981, yet, the refined products sold by San Joaquin were all decontrolled by September 1, 1976.[1] Thus, the Consent Order covers a period extending almost four and one half years after San Joaquin stopped selling controlled refined products. The Consent Order does not give the OHA any guidance regarding the proper allocation of the Consent Order funds between refined products and crude oil. However, the Proposed Consent Order does state that "[t]he major regulatory area of dispute concerns San Joaquin's pricing of refined petroleum products subject to price controls." 53 FR 15441 at 15441 (April 29, 1988). Additionally, based upon our experience in these matters, we believe that it is likely that San Joaquin had some exposure regarding the regulations governing crude oil. Therefore, the OHA has allocated 20 percent of the Consent Order funds to the crude oil pool.

[1] *See* Letter from Kevin R. Griffin, Attorney for San Joaquin, to Raymond P. Rayner, Jr., OHA Attorney Advisor, and Attached Exhibits (January 12, 1990).

III. Refund Procedures

A. Distribution of the San Joaquin Crude Oils Funds

The San Joaquin crude oil monies, $250,000, plus interest, will be disbursed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP), 51 FR 27899 (August 4, 1986), using the procedures described in *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988).[2] Up to 20 percent of those funds, $50,000, will be distributed to injured parties in the DOE's subpart V crude oil refund proceeding. Refunds to eligible claimants in that proceeding will be based on a per-gallon refund amount derived by dividing the sum of all crude oil overcharge monies in escrow by the total U.S. consumption of petroleum products during the period of federal petroleum price controls.[3] The principal volumetric refund amount associated with the San Joaquin crude oil funds is $0.0000001237 per gallon. For further information concerning application procedures in the subpart V crude oil proceeding, see *Bi-Petrol, Inc.*, 20 DOE ¶ 85,071 (1990) (established a filing deadline on March 31, 1991 for refunds from the third pool of crude oil funds), and *Texaco Inc.*, 19 DOE ¶ 85,200, *corrected*, 19 DOE ¶ 85,236 (1989). Any party that has previously submitted a refund Application in the crude oil refund proceedings should not file another Application; that Application will be deemed filed in this and all crude oil proceedings as the procedures are finalized.

Under the terms of the MSRP, 80 percent of the San Joaquin crude oil funds, $200,000, plus interest, as well as any portion of the above-mentioned 20 percent reserve which is not distributed, will be divided equally between the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. *E.g.*, *id.* at 88,375.

B. Eligibility for Refunds From the Refined Product Funds

As indicated in the PDO, firms and individuals that purchased San Joaquin's controlled refined products during the Consent Order period may file claims in this proceeding. From our experience with subpart V refund proceedings, we believe that potential claimants will fall into the following categories: (1) End-users; (2) regulated non-petroleum industry entities such as public utilities or cooperatives; and (3) refiners, resellers and retailers.

The settlement amount of $1,000,000, plus accrued interest, will be available for distribution to purchasers of San Joaquin's controlled refined petroleum products during the period September 1973 through the date when the specific product claimed was decontrolled. San Joaquin has indicated that it did not sell any controlled refined products after September 1, 1976, the date that gas oils were decontrolled.[4] Accordingly, the OHA believes that August 31, 1976 is the last date that a covered refined product would have been purchased from San Joaquin.[5]

As in many prior special refund proceedings, we are adopting certain presumptions that will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider refund applications in the most efficient manner possible. *See* 10 CFR 205.282(e), subpart V; *see also American Pacific International*, 14 DOE ¶ 85,158 (1986) (*API*).

1. Calculation of Refund Amount

First, we are adopting a volumetric method to apportion the San Joaquin escrow account. We will derive the volumetric figure by dividing the $1,000,000 in the San Joaquin refined product pool by the total volume of covered refined products sold by the firm during the period from September 1973 through August 31, 1976. This yields a volumetric refund amount of $.001647 per gallon, exclusive of interest.[6] This method is based upon the presumption that any alleged overcharges were spread equally over all gallons of covered products sold by San Joaquin during the Consent Order period when the refined products that it sold were controlled.[7]

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of covered products that it purchased from San Joaquin during the period from September 1973 until the products claimed were decontrolled, multiplied by the per gallon volumetric amount for this proceeding. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the San Joaquin refined product funds since the data of remittance.

As in previous cases, we will establish a minimum amount of $15 for refund claims. *E.g.*, *Urban Oil Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

2. Showing of Injury

Generally, each claimant will be required to document its purchases of San Joaquin's covered products. In addition, we require an applicant to demonstrate that it was injured by the alleged overcharges. In order to demonstrate that it did not subsequently raise its prices and thereby recover the increased costs associated with San Joaquin's alleged overcharges, a claimant must show that it maintained banks of unrecovered product costs. *Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985); *see also Bayou State Oil Corp.*, 12 DOE ¶ 85,197 (1985). We are willing to accept information establishing with reasonable likelihood that a claimant had banks. In order to demonstrate injury, a claimant must also show that market conditions would not permit it to pass through those increased costs to its customer. *E.g.*, *API*, 14 DOE at 88.295.[8]

3. Presumptions for Claims based upon Purchases of Refined Products

We are adopting a number of injury presumptions that will simplify and

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[2] Shortly after issuing the MSRP, the OHA announced its intention to apply the MSRP in all subpart V proceedings involving alleged crude oil violations and solicited comments concerning the refund procedures. 51 FR 29689 (August 20, 1986). On April 6, 1987, the OHA issued a Notice analyzing the comments and setting forth final procedures regarding Applications for crude oil refunds. 52 FR 11737 (April 10, 1987).

[3] It is estimated that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel Supply Company*, 14 DOE ¶ 85,475 at 88,868 n. 4. (1986).

[4] *See* 41 FR 30096 (July 22, 1976).

[5] The record indicates that San Joaquin sold only gas oils, asphalts, residual fuel oils and middle distillates. Therefore, an applicant will not be eligible to receive a refund based upon asphalt purchased after March 31, 1974 because asphalts were decontrolled on April 1, 1974. 39 FR 12214 (April 3, 1974); 39 FR 13805 (April 17, 1974). Residual fuel oils were decontrolled on June 1, 1976. 41 FR 13896 (April 1, 1976). Middle distillates were decontrolled on July 1, 1976. 41 FR 24516 (June 16, 1976).

[6] To compute this figure, we estimated that San Joaquin sold a total of 606,882,802 gallons of covered products during the period from September 1973 through August 31,1976.

[7] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. We therefore propose that the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g.*, *Standard Oil Co./Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

[8] In a recent Decision, the Temporary Emergency Court of Appeals affirmed the OHA's standards for a demonstration of injury. The court specifically upheld the method used to evaluate comparative market price and thereby determine competitive disadvantage. *Behm Family Corp.* v. *DOE*, No. 8-22 slip op.(T.E.C.A. April 30, 1990).

streamline the refund process. These presumptions will excuse members of certain applicant categories from providing that they were injured by San Joaquin's alleged overcharges. We have listed these presumptions and the showing that each type of applicant must make below.

a. Small Claims Presumption

We are adopting a presumption, as we have in many proceedings, that refiners, resellers and retailers seeking refunds of $5,000 or less were injured by San Joaquin's pricing practices. *E.g., API,* 14 DOE ¶ 85,158 (1986). Under this small claims presumption, a refiner, reseller or retailer seeking a total refund of $5,000 or less will not be required to make a detailed demonstration of injury. Such an applicant need only document its purchase volume of San Joaquin covered products.

b. End-Users

We are adopting the presumption that end-users, i.e., ultimate consumers, whose businesses are unrelated to the petroleum industry, were injured by San Joaquin's alleged overcharges. *Id.* at 88,294; *see also Thornton Oil Corp.,* 12 DOE ¶ 85,112 (1984). Therefore, end-users of San Joaquin's refined products need only document their purchase volumes of San Joaquin's covered products to make a sufficient showing of injury.

c. Regulated Firms and Cooperatives

Claimants whose prices for goods and services are regulated by a government agency (such as a public utility), or by the terms of a cooperative agreement, will be presumed to have absorbed the alleged overcharges. Accordingly, such claimants need only submit documentation of the volume of covered refined products purchased by and used by them, or, in the case of cooperatives, sold to their members, in order to receive a full volumetric refund. However, regulated firms or cooperatives will be required to certify that they will pass any refund on to their customers or member-customers, provide us with a full explanation of how they plan to accomplish the restitution, and certify that they will notify the appropriate regulatory body or membership group of their receipt of the refund. *Marathon Petroleum Co.,* 14 DOE ¶ 85,269 at 88,514 (1986); *see also Office of Special Counsel,* 9 DOE ¶ 82,538 at 85,203 (1982). We will not require a public utility seeking a refund of $5,000 or less to submit the above referenced certifications and explanation. Sales of covered products by cooperatives to non-members will be treated in the same manner as sales by other resellers or retailers.

d. Indirect Purchasers

Firms that made indirect purchases of covered San Joaquin products may also apply for refunds. If an applicant did not purchase directly from San Joaquin, but believes that covered products it purchased from another firm were originally purchased from San Joaquin, it must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect purchasers who either fall within a class of applicants whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of San Joaquin covered products passed through San Joaquin's alleged overcharges to its own customers. *E.g., Dorchester Gas Corp.,* 14 DOE ¶ 85,240 at 88,451 (1986).

e. Spot Purchasers

We are also adopting the rebuttable presumption that a claimant who made only spot purchases from San Joaquin was not injured as a result of those purchases. A claimant is a spot purchaser if it made only sporadic purchases of significant volumes of covered San Joaquin products. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from San Joaquin. *Gulf Oil Corp.,* 16 DOE ¶ 85,381 at 88,741 (1987); *see also Office of Enforcement,* 8 DOE ¶ 82,597 at 85,396–97 (1981).

4. Applicants Seeking Refunds Based on Allocation Claims

We also recognize that, while the Consent Order makes no allegation of known allocation violations, we may receive claims alleging San Joaquin's failure to furnish petroluem products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR part 211. Such claims could be based on the Consent Order's broad language regarding the matters settled. *See* section II above. Any such application will be evaluated with reference to the standards set forth in subpart V implementation decisions such as *Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynolds Industries, Inc.,* 17 DOE ¶ 85,608 (1988), and *Marathon Petroleum Corp./Research Fuels, Inc.,* 19 DOE ¶ 85,575 (1989), action for review pending, CA–3–89–2983–G (N.D. Tex. filed Nov. 22, 1989). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the Consent Order firm and the likelihood that the Consent Order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the DOE's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that San Joaquin may have had to the alleged allocation violation. *E.g., id.* In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than San Joaquin. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the amount of San Joaquin allocation violations in general and regarding the specific allocation violation alleged by the claimants. Finally, since the San Joaquin Consent Order reflects a negotiated compromise of the issues involved in an enforcement proceeding against San Joaquin, as well as potention unknown violations, and the Consent Order amount is therefore less than San Joaquin's potential liability, we will pro rate any allocation refunds that would otherwise be disproportionately large in relation to the Consent Order fund. *Cf. Amtel, Inc./Whitco, Inc.,* 19 DOE ¶ 85,319 (1989).

IV. General Refund Application Requirements for the Refined Products Pool

Pursuant to 10 CFR 205.283, we will not accept Applications for Refund from individuals and firms that purchased controlled refined petroleum products sold by San Joaquin during the period between September 1973 until the specific product claimed was decontrolled. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) The name of the Consent Order firm, Meadows Realty Company (Formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc., the case number (KEF-

0133) and the applicant's name should be prominently displayed on the first page.

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The use(s) of the San Joaquin refined product(s) by the applicant, i.e., refiner, reseller, retailer, end-user, public utility or cooperative.

(4) Monthly schedules of the applicant's purchases of each type of refined petroleum product that it purchased from San Joaquin from September 1973 until the product was decontrolled must be submitted. The applicant should indicate the source of this volume information. Monthly schedules should be based upon actual, contemporaneous business records. If such records are not available, the applicant may submit estimates provided that those estimates are reasonable and the estimation methodology is explained in detail.

(5) If the applicant was an indirect purchaser, it should submit the name, address and telephone number of its immediate supplier and indicate why it believes that the covered product was originally sold by San Joaquin.

(6) If the applicant is a refiner, reseller or retailer whose volumetric share exceeds $5,000, it must indicate whether it elects to receive $5,000 under the small claims presumption of injury. If it does not elect the presumption of injury, it must submit a detailed showing that it was injured by the alleged overcharges. *See* section II.B.2.

(7) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other Application for Refund in the San Joaquin proceeding, and if so, an explanation of the circumstances surrounding that filing or authorization.

(8) A statement whether the applicant was in any way affiliated with San Joaquin. If so, the applicant should explain the nature of the affiliation.

(9) A statement whether there has been any change in ownership of the entity that purchased the San Joaquin covered products at any time during or after the Consent Order period. If so, the name and address of the current (or former) owner should be provided.

(10) A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the Application for Refund. *See* 10 CFR 205.9(d).

(11) The following signed statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001.

All Applications for Refund must be filed in duplicate and must be filed no later than May 31, 1991. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, room 1E–234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of the Application and must submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is privileged or confidential. All Applications should be sent to: Meadows Realty Company (Formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc. Refund Proceeding, Case No. KEF–0133, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

V. Distribution of Funds Remaining after Consideration of All Refined Product Refund Applications

In the event that money remains after all meritorious refund applications have been processed, the funds in the San Joaquin refined products escrow account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). 15 U.S.C.A. 4501–4507 (West Supp. 1990).

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by Meadows Realty Company (Formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc. pursuant to the Consent Order finalized on June 17, 1988, may now be filed.

(2) Applications for refund from the Meadows Realty Company (Formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc. refined product pool must be postmarked no later than May 31, 1991.

(3) Applications for refund from the Meadows Realty Company (Formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc., crude oil pool must be postmarked no later than March 31, 1991 and filed pursuant to the procedures established in *Bi-Petro, Inc.*, 20 DOE ¶ 85,071 (1990).

(4) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $250,000, plus accured interest, from the Meadows Realty Company (Formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc. subaccount, Account Number 910S0001Z, pursuant to Paragraphs (5), (6), and (7) of this Decision.

(5) The Director of Special Accounts and Payroll shall transfer $100,000, plus accrued interest, of the funds obtained pursuant to paragraph (4) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(6) The Director of Special Accounts and Payroll shall transfer $100,000, plus accrued interest, of the funds obtained pursuant to paragraph (4) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(7) The Director of Special Accounts and Payroll shall transfer $50,000, plus accrued interest, of the funds obtained pursuant to paragraph (4) above, into the subaccount denominated "Crude Tracking-Claimants 3," Number 999DOE009Z.

George B. Breznay,

Director, Office of Hearings and Appeals.

Dated: July 27, 1990.

[FR Doc. 90–18175 Filed 8–2–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3816–7]

Confidentiality Agreement, Intent To Transfer Confidential Information To Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to make interprogram transfer of claimed confidential information.

SUMMARY: EPA intends to use information claimed to be proprietary collected under section 308 of the Clean Water Act to assist regulatory decision making under the Clean Air Act and the Resource Conservation and Recovery Act. Confidential information on the following subjects will be transferred to a contractor: Organic Chemicals, Plastics, and Synthetic Fibers Manufacturing; Pesticide Manufacturing; Pharmaceutical Manufacturing; Pulp and Paper Mills; Petroleum Refining; Waste Treatment Industry; Electroplating and Metal Finishing; Machinery Manufacturing and Rebuilding.

DATES: Comments on the notice of transfer are due August 13, 1990.

ADDRESSES: Send comments to K.C. Hustvedt (Industrial Wastewater Project: Publicly Owned Treatment Works Project; and Hazardous Waste Treatment, Storage, and Disposal

Facilities Project), or Robert E. Rosensteel (Electroplating and Metal Finishing and Machinery Manufacturing and Rebuilding), Chemicals and Petroleum Branch, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards (OAQPS), Research Triangle Park, North Carolina 27711 (919) 541–5671.

FOR FURTHER INFORMATION CONTACT: K.C. Hustvedt (Industrial Wastewater Project; Publicly Owned Treatment Works Project; and Hazardous Waste Treatment, Storage, and Disposal Facilities Project) or Robert E. Rosensteel (Electroplating and Metal Finishing and Machinery Manufacturing and Rebuilding), Chemicals and Petroleum Branch, Emission Standards Division (MD–13), OAQPS, Research Triangle Park, North Carolina 27711 (919) 541–5671.

SUPPLEMENTARY INFORMATION: Under the Clean Air Act (CAA) of 1977, EPA is required to identify hazardous air pollutants and establish national emission standards for these pollutants. The OAQPS is responsible for development of regulations for point source categories. The point source categories pertinent to this notice are publicly owned treatment works (POTW) and industrial wastewater treatment facilities (IWTF). EPA is currently assessing the need for regulation of hazardous air pollutants and volatile organic compounds (VOC) emitted from these source categories. To estimate loadings and emissions, EPA plans to use data collected under section 308 of the Clean Water Act (CWA). The strategy for estimating emissions of individual POTW or IWTF using available data on individual industrial discharges and (2) estimate air emissions from the treatment processes using volatilization models developed by the Emission Standards Division. EPA has awarded a contract to Radian Corporation in Research Triangle Park, North Carolina, to provide technical support to the OAQPS in the development of air emission standards for point sources.

Under sections 3004 and 3007 of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of November 1984, EPA is required to investigate the magnitude of the area (non-combustion) source air emissions from hazardous waste treatment, storage, and disposal facilities (TSDF) and to develop standards for monitoring and control as needed. Pollutants to be considered by any such standards would include VOC, particulate matter (PM), specific toxic substances, or a combination of these. EPA plans to use data collected under section 308 of the CWA to estimate emissions of total VOC and individual compounds from the wastewater treatment at TSDF. This information will also be used to assess technologies for controlling VOC, control costs, and to assess the environmental impacts. EPA has awarded a contract to Research Triangle Institute in Research Triangle Park, North Carolina, to provide technical support to the OAQPS in the development of air emission standards for TSDF.

The industrial point source categories; descriptions of industries for which data are being transferred or standard industrial classification (SIC) codes, if applicable; and current location of files are listed below:

1. Organic Chemicals, Plastics, and Synthetic Fibers Manufacturing Point Source Categories

a. SIC codes and descriptions:

SIC 2821..... Plastic materials, synthetic resins, and non-vulcanizable elastomers.
SIC 2823..... Cellulosic man-made fibers.
SIC 2824..... Synthetic organic fibers, except cellulosic.
SIC 2865..... Cyclic (coal tar) crudes and cyclic intermediates, dyes, and organic pigments.
SIC 2869..... Industrial organic chemicals, not elsewhere classified (NEC).

b. Location of files: The confidential files are currently located at the McLean, Virginia office of Science Applications International Corporation under Contract No. 68–03–3509.

2. Pesticide Chemicals Manufacturing Point Source Category

a. SIC codes and descriptions:

SIC 2879..... Pesticide and agricultural chemicals, NEC.

b. Location of files: The confidential files are currently located at the Herndon, Virginia office of Radian Corporation under Contract No. 68–C8–0008.

3. Pharmaceutical Manufacturing Point Source Category

a. SIC codes and descriptions:

SIC 2833..... Medicinal chemicals and botanical products.
SIC 2834..... Pharmaceutical preparations.
SIC 2836..... Biological products, except diagnostic substances.

b. Location of files: The confidential files are currently located at the Portland, Maine office of ABB Environmental Services, Incorporated under Contract No. 68–03–3412.

4. Pulp and Paper Mills Point Source Categories

a. SIC codes and descriptions:

SIC 2611..... Pulp mills.
SIC 2621..... Paper mills, except building paper mills.
SIC 2631..... Paperboard mills.

b. Location of files: The confidential files are currently located at the Portland, Maine office of ABB Environmental Services, Incorporated under Contract No. 68–03–3412.

5. Petroleum Refining Point Source Categories

a. SIC codes and descriptions:

SIC 2911..... Petroleum refining.
SIC 2951..... Asphalt paving mixtures and blocks.
SIC 2952..... Asphalt felts and coatings.
SIC 2992..... Lubricating oils and greases.
SIC 2999..... Petroleum and coal products, NEC.

b. Location of files: The confidential files are currently located at the Reston, Virginia office of ERC Environmental and Energy Services, Company under Contract No. 68–03–3410.

6. Electroplating and Metal Finishing Point Source Categories

a. As set forth in 40 CFR part 413 and 40 CFR part 433, plants which perform any of the following six metal finishing operations on any basis material:

Electroplating
Electroless Plating
Anodizing
Coating
Chemical Etching and Milling
Printed Circuit Board Manufacture

b. Location of files: The confidential files are currently located at Radian Corporation's Herndon, Virginia office under Contract No. 68–CO–0005.

7. Machinery Manufacturing and Rebuilding Point Source Categories

a. As described in 55 FR 94, Tuesday, January 2, 1990, "this category covers facilities that perform wastewater-generating processes on metal machinery and equipment, including manufacture and assembly, rebuilding, repair, and maintenance."

b. Location of files: The confidential files are currently located at Radian

Corporation's Herndon, Virginia office under Contract No. 68–CO–0005.

8. Waste Treatment Point Source Category

a. As described in 55 FR 94, Tuesday, January 2, 1990, "this category consists of three groups of facilities: (a) Facilities that treat aqueous hazardous waste; (b) Hazardous waste incinerators with wet scrubbers; and (c) Municipal and hazardous waste landfills with leachate collection."

b. Location of files: The confidential files are currently located at the McLean, Virginia office of Science Applications International Corporation under Contract No. 68–03–3509.

EPA has determined that use of data collected under the CWA would assist in making regulatory decisions and developing regulations under the CAA and RCRA, would avoid duplication of data gathering efforts, and thereby also reduce regulatory burdens on affected industries. For these reasons, EPA proposes to transfer data from its files or grant access to Radian Corporation's Research Triangle Park, North Carolina office in order that they may carry out technical support work that is currently required under Contract No. 68–03–4378. The EPA also proposes to transfer data or grant access to Research Triangle Institute in order that they may carry out technical support work currently required under Contract No. 68–01–6826.

This information is claimed to be proprietary information and, therefore, confidential. All regulations and confidentiality agreements apply. This transfer would not affect the status of this information as information claimed to be proprietary. The relevant contracts contain all confidentiality provisions required by EPA's confidentiality regulations (40 CFR 2.302(h)(2–3)). Persons under contract to EPA to perform work for EPA may be designated authorized representatives if such designation is necessary in order for the contractor to carry out the work required by the contract. The following conditions apply when information claimed to be confidential is provided to a designated contractor:

(1) The authorized contractor representative and its employees (a) May use such confidential information only for the purposes of carrying out the work required, (b) must refrain from disclosing the information to anyone other than EPA without having received from EPA prior written approval of each affected business or of an EPA legal office, and (c) must return to EPA all copies of the information (and any abstracts or excerpts therefrom) upon request or whenever the information is no longer required for the performance of the work.

(2) The authorized contractor representative must obtain a written agreement form each of its employees who will have access to the information to honor the above-noted limitations. A copy of each such agreement must be furnished to EPA before access is permitted.

(3) The authorized contractor representative must agree that the conditions in the contract concerning the use and disclosure of confidential business information are included for the benefit of, and shall be enforceable by both EPA and any affected business having a proprietary interest in the information.

In accordance with those regulations, sample facilities and questionnaire respondents who have submitted information claimed to be confidential have ten days from the date of this notice to comment on EPA's proposed transfer of this information to Radian Corporation, Research Triangle Park, North Carolina, for the purpose outlined above (40 CFR 2.302(h)(2–3)). The EPA welcomes comment on this proposed interprogram transfer to these designated EPA contractors.

Dated: July 24, 1990.

Robert H. Wayland, III,

Acting Assistant Administrator for Water

[FR Doc. 90–18171 Filed 8–2–90; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3816–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 16, 1990 through July 20, 1990 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 the **Federal Register** dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D–AFS–L65134–ID Rating EC2, Mallard Creek Timber Sale and Road Construction, Implementation, Nez Perce National Forest, Red River Ranger District, Idaho County, ID.

Summary: EPA expressed environmental concerns based on potential adverse effects on water quality, fish habitat, and air quality. Additional information was requested on the relationship between fish/water quality objectives and compliance with state water quality standards, mitigation effectivenesss, the development of monitoring plans, and the effects of prescribed burning on air quality.

ERP No. D–AFS–L65136–ID Rating EC2, Cove Area Timber Sales and Road Construction, Implementation, Nez Perce National Forest, Idaho County, ID.

Summary: EPA expressed environmental concerns based on potential adverse effects to water quality, air quality, and fish habitat. Additional infomation was requested on the relationship between fish/water quality objectives and compliance with state water quality standards, mitigation effectiveness, the development of monitoring plans, and the effects of prescribed burning on air quality.

ERP No. D–COE–E32073–FL Rating EC2, Canaveral Harbor Navigation Improvements, Implementation, Brevard County, FL.

Summary: EPA has a degree of environmental concern regarding the suitability of putting fine-grained sediments from the harbor into the Canaveral ODMDS until the testing procedures for this material are reaccomplished.

ERP No. D–FHW–E40730–FL Rating EC2, US 1/FL–5 Upgrading, Abaco Road on Key Largo to Card Sound Road, Funding, Dade and Monroe Counties, FL.

Summary: EPA concludes that the project will have significant impacts to coastal wetland resources and recommended that additional measures/alternatives to reduce impacts and to offset unavoidable losses be examined.

ERP No. D–FRC–F05118–OH Rating EC2, Summit Pumped Storage Hydroelectric Project, Construction, Operation and Maintenance, License, Summit County, OH.

Summary: Based on EPA's review, this draft EIS was rated EC–2. EPA would like to be included in the review process for the wetlands, South Run stream, and upland habitat mitigation plans.

ERP No. DS–UMT–C54005–NY Rating EC2, Queens Subway Improvement, Options Study, Connection of Queens Boulevard Subway Line with the 63rd Street Tunnel, New Alternatives, Queens, NY.

Summary: EPA expressed environmental concerns about the potential adverse impacts to water resources, and requested that the final

EIS provide additional information to address this issue.

Final EISs

ERP No. F-COE-E50286-NC, Core Creek Bridge Replacement, Atlantic Intercoastal Waterway Bridge, Implementation, Carteret County, NC.

Summary: EPA finds that its original comments have been satisfactorily addressed.

ERP No. F-FHW-G40124-OK, East 71st Street South Reconstruction, South Lewis Avenue to South Memorial Drive, Funding, City and County of Tulsa, OK.

Summary: EPA has not identified any new issues of concern with regard to the proposed action.

ERP No. F-FRC-C03011-00, Iroquois and Tennessee Gas Transmission Pipelines Project, Construction and Operation, MA, CT, NH, NY, RI and TN.

Summary: EPA believes the Iroquois project could cause temporary adverse environmental impacts. The mitigation measures presented in the document minimize anticipated environmental impacts and, with one exception, make the proposed Iroquois project environmentally acceptable. EPA still has significant outstanding concerns regarding the wetland impacts associated with the Tennessee project and at this time is unable to determine whether the Tennessee project is environmentally acceptable. EPA requests that the two projects be separated in their respective Certificate/Permit processes, so that they may proceed independently. EPA also requests additional information to address outstanding issues prior to issuance of any Certificates or Permits.

ERP No. FS-NPS-K61017-CA, Lassen Volcanic National Park General Management Plan, Traditional Visitor Use, Manzanita Lake Area, Implementation, Butte, Plumas, Lassen, Tehama and Shasta Counties, CA.

Summary: Review of the final supplement EIS was not deemed necessary. No formal letter was sent to the agency.

Dated: July 31, 1990.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 90-18183 Filed 8-2-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3816-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073. Availability of Environmental Impact Statements Filed July 23, 1990 through July 27, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900272, DRAFT EIS, GSA, NY, Foley Square Federal Courthouse and Federal/Municipal Office Building Development, Construction, New York County, NY, Due: September 17, 1990, Contact: Peter Sneed (212) 264-3581.

EIS No. 900273, DRAFT EIS, FHW, CA, CA-198 Freeway Improvements, Plaza Road to Mooney Boulevard, Funding, City of Visalia, Tulare County, CA, Due: September 18, 1990, Contact: John R. Schultz (916) 551-1140.

EIS No. 900274, FINAL EIS, AFS, CA, OR, Rogue River National Forest, Land and Resource Management Plan, Implementation, Jackson, Klamath, Josephine and Douglas Counties, CA and Siskiyou County, OR, Due: September 4, 1990, Contact: Larry Wheeler (503) 776-3600.

EIS No. 900275, DRAFT EIS, FHW, NC, North Charlotte Outer Loop Construction NC-27/Mount Holly Road to I-85 near U.S. 29 Connection, Funding, Section 404 Permit, Mecklenburg County, NC, Due: September 17, 1990, Contact: Nicholas L. Graf (919) 790-2859.

EIS No. 900276, DRAFT EIS, FHW, NC, West Charlotte Outer Loop Construction, I-77 South near Westinghouse Boulevard to NC 27, Funding, Section 404 Permit, Mecklenburg County, NC, Due: September 17, 1990, Contact: Nicholas L. Graf (919) 790-2859.

EIS No. 900277, DRAFT EIS, AFS, WA, Lower White Salmon River Wild and Scenic River Management Plan, Columbia River Gorge National Scenic Area Wild and Scenic Rivers System, Implementation, Klickitat County, WA, Due: September 17, 1990, Contact: Steve Mellor (503) 386-2333.

EIS No. 900278, DRAFT EIS, AFS, WA, Lower Klickitat River Wild and Scenic River Management Plan, National Wild and Scenic Rivers System, Implementation, Columbia River Gorge National Scenic Area, Klickitat County, WA, Due: September 17, 1990, Contact: Steve Mellor (503) 386-2333.

EIS No. 900279, FINAL EIS, AFS, UT, Skyline Mine Main Line No. 41 Gas Transmission Pipeline Relocation, Manti-La-Sal National Forest, Special Use Permit and COE Section 404 Permit, Emery, Sanpete and Carbon Counties, UT, Due: September 4, 1990, Contact: Walt Nowak (801) 837-2817.

EIS No. 900280, DRAFT EIS, NOA, CA, Monterey Bay National Marine Sanctuary, Establishment, Designation and Management Plan, San Mateo, Santa Cruz and Monterey Counties, CA, Due: October 2, 1990, Contact: Frank Christhilf (202) 673-5126.

EIS No. 900281, DRAFT EIS, EPA, Synthetic Organic Chemical Manufacturing Industry, Reactor Processors VOC Emissions Standards, Due: September 17, 1990, Contact: Doug Bell (919) 541-5568.

Dated: July 31, 1990.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 90-18182 Filed 8-2-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-505; FRL-3816-5]

Carpet Emissions Reduction; Policy Dialogue

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA is initiating a policy dialogue as part of its efforts to gather data which will assist EPA in determining what future activity is necessary to assess total volatile organic chemical emissions from carpet and reduce the public's exposure to total compounds which may off-gas from carpeting.

DATES: The first meeting has been scheduled for August 21, 1990. The meeting will start at 8:30 a.m. and end at approximately 5 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Crown Plaza, National Airport, 300 Army Navy Drive, Arlington, VA 22202, Tel. (703) 892-4100.

FOR FURTHER INFORMATION CONTACT: Oscar Hernandez, Existing Chemical Assessment Division (TS-778), Office of Toxic Substances, Environmental Protection Agency, room E 409, 401 M Street, SW., Washington, DC 20460, Telephone: (202) 382-3560.

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 1990, the National Federation of Federal Employees (NFFE), Local 2050, petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620 to initiate rulemaking proceedings, under sections 4, 6, and 8 of TSCA, 15 U.S.C. 2603, 2605, and 2607, to reduce emissions from new carpets. EPA has decided (55 FR 17404) not to initiate the specific rulemaking proceedings requested by NFFE because the Agency disagreed with the specific assertions regarding the health risk posed by carpeting and with the remedies sought.

The Agency believes, however, that an absence of scientific certainty does

not necessarily mean an absence of risk and that efforts to better characterize carpet emissions, and potential health effects which may be associated with carpeting, should be continued and expanded. In addition, the Agency recognizes that new carpeting may be a significant source of human exposure to low levels of volatile organic compounds (VOCs). As a matter of policy, the Agency believes it is prudent to minimize indoor human exposure to these chemicals where reasonable and that efforts on the part of manufacturers to reduce product emissions should be strongly encouraged.

In light of these findings, the Agency is taking three major initiatives. First, the Agency is formally requesting that the carpeting industry undertake a voluntary program to conduct periodic total VOC analyses on a company-by-company and product-by-product basis to provide the interested public with comparative information on total VOC emissions. Second, the Agency is inviting parties representing concerned interest groups to participate in a 1-year dialogue process designed to work out the details of the voluntary testing program mentioned above, and to explore and, where possible, reach agreement on a variety of issues including: The sampling and analytical methods for the voluntary testing, any additional information needed, and cost-effective process changes to reduce emissions. Third, the Agency will continue its ongoing exposure reduction and research activities on indoor air quality issues generally and on the potential health effects of exposure to low level VOC mixtures, in particular.

A separate, but concurrent effort, will be initiated to assess the feasibility of prospective epidemiology studies to determine the response characteristics of individuals exposed to carpet emissions.

II. Participants

The Agency has contracted with a private consulting firm to identify key individuals and groups who are prospective participants in the dialogue. For further information, contact the Existing Chemical Assessment Division as noted above.

Dated: July 30, 1990.

Joseph A. Carra,

Acting Director, Office of Toxic Substances.

[FR Doc. 90-18172 Filed 8-2-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Fact Finding Investigation No. 18]

Rebates and Other Malpractices in the Trans-Pacific Trades; Notice to Shippers and Other Cargo Interests

July 31, 1990.

The Investigative Officers in Fact Finding Investigation No. 18 notify shippers and other cargo interests in the Trans-Pacific Trades of the opportunity for mitigation of civil penalties for violations of section 10(a)(1) of the Shipping Act of 1984.

On July 9, 1990, the Federal Maritime Commission announced that a settlement agreement was reached with certain ocean common carriers operating in the Trans-Pacific Trades. The settlement agreement required those carriers to furnish full disclosures of alleged wrongful or questionable rate practices involving cargo interests, including rebates, misdescriptions and misdeclarations, inland absorptions, and other contemporary practices which serve to defeat tariffs or service contracts. Other details of the settlement are being withheld until August 28, 1990 due to ongoing enforcement activities in connection with the settlement agreement.

Shippers and other cargo interests involved in rate malpractices should recognize that these disclosures have made numerous shippers and cargo interests vulnerable to substantial sanctions. Violations of the Shipping Act can result in civil penalties of $25,000 per shipment.

Shippers and other cargo interests desiring to minimize their liability should immediately contact the Commission's Bureau of Investigations. Any shipper or cargo interest which is engaged in good faith settlement discussions prior to August 28, 1990 will be eligible for mitigation of penalties. Shippers and cargo interests must be prepared to provide full disclosures of past unlawful activities with carriers. Malpractice activities which occur after July 10, 1990 are not eligible for mitigation.

Shippers and other cargo interests requiring further information or seeking to open negotiations under this announcement should contact the Bureau of Investigations, Headquarters Office, at (202) 523-5860.

Peter J. King,

Investigative Officer.

Charles L. Haslup III,

Investigative Officer.

[FR Doc. 90-18155 Filed 8-2-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 30, 1990.

Background

Notice is hereby given of final approval of proposed information collections(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Final Approval Under OMB Delegated Authority of the Extension, Without Revision, of the Following Report

Report title: Agreement of Domestic and Foreign Nonmember Banks
Agency form number: FR T-1, T-2
OMB Docket number: 7100-0191
Frequency: On occasion
Reporters: Domestic and foreign nonmember banks
Annual reporting hours: 4
Estimated average hours per response: 0.5
Estimated number of respondents: 8
Small businesses are not affected.

General description of report:

This information collection is mandatory [15 U.S.C. §§ 78h,w] and is not given confidential treatment.

On a one-time basis, domestic and foreign nonmember banks that wish to extend credit to broker-dealers using exchange-traded securities as collateral must file this report, thereby agreeing to comply with all statutes and regulations applicable to member banks concerning such extensions of credit.

Final Approval Under OMB Delegated Authority of the Extension, With Revision, of the Following Reports

1. Report title: Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer
Agency form number: FR MSD-4
OMB Docket number: 7100-0100
Frequency: On occasion.

Reporters: State member banks who engage in activities as municipal securities dealers, and persons who are or seek to be associated with such dealers as municipal securities principals or representatives
Annual reporting hours: 369
Estimated average hours per response: 1
Number of respondents: 369
Small businesses are not affected.

General description of report:

This information collection is mandatory [15 U.S.C. 78c(a)(34)(A), 78o–4, 78o–4(b)(2)(A), 78o–4(c)(5), 78q and 78w] and is given confidential treatment [5 U.S.C. 552(b)(6)].

The filing of this application is required of a Municipal Securities Dealer Bank (MSD) and a person associated with a MSD, prior to such person functioning in a professional capacity. This application serves to verify compliance with the rules of the Municipal Securities Rulemaking Board and with related securities and banking laws. It is also used as a source document for entry into an interagency computer system of records. The proposed revisions involve the addition of certain phrases to the form and of a sentence to the instructions.

2. Report title: Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer
Agency form number: FR MSD–5
OMB Docket number: 7100–0101
Frequency: On occasion.
Reporters: State member banks who engage in activities as a municipal securities dealer
Annual reporting hours: 94
Estimated average hours per response: 0.25
Number of respondents: 377
Small businesses are not affected.

General descripion of report:

This information collection is mandatory [15 U.S.C. 78c(a)(34)(A), 78o–4, 78o–4(b)(2)(A), 78o–4(c)(5), 78q and 78w] and is given confidential treatment [5 U.S.C. 552(b)(6)].

This notice must be filed within 30 days after a person associated in a professional capacity with a bank municipal securities dealer terminates employment. The notice is a compliance vehicle for rules of the Municipal Securities Rulemaking Board and for related securities and banking laws. It is also a source document for updating information on an interagency computer system of records. The proposed revisions involve the addition of certain phrases to the form and of a sentence and a Privacy Act notice to the instructions.

Board of Governors of the Federal Reserve System, July 30, 1990.
William W. Wiles,
Secretary of the Board.
[FR Doc. 90–18141 Filed 8–2–90; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Human Development Services Regional Offices; Statement of Organization, Functions, and Delegations of Authority

This notice amends part D, Office of Human Development Services (OHDS), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services as follows: Chapter DD, The Regional Offices of the Office of Human Development Services as last amended at 49 FR 17586, April 24, 1984; and chapter DF, Administration on Developmental Disabilities as last amended at 50 FR 30016, July 23, 1985. This organizational change will abolish the Regional Office for Children, Youth, and Families and the Regional Office for the Administration on Developmental Disabilities in the regions where they currently are located and replace them with the Office of State Programs and Office of Community Programs; and expand the Programs within the Administration on Developmental Disabilities to all ten Regions. These changes will allow OHDS to have program organization standards in all ten Regions.

1. Delete chapter DD in its entirety and replace with the following:

DD.00 MISSION. THE REGIONAL OFFICES OF THE OFFICE OF HUMAN DEVELOPMENT SERVICES constitute an intermediate operational level, between the Central Office and State and local governments and other organizations, in the administration of programs for children, youth, and families, persons who are developmentally disabled, Native Americans, and Older Americans. OHDS Regional Offices award grants directly or recommend approval/disapproval to the appropriate Central Office organization; assist State and local governments and other organizations in the administration of OHDS programs; and monitor such administration to assure adherence to program and fiscal objectives and conformance with applicable laws, regulations, policies and procedures.

The Regional Offices coordinate OHDS program activities with other components of HHS and with other Federal programs so maximum benefit can be derived from the programs for the recipients of services. Make recommendations to OHDS Central Office on program priorities, fiscal matters, and policy or procedural changes based on operating experience gained from the oversight and monitoring activities and assessment of the actual delivery of services. Provide consultation and technical information on OHDS matters to State and local units of government, State and local agencies, Native American Tribes and urban Indian agencies, provider agencies, educational institutions, and public interest groups in the Region. Provide assistance to States and grantees to improve effectiveness and efficiency of program operations, meet program goals, and comply with requirements. Promote comprehensive social and human services planning and services delivery in the Region. Represent the Assistant Secretary for Human Development Services (ASHDS), as appropriate and as assigned, on activities related to the OHDS mission.

DD.10 ORGANIZATION. THE REGIONAL OFFICES OF THE OFFICE OF HUMAN DEVELOPMENT SERVICES consist of ten Regional Offices, each headed by a Regional Administrator (RA), who reports to the Assistant Secretary for Human Development Services, through the Director, Office of Regional Operations (ORO). Each Regional Office is organized as follows:

Office of the Regional Administrator
Office of Fiscal Operations
Office of Community Programs
Office of State Programs
Office for Native Americans (Region X only)
Regional Office on Aging

DD.20. FUNCTIONS. A. OFFICE OF THE REGIONAL ADMINISTRATOR, as the representative of the Assistant Secretary for OHDS in the Region, provides executive leadership to the OHDS Regional Office by interpreting and implementing OHDS policy. Exercises delegated authorities and responsibilities to oversee the regional administration of the Social Security Act's title XX Social Services Block Grant (42 U.S.C. 1397 *et seq.*); the Head Start Program, (42 U.S.C. 9801 *et seq.*); the Runaway and Homeless Youth Program (42 U.S.C. 5701 *et seq.*); the Social Security Act's title IV–B Child Welfare Services Program (42 U.S.C. 620 *et seq.*); the Social Security Act's title IV–E Foster Care and Adoption Assistance Program (42 U.S.C. 670 *et seq.*); the Adoption Opportunities

Program (42 U.S.C. 5111 *et seq.*); the Child Abuse Prevention and Treatment Program (42 U.S.C. 5101 *et seq.*); the Developmental Disabilities Program (42 U.S.C. 6000 *et seq.*); section 1110 of the Social Security Act's Social Services Research and Demonstration Program (42 U.S.C. 1310); grants under the Appalachian Regional Development Act (40 U.S.C. Appx.) for Child Development activities in Regions II, III, IV, and V; and in Region X only, the Native American Program (42 U.S.C. 2991 *et seq.*).

Provides general staff support and assistance to the President's Committee on Mental Retardation (PCMR). Works with State and local governments and private sector organizations in achieving PCMR's goals and objectives on mental retardation.

Provides only administrative and other support services to the Regional Office on Aging (OA). Coordinates regional operations with OA activities.

Serves as the focal point for interaction with the other HHS regional components, OHDS Central Office, and State agencies. Represents the ASHDS in establishing working relationships and coordinating with other Federal agencies, State and local governments, and public and private interest groups on OHDS and Departmental initiatives. Coordinates special projects with the Regional Director and appropriate organizations. Negotiates interagency agreements in support of OHDS program goals and objectives within delegated authorities.

Interacts with private organizations, the volunteer community and other public entities to mobilize private sector and volunteer resources and stimulate interest in joint initiatives and projects between the public/private sectors and volunteer groups.

Provides leadership to OHDS units in the development and implementation of long-range plans and the annual Regional Office operational plan. Develops and implements cross-cutting initiatives, assesses their effectiveness, and reports on implementation. Conducts management reviews of internal operations and service delivery.

Develops a strategy for compliance and management reviews and assessments of financial management systems, and practices and program operations in States and grantee organizations to deterimine conformance with applicable regulations, guidelines and performance standards and to ensure efficiency and effectiveness in program administration and operations. As requested, provides assistance to States and grantees in program administration, management systems, training needs and policy implementation. Identifies exemplary management techniques and provides leadership in the transfer of technology.

Provides program supervision, applies policy, and ensures conformance with requirements governing the regional administration of the block grants, formula grants, and discretionary grants. Promotes linkages with other HHS and OHDS programs in support of the Social Services Block Grant Program. Reviews the State Social Services Block Grant pre-expenditure reports for compliance with all statutory requirements for funding; reviews and approves the State plans for child welfare services, foster care and adoption assistance programs; and State plans for developmental disabilities for compliance with Federal requirements.

Reviews and/or approves the formula grants process for child welfare services and developmental disabilities program, including reviewing project objectives and budget projections; recommending funding levels; issuing discretionary grant awards for the Administration on Developmental Disabilities; providing technical assistance; and conducting post award administration activities.

Manages discretionary grants process for the Head Start, Runaway and Homeless Youth, and Developmental Disabilities programs, including reviewing project objectives and budget projections; recommending funding levels; issuing financial assistance awards; providing technical assistance; and conducting post award administration activities. The Regional Administrator exercises authority to implement grantee adverse actions.

In Region X, manages the discretionary grant process for the Administration for Native Americans grants to Alaska Native Organizations and provides post award administration activities for Native American grants in Regions IX and X, including exercising authority to implement grantee adverse actions.

Manages the discretionary grants process for child welfare training grants including directing the review panel, reviewing project objectives and budget, issuing financial assistance awards, providing technical assistance, and conducting post award administration activities. Monitors selected research, demonstration, evaluation and training project grants.

Determines the allowability of expenditure claims submitted by States and grantees; approves or disapproves claims for reimbursement within delegated authorities. Approves the disposition and resolution of audit exceptions; and makes financial adjustments or disallows funds. Provides written recommendations to Headquarters on State formula grant financial reports and resolves assigned audit reports.

Provides general management oversight and centralized administrative support, information systems, grants management, procurement, and records management services to OHDS regional program and support components. Develops justification for negotiation of the regional budget, and excercises financial control and oversight of allowances for program and administration accounts. Maintains personnel ceiling and position management controls, and serves as the focal point for general personnel management. Promotes employee development, assesses training needs, and develops and implements training plans. Directs the planning for and implementation of regional Equal Employment Opportunity Programs which include Affirmative Action, Federal Women's Program, EEO Discrimination Complaints Processing/Resolution, Special Emphasis Programs and Civil Rights.

Manages the function of the systems administrator for the Regional Office management information system supporting OHDS and participating HHS operating and staff divisions. Develops information systems applications for use by regional program units, States and grantee organizations. Assesses need for enhanced word processing/data processing applications, and monitors implementation of applications.

B. OFFICE OF FISCAL OPERATIONS is headed by a Director who reports to the Regional Administrator. Provides financial management services for all OHDS discretionary, formula, and block grant programs under the direct supervision of the Regional Administrator. Participates in joint planning, development, and implementation of cross-cutting program and fiscal initiatives, and assesses financial management systems and practices.

In coordination with regional program components, reviews estimates and budget projections for all OHDS grant programs administered in the Regional Office, and recommends funding levels. Maintains liaison with components of the Regional Administrative Support Center (RASC), cognizant agency audit staff, and other appropriate public and private groups and professional associations. Reviews grantee cost allocation plans and indirect cost proposals in coordination with the Department's Division of Cost

Alloc. tion to ensure conformance with accepted policies and guidelines. Interacts with the Department's Division of Finance on disbursement of funds to grantees. Coordinates with regional operating components to develop strategies for joint monitoring of grantee compliance with financial management requirements. Recommends resolution of audit exceptions.

Serves as the regional focal point for managing and coordinating major Headquarters national financial review initiatives for OHDS programs such as Title IV–E Foster Care and Adoption Assistance and Head Start. Conducts financial reviews of grantee organizations in coordination with regional program components. Makes recommendations to the RA, program offices, and other appropriate OHDS officials 1) to approve or disallow claims for Federal financial participation by grantees under all OHDS formula grant programs, and 2) approve or disallow costs under OHDS discretionary grant programs. Makes recommendations to the Regional Administrator on deferrals for the Title IV–E program. Prepares supporting materials for the Departmental position on disallowances under consideration by the Departmental Appeals Board.

Plans, directs, monitors, and provides assistance on financial management activities for all OHDS regional grants. Provides guidance to grantees, State and local agencies, and others on interpreting financial management regulations, policies and guidelines; budgeting; determining allowable expenditures; planning and implementing reviews and costing methodologies; conducting studies; and providing assistance to State and local agencies on management reporting. Conducts studies and provides guidance on reporting systems, procurement practices and contracting procedures, business and economic development activities and the adoption of improved management and administrative methods and practices. Assures that financial management systems and activities comply with the HHS Grants Administration Manual, laws, regulations, policies, and procedures.

C. OFFICE OF STATE PROGRAMS is headed by a Director who reports to the Regional Administrator. The Office of State Programs (OSP) maintains oversight of the Child Abuse Prevention and Treatment program; the Child Welfare Services and Foster Care and Adoption Assistance programs; the Child Welfare Services Training Program; and the Developmental Disabilities program. Serves as the focal point with State and local governments and other organizations for the consideration of progam issues and policies affecting service needs and rights of children, youth, and persons who are developmentally disabled.

Provides direction and guidance on the implemenation of the child welfare and developmental disabilities programs; advises the Regional Administrator of policy concerns and operational issues affecting program implementation efforts. Provides leadership, policy interpretation, legislative liaison, and program administration support in the areas of delegated responsibility.

Works with State and local program administrators and public officials to promote programs and services provided under the applicable statutes. Reviews, for compliance with Federal requirements, and recommends approval of State plans, amendments and annual reports. Participates with States in the joint development and redefinement of the child welfare services plans. Ensures States' compliance with the certified protections afforded foster care and adoption assistance cases in the approved State plan. Assists States and local governments in the development and implementation of exemplary management and operational practices; and makes recommendations for improvements and enhancements in State programs.

Exercises delegated authority to make recommendations or decisions on approval or disapproval of grant applications and requests for supplemental funding. Reviews estimates, budget projections, and reports of expenditures for the formula grant programs. Assists in monitoring and evaluating grants and special projects of national significance, and disseminating results.

Insures adherence by recipients of funds to program objectives, applicable policy, regulations and procedures. Interprets statutes and regulations consistent with policy guidance. Assists agencies and grantees in the resolution of specific operational issues.

Coordinates child welfare and developmental disabilities program activities with other Federal programs at the Regional and State levels to enhance service delivery for children and their families and persons who are developmentally disabled. Develops and promotes linkages between the child welfare and developmental disabilities communities and other Federal/State program services through leadership in the development, design, and implementation of comprehensive program service plans.

D. OFFICE OF COMMUNITY PROGRAMS (OCP) is headed by a Director who reports to the Regional Administrator. The Office of Community Programs maintains oversight of programs administered under the Runaway and Homeless Youth Act, as amended, and the Head Start Act. Serves as the focal point with local governments and grantee organizations for the consideration of program issues and policies affecting needs of persons served under these Acts.

Provides direction and guidance on the implementation of the Runaway and Homeless Youth and Head Start programs and advises the Regional Administrator of policy concerns and operational issues affecting program performance. Provides leadership, policy interpretation, legislative liaison, and program administration support in the areas of delegated responsibility.

Works with local, public and private, profit and not-for-profit organizations and institutions to promote and improve programs and services provided under the applicable statutes. Assists grantees in the development and operation of exemplary management and operational practices; makes recommendations for enhancements and improvements in grantee organizations and program operations.

Exercises delegated authority to make recommendations or decisions on approval of grant applications and requests for supplemental funding; reviews estimates, budget projections, and reports of expenditures for each grant program. Recommends suspension of operations, denial of refunding or termination actions. Assists in monitoring and evaluating grants and special projects of national significance, and disseminating results.

Insures adherence by recipients of funds to statutes, regulations, performance, standards, program objectives, applicable policy, and procedures. Conducts assessments of grantee operations to determine compliance with performance standards; negotiates improvement plans with grantees; provides training and technical assistance to grantees. Interprets statutes and regulations consistent with policy guidance and directives. Assists grantees in the resolution of specific management and operational issues.

Coordinates Head Start and Runaway and Homeless Youth Program activities with other Federal programs at the Regional, State and local levels to enhance service delivery for children,

youth and families. Assists States in the coordination and implementation of programs funded directly by States or through other Federal-State funding. Promotes identification and utilization of State and local resources to meet expanded needs of OHDS target populations. Develops and promotes linkages with other Federal/State program services through leadership in the development, design, and implementation of comprehensive program service plans.

E. REGIONAL OFFICE FOR NATIVE AMERICANS (ONA) is in Region X only and acts under the direct supervision of the Regional Administrator. Is responsible for the administration of those ANA grant programs delegated to the OHDS Region X Office. Represents the interests of Native Americans served by that Region. Serves as liaison with other Federal, State and local agencies that operate programs which serve Native Americans and with organized Native American groups. Disseminates information on Departmental services, benefits and eligibility criteria to Native Americans. Identifies and seeks to address the specific needs of Native Americans. Works to encourage the social and economic development of Native Americans. Exercises oversight on regional grant programs authorized under the Native Americans Programs Act. Provides guidance and technical assistance on financial management reporting, regulations, policies and procedures to ANA grantees. Stimulates and facilitates development of appropriate Research and Demonstration projects.

F. REGIONAL OFFICES ON AGING are headed by a Regional Program Director (RPD) who is responsible to the Commissioner on Aging through the Associate Commissioner for State and Community Programs.

The Regional Offices on Aging serve as the focal point for Older Americans Act (OAA) programs through the development, coordination and administration of those programs within the HHS region. Represent the Commissioner on Aging within the region, and provide information for, and contribute to the development of, national policy dealing with the elderly. Based on national policy and priorities, establish regional program goals and objectives.

Serve as the effective and visible advocate for the elderly within the Federal Government to assure the rights and entitlements of the elderly; advise, consult and cooperate with each Federal agency proposing or administering programs or services related to the aging; coordinate and assist in the planning and development by public (including Federal, State and local agencies) and private organizations of comprehensive and coordinated services and opportunities for older individuals in each community of the Nation; conduct active public education of officials and citizens and the aged to assure broad understanding of the needs and capabilities of the aged.

Monitor, assist and evaluate State Agencies on Aging administering programs provided through Title III of the OAA, discretionary grantees administering Title IV projects, and Native American tribes administering projects under Title VI.

Review OAA State Plans on Aging and approve acceptable plans or recommend disapproval to the Commissioner on Aging, as appropriate. Recommend approval or disapproval of Title IV applications to the Commissioner. Approve or disapprove refunding of title IV grantees. Recommend approval or disapproval of title VI projects to the Commissioner.

Determines the allowability of expenditure claims submitted by States and grantees; approves or disapproves claims for reimbursement within delegated authorities. Approves the disposition and resolution of audit exceptions; and makes financial adjustments or disallows funds. Provides written recommendations to Headquarters on State formula grant financial reports and resolves assigned audit reports.

Advise the Commissioner of problems and progress of programs through the Associate Commissioner for State and Community programs; recommend to the Commissioner changes that would improve OAA operations; evaluate the effectiveness of OAA and related programs in the Region and recommend to the Commissioner or take positive action to gain improvement; and guide agencies and grantees in applications of policy to specific operational issues requiring resolution. Facilitate interagency cooperation at the Federal, Regional and State levels to enhance resources and assistance available to the elderly. Conduct public education strategy on the needs and capabilities of the elderly. Coordinate with the RA on administrative and logistic matters.

2. Amend chapter DF, Administration on Developmental Disabilities, as follows:

a. DF.10 Organization. Delete Regional Offices of the Administration on Developmental Disabilities. Regions III, VI, VII, and IX.

b. DF.20 Functions. Delete Paragraph F.

Dated: July 24, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-18157 Filed 8-2-90; 8:45 am]

BILLING CODE 9130-01-M

Statement of Organization, Functions and Delegations of Authority; Chair and Members of the Departmental Appeals Board

Notice is hereby given that I have delegated to the Chair and Members of the Departmental Appeals Board my authority to make final determinations with respect to the imposition of civil remedies, including exclusions and monetary penalties, under sections 1128(b)(6)(B), (C), (D), 1128A(b), and 1156 of the Social Security Act, 42 USC 1320a-7(b) (6)(B), (C), (D), 1320a-7a(b) and 1320c-5.

This delegation, which supersedes all previous delegations of authority to review initial decisions by Administrative Law Judges on civil remedies cases brought by the Inspector General under the aforementioned sections of the Social Security Act, is effective immediately, except that the Social Security Administration, Office of Hearings and Appeals, Appeals Council shall continue to have the authority to render final determinations in cases currently pending before it and in cases under these sections pending before or already decided by Administrative Law Judges assigned to or employed by the Office of Hearings and Appeals.

Dated: July 26, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-18154 Filed 8-2-90; 8:45 am]

BILLING CODE 4150-04-M

Statement of Organization, Functions, and Delegations of Authority; Departmental Appeals Board; Administrative Law Judges

Notice is hereby given that I have delegated to any and all Administrative Law Judges in, assigned to, or detailed to, the Departmental Appeals Board, my authority to conduct hearings and to render decisions with respect to the imposition of civil remedies, including exclusions and monetary penalties and assessments, under sections 1128(b)(6)(B), (C), and (D), 1128A(b), and 1156 of the Social Security Act (42 U.S.C. 1320a-7(b)(6)(B), (C), and (D), 1320a-7a(b) and 1320c-5). This delegation includes, but is not limited to, the authority to administer oaths and affirmations, to subpoena witnesses and

documents, to examine witnesses, to exclude or receive and give appropriate weight to materials and testimony offered as evidence, to make findings of fact and conclusions of law, and to determine the civil remedies to be imposed, which determinations will be final unless reviewed by me or my designee in accordance with regulations.

This delegation, which supersedes all previous delegations of authority to conduct hearings and render decisions on civil remedies cases brought by the Inspector General under the aforementioned sections of the Social Security Act, is effective immediately, except that Administrative Law Judges in the Social Security Administration Office of Hearings and Appeals shall continue to have the authority to conduct hearings and render decisions in cases currently pending before them.

Dated: July 26, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-18156 Filed 8-2-90; 8:45 am]

BILLING CODE 4150-04-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), 49 **Federal Register** 35,247 (September 6, 1984), is amended to include the Secretary's delegation to the Administrator, HCFA, of the authority to determine that State legislation is required in order for a State to meet the provisions under sections 6401, 6404, and 6408 of the Omnibus Budget Reconciliation Act (OBRA) of 1989, Public Law 101-239.

The specific change to Part F. is described below:

• Section F.30., Delegations of Authority, is amended by adding a new paragraph CC. The new delegation of authority reads as follows:

CC. The authority under sections 6401(c)(2), 6404(d)(2), and 6408(d)(5)(B) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101-239, to determine that State legislation (other than legislation appropriating funds) is required in order for a Medicaid State plan to meet the requirements imposed by OBRA '89.

Dated: July 26, 1990.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 90-18153 Filed 8-2-90; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Final Funding Priority for Nursing Special Project Grants

The Health Resources and Services Administration (HRSA) announces the final funding priorities for fiscal year 1991, Nursing Special Projects, section 820(c) and (d) of the Public Health Service Act, as amended by Public Law 100-607.

Nursing Special Projects Grants

Special Project Grants and Contracts are authorized under Title VIII, section 820 of the Public Health Service Act to improve nursing practice through projects that increase the knowledge and skills of nursing personnel, enhance their effectiveness in care delivery, and reduce vacancies and turnover in professional nursing positions.

Section 820(a) authorizes grants and contracts to public or nonprofit private schools of nursing or other public or nonprofit private entities to improve the quality and availability of nurse training through projects that carry out one of the following purposes:

1. Provide continuing education for nurses;

2. Demonstrate, through geriatric health education centers and other entities, improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);

3. Increase the supply of adequately training nursing personnel (including bilingual nursing personnel) to meet the health needs of rural areas; and provide nursing education courses to rural areas through telecommunications via satellite;

4. Provide training and education to (a) upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel with priority given to rapid transition programs toward achievement of professional nursing degrees and (b) develop curricula for the achievement of baccalaureate degrees in nursing by registered nurses and by individuals with baccalaureate degrees in other fields;

5. Demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities; and

6. Collect data to facilitate communications between health facilities and nursing students and nursing personnel in respect to agreements under which the individuals would serve as nurses in the health facilities in exchange for repayment of their educational loans by the facilities. (This activity will be carried out under contract with the Division of Nursing.)

Section 820(b) authorizes grants and contracts to accredited schools of nursing to assist in meeting the costs of providing projects:

1. To improve the education of nurses in geriatrics;

2. To develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

3. To expand and strengthen instruction in methods of such treatment;

4. To support the training and retraining of faculty to provide such instruction;

5. To support continuing education of nurses who provide such treatment; and

6. To establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric health care.

Section 820(c) authorizes grants to public and nonprofit private entities for projects to demonstrate innovative hospital nursing practice models designed to reduce vacancies in professional nursing positions and to make such positions a more attractive career choice. Projects must include initiatives:

1. To restructure the role of the professional nurse to ensure that the expertise of such nurses is efficiently utilized and that they are engaged in direct patient care during a larger proportion of their work time;

2. To test innovative wage structures for professional nurses in order to (a) reduce vacancies in work shifts during unpopular work hours; and (b) provide financial recognition based upon experience and education; and

3. To evaluate effectiveness of providing benefits for professional nurses as a means of increasing their loyalty to health care institutions and reducing turnover in nursing positions.

Section 820(d) authorizes grants to public and nonprofit private entities accredited for the education of nurses for the purpose of:

1. Demonstrating innovative nursing practice models for (a) the provision of case-managed health care services

(including adult day care) and health care services in the home or (b) the provision of health care services in long-term care facilities or;

2. Developing projects to increase the exposure of nursing students to clinical practice in nursing homes, home health care, and gerontologic settings through collaboration between such accredited entities and entities that provide health care in such settings.

Demonstration models must be designed (a) to increase the recruitment and retention of nurses to provide nursing care for individuals needing long-term care; and (b) to improve nursing care in home health care settings and nursing homes.

Eligible applicants are public or nonprofit private schools of nursing and other public or nonprofit private entities.

To receive support, applicants must meet the requirements of 42 CFR part 57, subpart T.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve;

2. The potential effectiveness of the proposed project in carrying out such purposes;

3. The administrative and managerial capability of the applicant to carry out the proposed project;

4. The adequacy of the facilities and resources available to the applicant to carry out the proposed project;

5. The qualifications of the project director and proposed staff;

6. The reasonableness of the proposed budget in relation to the proposed project; and

7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

Statutory Requirements

Section 820(g)(2) of the statute requires that not less than 20 percent of Special Project Grant funds be allocated for Purpose 2 of section 820(a), and section 820(b). Not more than $2 million per year may be obligated for geriatric health education center projects.

Section 820(g)(2) further requires that not less than 20 percent of Special Project Grant funds be allocated for Purpose No. 3 of section 820(a).

Section 820(g)(2) also requires that not less than 10 percent of funds for Special Project Grants be allocated for Purpose No. 4 of section 820(a).

Special Consideration for Fiscal Year 1991

Section 820(a)(1)

Special consideration will be given to projects which provide expansion of current or development and implementation of new curriculum concerning the needs of persons with HIV/AIDS. This special consideration was established in FY 1990 and is being extended in FY 1991.

Final Funding Priorities for Fiscal Year 1991

Funding priorities for the following were established in FY 1990 and are being extended for FY 1991:

Section 820(a)(1)

A funding priority will be given to applications for continuing education programs in the area of Quality Assurance/Risk Management for nurses.

Section 820(a)(4) (A) and (B)

Projects for rapid transition programs toward achievement of professional nursing degrees.

Section 820(a)(5)

1. Projects which include a target population of minority or disadvantaged persons.

2. Projects which demonstrate efforts to recruit and retain minority nurses.

Final Funding Priority for Section 820 (c) and (d)

A proposed funding priority was published in the **Federal Register** of May 30, 1990 for public comment. One comment was received in support of this priority during the 30-day comment period. Therefore as proposed the final funding priority will be retained as follows:

A funding priority will be given to applications for innovative hospital nursing practice models (Section 820(c)) and innovative long-term nursing practice demonstrations (Section 820(d)) which demonstrate efforts to recruit and retain minority nurses. Minority nurses continue to be underrepresented in the nursing profession and various practice settings. This funding priority is designed to help address this problem.

For information regarding this program contact:

Dr. Mary Hill, Division of Nursing, Bureau of Health Professions, Nursing Education Practice Resources Branch, Health Resources and Services Administration, Parklawn Building, Room 5C–14, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6193.

This program is listed at 13.359 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: July 30, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–18139 Filed 8–2–90; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on July 20, 1990.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. Grant Program for Scholarships for the Undergraduate Education of Professional Nurses—Forms—NEW—This clearance is for two forms to be used in the Scholarship for Undergraduate Education of Professional Nurses program. The first form is an application for assistance—the form is also a contract between the recipient and the Department for completion of the service obligation. The second form is a verification of employment which the recipient will submit to the Department annually during the obligated service period. Respondents: Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Application/ Student Contract	1,500	.5	1
Employment Verification—Recipients	1,400	.167	1
Employment Verification—Employer	1,400	.083	1

Estimated Annual Burden 1,100

2. Nurse Practitioner and Nurse Midwifery Traineeship Program—0915–0129—The final program regulations will be implemented through the use of the

proposed forms and other non-form related data collections. The rules require tracking by grantees of trainees through the training process. Traineeship recipients are then tracked by the PHS to assure that the service obligation is completed. Respondents: Individuals or households, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Statement of Appointment, 57.2610(a)	200	.125	1-3
Agreement with Secretary, 57.2610(b)	150	.083	1
Entrance/Exit Interview, 57.2610(e)	200	.25	1-3
Completion or Termination Notice Grantees, 57.2610(f)	50	1.0	1-2
Traineeship Payment Notification, 57.2610(g)	50	.083	6
Notification of Practice Sites, 57.2610(h)	50	.083	1.5
Notification of Site Selection, 57.2613(c)	75	.167	1
Practice Site Verification, 57.2613(d)(1)	300	.125	1
Notice of Obligation Completion Trainees, 57.2613(d)(2)	150	.125	1
Request for Waiver, 57.2615(a)	11	1.5	1
Recordkeeping, 57.2610(a), 57.2610(e), 57.2610(g)	50	.083	12

Estimated Annual Burden ..... 371 hours

3. Survey of Policies and Practices in Child Care Centers—NEW—A telephone survey will be conducted of a nationally representative sample of licensed child care centers concerning policies and practices related to prevention of infectious diseases and injuries. The purpose of the survey is to provide information on health and safety practices and to determine whether CDC recommendations on infectious disease prevention reached licensed centers. Respondents: Businesses or other for-profit, small businesses or organizations; Number of Respondents: 2,000; Number of Responses per Respondent: 1; Average Burden per Response: .30 hours; Estimated Annual Burden: 600 hours.

4. Evaluation of CDC Guidelines for Prevention of Occupationally Acquired HIV and HBV—NEW—Health care workers in hospitals in the U.S. will be surveyed in order to determine the extent to which they comply with CDC guidelines for the prevention of occupationally acquired HIV and Hepatitis B infection. Separate surveys will be conducted among physicians, nurses, housekeeping staff, and other health care worker staff. Respondents: Individuals or households; Number of Respondents: 2,840; Number of Responses per Respondent: 1; Average Burden per Response: 0.33 hours; Estimated Annual Burden: 940 hours.

5. Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report (21 CFR part 510)—0910-0012—Information is gathered by the Food and Drug Administration from manufacturers of animal drug products and veterinarians on adverse drug reactions to new animal drugs. This regulation requires the submission of full reports of information pertinent to the safety and effectiveness of the new animal drug. Respondents: Businesses or other for-profit.

	No. of respondents	No. of hours per response	No. of responses per respondent
Experience with New Animal Drugs, Reporting, 21 CFR 510.300, 301, & 302	350	1.02	3.1
Establish/ Maintain records/files on safety effectiveness of new animal drugs, Recordkeeping, 21 CFR 510.300 (a), 301(a)	250	0.5	1

Estimated Annual Burden..... 1,250 hours

6. 1991 National Household Survey on Drug Abuse—0930-0110—This study, which will involve a national probability sample of the population of the U.S., is necessary to determine the prevalence of cigarette, alcohol, and licit and illicit drug use. The results will be used by NIDA, ONDCP, and other government agencies, concerned organizations and individuals to direct their activities and establish policy. Respondents: Individuals or households; Number of Respondents: 31,216; Number of Responses per Respondent: 1; Average Burden per Response: 1.16 hours; Estimated Annual Burden: 36,132 hours.

7. FDA Study of Food Label Formats—NEW—A sample of household food shoppers will be interviewed in an experimental setting to determine ability to identify nutrient differences between foods under alternative nutrition label formats. The data will provide input to proposed FDA rulemaking to establish a new standardized format for food labels. Respondents: Individuals or households; Number of Respondents: 1,550; Number of Responses per Respondent: 1; Average Burden per Response: .33 hours; Estimated Annual Burden: 512 hours.

8. Methodological Field Test—National Household Survey on Drug Abuse—NEW—This study, which will involve a sample of the U.S. population within 33 Primary Sampling Units, is needed to improve the response rate and improve the accuracy of data collection for the National Household Survey on Drug Abuse. The resultant data will be used to refine the current questionnaire and overall survey methodology. Respondents: Individuals or households; Number of Respondents: 4,000; Number of Responses per Respondent: 1; Average Burden per Response: 0.98 hours; Estimated Annual Burden: 3,930 hours.

OMB Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address:

Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: July 27, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90-18105 Filed 8-2-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-83]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, 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: August 3, 1990.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, Room 7228, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6300; 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.

Dated: July 26, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 90-17980 Filed 8-2-90; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-010-00-4320-02]

Meeting of Elko District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Elko District Grazing Advisory Board Meeting.

SUMMARY: A meeting of the Elko District Grazing Advisory Board will be held on September 12, 1990. The meeting will begin at 9 a.m. in the conference room of the Bureau of Land Management Office at 3900 E. Idaho St., Elko, Nevada 89801.

The Board will review:

1. Range improvement projects for Fiscal Year 1990 and 1991
2. Proposed Allotment Management Plans, and
3. Allotment evaluations and proposed grazing agreements and decisions, as well as other matters that may come before the Board.

The meeting is open to the public. Interested persons may make oral statements to the Board between 11 a.m. and 11:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 3900 E. Idaho St., Elko, NV 89801 by September 5, 1990.

Dated: July 23, 1990.

Rodney Harris,

District Manager.

[FR Doc. 90-18107 Filed 8-2-90; 8:45 am]

BILLING CODE 4310-HC-M

[NDM79388A-NDM79388I; MT-030-00-4212-14]

Sale of Public Land in North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public land in North Dakota.

SUMMARY: The following land has been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value (FMV). The land will not be offered for sale for at least 60 days following the date of this notice.

Parcel	Legal description	Acreage	County	FMV
NDM79388A	T. 151 N., R. 52 W., 5th PM		Grand Forks	$2,400
	Sec. 13: SE1/4SW1/4	40.00		
NDM79388B	T. 144 N., R. 71 W., 5th PM		Kidder	1,400
	Sec. 28: Lot 3	15.5		
NDM79388C	T. 151 N., R. 67 W., 5th PM		Benson	500
	Sec. 13: Lot 2	4.14		
NDM79388D	T. 149 N., R. 63 W., 5th PM		Eddy	3,275
	Sec. 27: Lot 1	10.82	Eddy	
	T. 150 N., R. 63 W., 5th PM			
	Sec. 14: Lot 1	2.78		
	Sec. 19: Lot 1	.25		
	Sec. 26: NE1/4SW1/4	40.00		
NDM79388E	T. 135 N., R. 77 W., 5th PM		Emmons	3,400
	Sec. 30: NE1/4NE1/4	40.00		
NDM79388F	T. 138 N., R. 67 W., 5th PM		Stutsman	1,000
	Sec. 8: NE1/4NW1/4	40.00		
	T. 138 N., R. 68 W., 5th PM		Stutsman	
	Sec. 10: SW1/4SE1/4	40.00		
NDM79388G	T. 150 N., R. 95 W., 5th PM		McKenzie	4,200
	Sec. 24: Lot 4	46.99		
NDM79388H	T. 151 N., R. 104 W., 5th PM		McKenzie	2,250
	Sec. 26: Lots 1 and 4	40.7		
NDM79388I	T. 151 N., R. 104 W., 5th PM		McKenzie	640
	Sec. 35: SW1/4NE1/4 (portion)	8.5		

SUPPLEMENTARY INFORMATION: The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The land will be offered for sale at public auction beginning at 10 a.m. m.d.t., on October 10, 1990, at 2933 Third Avenue West, Dickinson, North Dakota 58601. The sale will be done by modified competitive procedures. The tract's lessees or adjoining land owners will be given the opportunity to meet the highest bid received at public auction. The sale will be sealed bid only.

All sealed bids must be submitted to the BLM's Dickinson District Office at 2933 Third Avenue West, Dickinson, North Dakota 58601, no later than 4:30 p.m. m.d.t. on October 9, 1990. Bid envelopes must be marked on the left front corner with the parcel number and the sale date. Bids must not be for less than the appraised FMV specified in this notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior, BLM for not less than 10 percent of the amount bid.

Bids on unsold parcels will be opened each following Wednesday at 10 a.m. Mountain Time until the parcels are sold.

The terms and conditions applicable to the sale are:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this office.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the Authority of the Act of August 30, 1890, (26 Stat. 291; 43 U.S.C. 945).

3. The patents will be subject to all valid existing rights to include rights-of-way.

Federal law requires that all bidders must be U.S. Citizens 18 years old or older, or, in the case of corporations, be subject to the laws of any State of the U.S. Proof of these requirements must accompany the bid.

Under the modified competitive sale procedures, an apparent high bid will be declared at the public auction. The apparent high bidder and the lessee and adjoining land owners will be notified. They will have 30 days from the date of the sale to exercise the preference consideration given to meet the high bid.

Should they fail to submit a bid that matches the apparent high bid within the specified time period, the apparent high bidder shall be declared the high bidder. The total purchase price for the land shall be paid within 180 days from the date of the sale.

Detailed information concerning the sale, including the reservations, procedures for and condition of sale, and planning and environmental documents, is available at the Dickinson District Office, Bureau of Land Management, 2933 Third Avenue West, Dickinson, North Dakota 58601.

For a period of 45 days from the date of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Dickinson District, at the above address. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Dated: July 26, 1990.

Gene C. Campbell,

District Manager.

[FR Doc. 90-18028 Filed 8-2-90; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-00-4333-12]

Proposed Supplemental Rules for Certain Public Lands Managed by the Bureau of Land Management, Las Vegas District, NV

July 24, 1990.

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Proposed supplemental rules for certain public lands managed by the Bureau of Land Management within the Las Vegas District, Las Vegas, Nevada.

SUMMARY: Supplemental rules are necessary for the management of actions, activities, and public use on certain public lands that are not currently covered by title 43, Code of Federal Regulations, which may have, or are having adverse impacts on persons using public lands, or property, and resources located on public lands in the Red Rock Canyon Recreation Lands (RRCRL), public lands acquired for inclusion in the RRCRL, and lands identified in the Proposed Red Rock Canyon National Conservation Area (NCA), Stateline Resource Area, Las Vegas District, in the State of Nevada. The supplement consists of rules and legal definitions which support the rules. The supplemental rules, when approved, will be incorporated into and made a part of the Collateral Schedule currently in use in Nevada.

The affected lands are located in the following areas:

Mount Diablo Meridian

T. 20 S., R. 58 E.,
Sec. 8,9,10,11,12,13,14,15,16,17,18,19,20,21,22, 23,24,25,26,27,28,29,30,31,32,33,34,35,36.
T. 20 S., R. 59 E.,
Sec. 7,8,9,N½ of 16,N½ and SW¼ 17,18,19,NW¼ 20,39,31,32.
T. 21 S., R. 57 E.,
Sec. 1,12,13,24,25,36.
T. 21 S., R. 58 E.,
Sec. 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17, 18,19,20,21,22,23,24,25,26,27,28,29,30,31,32, 33,34,35,36.
T. 21 S., R. 59 E.,
Sec. 4,5,6,7,8,9,10,15,16,17,18,19.
T. 22 S., R. 58 E.,
Sec. 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17, 18,23,24,25,26,27,28,33,34,35,36.
T. 22 S., R. 58 E.,
Sec. 6,7,8,18.
T. 23 S., R. 58 E.,
Sec. 1,2,3,4,5,8,9,10,11,12.

COMMENT PERIOD: Until September 4, 1990, interested parties may submit comments on the proposed Supplemental Rules to the District Manager, Las Vegas District Office, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126.

SUPPLEMENTARY INFORMATION: The Nevada State Director of the Bureau of Land Management hereby proposes to establish supplementary rules necessary for the protection of persons, property and public lands and resources within the Red Rock Canyon Recreation Lands, lands acquired for inclusion in the Red Rock Canyon Recreation Lands, and all lands that may be incorporated into the proposed Red Rock Canyon National Conservation Area (NCA), in the Las Vegas District, as provided for in 43 CFR 8365.1-6. For the purposes of this section, the entirety of the Red Rock Canyon Recreation Lands, and lands within the proposed NCA boundary, is considered to be a "developed area" as defined under § 8360.0-5(c). Violations of these rules are punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months as provided for under 43 CFR 8360.0-7.

Definitions

In addition to the regulations contained in 43 CFR 8365.2, the following definitions shall apply in the proposed Red Rock National Conservation Area unless modified within a specific regulation:

Abandonment means the voluntary relinquishment of control of property for longer than a period specified with no intent to retain possession.

Administrative activities means those activities conducted under the authority of the BLM for the purpose of

safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with the regulations in this chapter, or repairing or maintaining government facilities.

Bicycle means every device propelled solely by human power upon which a person or persons may ride on land, having one, two, or more wheels.

Camping means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy.

Controlled substance means a drug or other substance, or immediate precursor, included in schedules I, II, III, IV, or V of part B of the Controlled Substance Act (21 U.S.C. 812) or a drug or substance added to these schedules pursuant to the terms of the Act.

Cultural resource means material remains of past human life or activities that are of significant cultural interest and are less than 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, or any portion or piece of the foregoing items, and the physical site, location, or context in which they are found, or human skeletal materials or graves.

Designated road means roads identified on the Red Rock Canyon Recreation Lands handout map with these additions: the primary road access to the cave parking area, Mud Springs 1 & 2, Velvet Canyon, the Mt. Springs to Rainbow Springs Road, the Lovell Canyon Road to Rainbow Springs Road. A map of designated roads will be maintained at the BLM District Office and Red Rock Canyon Recreation Lands Visitor Center. Any road with any signed or physical barrier, including posts, branches, or rocks, is not a designated road.

Firearm means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant.

Hunting means taking or attempting to take wildlife, except trapping.

Motor vehicle means every vehicle that is self-propelled and every vehicle that is propelled by electric power, but not operated upon rails, or upon water, except a snowmobile.

Operator means a person who operates, drives, controls, or otherwise has charge of a mechanical mode of transportation or any other mechanical equipment.

Permit means a written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

Person means an individual, firm, corporation, society, association, partnership, or private or public body.

Pet means a dog, cat or any animal that has been domesticated.

Possession means exercising direct physical control or dominion, with or without ownership, over property, or archaeological, cultural or natural resources.

Property means both real and personal property.

Personal property includes money, goods, chattels, things in action and evidences of debt.

Smoking means the carrying or possession of lighted cigarettes, cigars or pipes, or the intentional and direct inhalation of smoke from these objects.

Take or *taking* means to pursue, hunt, harass, harm, shoot, trap, net, capture, collect, kill, wound, or attempt to do any of the above.

Traffic means pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together while using any road, trail, street or other thoroughfare for purpose of travel.

Trap means a snare, trap, mesh, wire or other implement, object or mechanical device designed to entrap or kill animals other than fish.

Trapping means taking or attempting to take wildlife with a trap.

Unattended means failure to exercise direct control over property.

Unloaded as applied to weapons and firearms, means that: (1) There is no unexpended shell, cartridge, or projectile in any chamber or cylinder of a firearm or in a clip or magazine inserted in or attached to a firearm; (2) A muzzle-loading weapon does not contain gun powder in the pan, or the percussion cap is not in place; and (3) Bows, crossbows, spear guns or any implement capable of discharging a missile or similar device by means of a loading or discharging mechanism, when that loading or discharging mechanism is not charged or drawn.

Vehicle means every decice in, upon, or by which a person or property is or may be transported or drawn on land, except snowmobiles and devices moved by human power or used exclusively upon stationary rails or track.

Weapon means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, spearguns, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles or projectiles; hand-thrown spear, edged weapons, nun-chucks, clubs, and billy-clubs; and includes any weapon the possession of which is prohibited under Nevada law.

Wildlife means any member of the animal kingdom and includes a part, product, egg or offspring thereof, or the dead body or part thereof, except fish.

(1) Vehicle Operations

(i) State Laws Applicable

Unless specifically covered by the general and special regulations set forth in this CFR title, the laws and regulations of the State of Nevada shall govern traffic and the operation and use of vehicles. Such State laws and regulations which are now or may hereafter be in effect are hereby adopted and made a part of the regulations in this part.

(ii) Scenic Loop Drive

The Scenic Loop Drive is considered a one-way, two-lane road.

(iii) Failure to Maintain Control

Every operator of a vehicle shall maintain such control of the vehicle as may be necessary to avoid danger to persons or property or wildlife.

(iv) Exhibition of Power

The excessive acceleration of the engine of a motor vehicle or motorcycle when such vehicle is not moving, or is approaching or leaving a stopping place is prohibited.

(v) Commercial Towing Service

An operator of a vehicle used to provide commercial towing service for another vehicle following an accident or for any other reasons must give immediate notice by the quickest available means of communication to law enforcement rangers before moving the vehicle unless traffic is being obstructed, in which case notification shall be made before leaving RRCRL.

(vi) Weight, Length, and Width Limitations

(A) No vehicle, or load thereon, the total outside width of which exceeds 8 feet, shall be permitted on roads without a permit from the BLM.

(B) Trailers more than 35 feet long are prohibited without a permit from the BLM.

(C) Vehicles with a gross weight greater than 35,000 pounds are prohibited without a permit from the BLM.

(D) Violations of the conditions established by the BLM or of the terms and conditions of a permit issued in accordance with this section is prohibited.

(vii) Parking/Obstructing Traffic

(A) Stopping, parking, or leaving any vehicle, whether attended or unattended, upon the paved or maintained surface, or designated portion of a road, so as to leave less than 10 feet of the width of the same traffic lane for the free or unobstructed movement of other vehicles is prohibited, except in the event of accident or other conditions beyond the immediate control of the operator, or as otherwise directed by an authorized person.

(B) Causing or permitting a motor vehicle under one's control to obstruct traffic by making turns from the wrong traffic lane, or by weaving in and out of traffic, or by driving so slowly as to interfere with the normal flow of traffic, or in any other manner, is prohibited.

(C) Parking a vehicle along the scenic loop drive in an area not designated as a parking area is prohibited. Elsewhere, parking in areas with no or minor previous disturbance is prohibited.

(a) Parking off road less than 100' or minor disturbance to natural features is prohibited.

(b) Parking off road greater than 100' or significant disturbance to natural features is prohibited.

(D) Leaving vehicle overnight in an area restricted to day use without prior authorization is prohibited.

(E) Parking in designated handicap parking areas without a handicap license plate or other authorized symbol is prohibited.

(viii) Travel Off Roads and Designated Routes

The use of motor vehicles off designated roads and parking areas is prohibited.

(A) Traveling off road less than 100' or minor disturbance to natural features is prohibited.

(B) Traveling off road more than 100' or significant disturbance to natural features is prohibited.

(ix) Authority to Remove Vehicles

Authorized employees of the BLM may remove any vehicle obstructing traffic or posing a hazard.

(x) Buses on commercial tours of RRCRL may not stand idling in parking areas when passengers are not on board.

(xi) Washing, greasing, or repairing any vehicle, except repairs necessitated by emergency, is prohibited.

(xii) Bicycles

(A) Bicycle riders must comply with all applicable vehicle regulations.

(B) Bicycle riders shall keep well to the right side of the road and shall keep the bicycle under complete control at all times. Bicycles shall not be ridden abreast of one another.

(C) Each bicycle must exhibit a white light on the front and a red light or red reflector on the rear during periods of low visibility or during the period between sunset and sunrise.

(D) The use of bicycles is prohibited, except on designated public roads and parking areas, and on routes designated for their use by the posting of signs or as identified on a map which shall be available at the RRCRL Visitor Center and Las Vegas District Office.

(2) Public Use and Recreation

(i) Firearms, Explosives, and Fireworks

(A) It is unlawful to willfully discharge any weapons within the limits of RRCRL; provided however, hunting for bighorn sheep, deer, and mountain lion, is permitted legally established seasons except below six thousand feet on the east slope of the Spring Mountains and southeast slope of the La Madre Mountains, and within one mile of any developed camp, picnic area, road, trail, or site developed for public or private use. Hunting for upland game birds is permitted for licensed hunters during legally established seasons south of Spring Mountain Ranch State Park at all elevations, except within 1,000' of any road or structure.

(B) All weapons in the possession of any person in RRCRL shall be unloaded, made safe, and be stored in a vehicle, except for licensed hunters legally hunting.

(C) Firearms must be registered as required by County or State laws where residing.

(D) Using, possessing, storing, or transporting explosives, blasting agents or explosive materials is prohibited, except pursuant to the terms and conditions of a permit. When permitted, the use, possession, storage and transportation shall be in accordance with applicable Federal and State laws.

(ii) Trapping

(A) Trapping is allowed only where hunting is allowed.

(B) Trapping may be undertaken only in accordance with State laws * * *

(iii) Groundfires

No person shall build or maintain any fire except in a stove or grill provided for such purpose.

(iv) Climbing

Rock climbing or mountaineering in violation of climbing regulations issued by the District Manager and available at the RRCRL Visitor Center or the BLM Las Vegas District Office is prohibited.

(v) Glass Containers

Glass containers are not permitted outside of vehicles except in designated picnic or camping areas.

(vi) Cutting Trails

Leaving a trail or walkway to shortcut between portions of the same trail or walkway, or to shortcut to an adjacent trail or walkway is prohibited.

(vii) Preservation of Natural Features

(A) Renewable fruits or nuts and seeds may be collected in small quantities for personal use.

(B) The following are prohibited:

(a) Possessing, destroying, injuring, defacing, removing, or disturbing from its natural state living or dead wildlife or fish, or the parts or products thereof, such as antlers or nests, except in accordance with hunting regulations.

(b) Introducing wildlife, fish or plants, including their reproductive bodies, into RRCRL.

(c) Digging for or removing artifacts, or using any devise for detecting metal.

(viii) Feeding, attempting to feed, or otherwise, willfully attracting wild horses or burros or any other wild animal to within a highway right-of-way or within 100' of any designated road is prohibited

(ix) Pets

(A) The following are prohibited:

(a) Allowing a pet to become a nuisance or to create a disturbance.

(b) Failing to clean up waste deposited by a pet.

(c) Allowing a pet, other than a seeing eye dog, to enter a building.

(B) In RRCRL where hunting is allowed, dogs may be used in support of these activities in accordance with applicable Federal and State laws and in accordance with conditions which may be established by the BLM.

(C) Pets or feral animals that are running-at-large and observed by an authorized person in the act of killing, injuring or molesting humans, livestock, or wildlife may be destroyed if necessary for public safety or protection of wildlife, livestock, or other park resources.

(D) Pets running-at-large may be impounded and the owner may be charged reasonable fees for kennel or boarding costs, feed, veterinarian fees, transportation costs, and disposal. An impounded pet may be put up for adoption or otherwise disposed of after being held for 72 hours from the time the owner was notified of capture of 72 hours from the time of capture if the owner is unknown.

(x) Horses and Pack Animals

The following are prohibited:

(A) The use of horses or pack animals on established foot trails or in designated picnic areas, except for activities sanctioned by permit.

(B) The use of horses or pack animals on a paved road, except:

(a) Where such travel is necessary to cross the road.

(b) When the road has been closed to motor vehicles.

(C) Free-trailing or loose-herding of horses or pack animals on trails or cross-country.

(D) Allowing horses or pack animals to proceed in excess of a slow walk when passing in the immediate vicinity of persons on foot or bicycle.

(E) Pedestrians obstructing a trail, or making an unreasonable noise or gesture, considering the nature and purpose of the actor's conduct, and other factors that would govern the conduct of a reasonably prudent person, while horses or pack animals are passing.

(xi) Alcoholic Beverages-Controlled Substances

(A) *Alcoholic beverages.* (a) The use and possession of alcoholic beverages within RRCRL is allowed in accordance with the provisions of this section.

(b) The following are prohibited. (1) The sale or gift of an alcoholic beverage to a person under 21 years of age.

(2) The possession of an alcoholic beverage by a person under 21 years of age.

(3) Carrying or storing a bottle, can or other receptacle containing any alcoholic beverage that has been opened, or seal broken or the contents of which have been partially removed, within a motor vehicle upon a road or parking area. This restriction shall not apply to containers stored in the trunk of a vehicle, or stored in some other portion of the vehicle designed for the storage of luggage and not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This subparagraph shall not apply to the living quarters of a motor home or camper.

(c) The District Manager may close all or a portion of public buildings, or structures, parking lots, picnic areas, overlooks, walkways, commemorative areas, historic areas, or archaeological sites within RRCRL area to the consumption of alcoholic beverages when it is determined that:

(1) The consumption of alcohol would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or

(2) Incidents of aberrant behavior related to the consumption of alcohol are of such magnitude that the diligent attempts to enforce applicable regulations do not alleviate the problem. Failure to abide by such a closure is prohibited.

(d) Presence in RRCRL when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person, or damage property or park resources, is prohibited.

(B) Controlled substances

The following is prohibited:

(a) The delivery of a controlled substance. For the purposes of this paragraph, delivery means the actual, attempted or constructive transfer of a controlled substance.

(b) The possession of a controlled substance, unless such substance was obtained by the possessor directly, or pursuant to a valid prescription or order, from a practitioner acting in the course of professional practice or otherwise allowed by Federal or State law.

(xii) Disorderly Conduct Is Prohibited

A person commits disorderly conduct when, with intent to cause alarm, nuisance, jeopardy or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(A) Engages in fighting or threatening, or in other violent behavior.

(B) Uses language, an utterance, or gesture, or engages in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

(xiii) Smoking

(A) The BLM may designate a portion of RRCRL, or all or a portion of a building, structure or facility as closed to smoking when necessary to protect park resources, reduce the risk of fire, or prevent conflicts among visitor use activities. Smoking in an area or location so designated is prohibited.

(B) Smoking is prohibited within all caves and caverns.

(xiv) Property

(A) The following are prohibited:

(a) Abandoning property.

(b) Leaving property unattended for more than 24 hours in a day use area, or 72 hours in other areas. Personal property left unattended beyond such time limit is subject to disposition under the Federal Property and Administration Services Act of 1949, as amended (40 U.S.V. 484(m)).

(c) Failing to turn in found property to the BLM as soon as practicable.

(B) Impoundment of property

Unattended property that interferes with visitor safety, orderly management of RRCRL, or presents a threat to area resources may be impounded by the BLM at any time.

(xv) Aircraft and Air delivery

(A) The use of aircraft shall be in accordance with regulations of the Federal Aviation Administration.

(B) Delivering or retrieving a person or object by parachute, helicopter, ultralight aircraft, hang glider, balloon, or other airborne means, except in emergencies involving public safety or serious property loss, or pursuant to the terms and conditions of a permit, is prohibited. The provisions of this section shall not be applicable to official business of the Federal government, or emergency rescues or rescue training in accordance with the direction of the District Manager.

Ben F. Collins,

District Manager, Nevada.

[FR Doc. 90-17962 Filed 8-2-90; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions pending through September 1990. This notice is one of a variety of means being used to inform the public about proposed contractual actions for water service and repayment. The Bureau of Reclamation announcements of individual repayment and water service contract actions will be published in the **Federal Register** and in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary of the Interior or the district may invite the

public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

ADDRESSES: The identity of the approving officer, and other information pertaining to a specific contract proposal, may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Dick L. Porter, Chief, Contracts & Repayment, Bureau of Reclamation, 1849 C St. NW., Washington, DC 20240; telephone (202) 208–5104, [FTS] 268–5104.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the **Federal Register** dated December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of water for irrigation or other uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution and, pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** dated February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during July, August, or September of 1990. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) **Federal Register**
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P–SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(BCP) Boulder Canyon Project

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724–0043, telephone (208) 334–1894.

1. *Cascade Reservoir Water Users, Boise Project, Idaho:* Repayment contracts for irrigation and municipal and industrial water; 29,221 acre-feet of stored water in Cascade Reservoir.

2. *Individual Irrigators, M&I, and Miscellaneous Water Users, Pacific Northwest Region, Idaho, Montana, Oregon, and Washington:* Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

3. *Rogue River Basin Water Users, Rogue River Basin Project, Oregon:* Water service contracts; $5 per acre-foot or $50 minimum per annum for terms up to 40 years.

4. *Willamette Basin Water Users, Willamette Basin Project, Oregon:* Water service contracts; $1.50 per acre-foot or $50 minimum per annum for terms up to 40 years.

5. *Irrigation Districts and Similar Water User Entities:* Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. *Forty-four Palisades Reservoir Shareholders, Minidoka Project, Idaho-Wyoming:* Contract amendments to extend term for which contract water may be subleased to other parties.

7. *City of Cle Elum, Yakima Project, Washington:* Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

8. *Three Irrigation Districts, Flathead Indian Irrigation Project:* Repayment of costs associated with rehabilitation of irrigation facilities.

9. *Baker Valley Irrigation District, Baker Project, Oregon:* Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

10. *Crooked River Project, Oregon:* Irrigation repayment or water service contracts with several individuals and with North Unit Irrigation District for a total of up to 25,000 acre-feet of storage space in Prineville Reservoir (Arthur R. Bowman Dam).

11. *Various Projects, PN Region:* R&B contracts for replacement of needle valves at storage dams.

12. *Minidoka-Palisades Project:* Repayment contract with Palisades Water Users Inc., for additional 500 acre-feet of storage space in Palisades Reservoir.

13. *Willow Creek Project, Oregon:* Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

14. *Four Project Spaceholders, Minidoka-Palisades Project, Idaho-Wyoming:* Contract amendments to provide for rental of water to other parties.

15. *Bridgeport Irrigation District, Chief Joseph Dam Project, Washington:* Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

16. *Five Irrigation Districts, Arrowrock Division of the Boise Project, Idaho:* Repayment contracts for Safety-of-Dams repair to Deer Flat Dam.

17. *State of Wyoming, Palisades Project, Idaho:* Proposed repayment contract with the State of Wyoming for the sale of 33,000 acre-feet of noncontracted space in Palisades Reservoir.

18. *Hermiston Irrigation District, Umatilla Project, Oregon:* Repayment contract for reimbursable cost for Safety-of-Dams repairs to Cold Springs Dam.

19. *Ochoco Irrigation District and Various Individual Spaceholders, Crooked River Project, Oregon:* Repayment contract for reimbursable cost for Safety-of-Dams repairs to Arthur R. Bowman Dam.

20. *The Dalles Irrigation District, Oregon:* SRPA loan repayment contract; $2,000,000 proposed loan obligation.

21. *Oroville-Tonasket Irrigation District, Chief Joseph Dam Project, Washington:* SRPA loan repayment contract; $661,500 proposed loan obligation.

Mid-Pacific Region

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone (916) 978–5030. In accordance with the Energy and Water Development Appropriations Act of 1990

(Pub. L. 101–101), new long-term contracts for a water supply from the Central Valley Project of California cannot be executed prior to October 1, 1990, unless otherwise exempted from the provisions of this law.

1. *Tuolumne Regional Water District, CVP, California:* Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

2. *Calaveras County Water District, CVP, California:* Water service contract, up to 2,000 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

3. *Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada:* Temporary (interim) water service contracts for available project water for irrigation, M&I or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts for use of project facilities for terms up to 1 year; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

Note: Copies of the standard form of temporary water service contract for the various types of service are available, upon written request, from the Regional Director at the address shown above.

4. *Friant Unit Contractors, CVP, California:* Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern Canal whose contracts expire 1990–1997 with two contracts expiring later. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

5. *ID's and similar water user entities:* Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. *State of California, CVP, California:* Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the Coordinated Operation Agreement.

7. *Madera ID, Madera Canal, CVP, California:* Warren Act contract to convey and/or store nonproject water through project facilities.

8. *County of Tulare, CVP, California:* Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

9. *Shasta Dam Area Public Utilities District, CVP, California:* Renewal/Increase of M&I water supply contract. Less than 6,000 acre-feet.

10. *U.S. Fish and Wildlife Service, CVP, California:* Long-term contract for water supply for Federal refuge in Grasslands area of California.

11. *North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, Kern River Project, California:* Amendatory contract to provide storage space for M&I water.

12. *Contra Costa Water District, CVP, California:* Amendatory water service contract to add an additional point of delivery to accommodate the District's proposed Los Vaqueros project. Amendment will also conform contract to current water ratesetting policies.

13. *San Juan Suburban Water District, CVP, California:* Amend Contract No. 14–06–200–152A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Public Law 99–546.

14. *Centerville Community Services District, CVP, California:* Water service contract for up to 800 acre-feet of M&I water annually.

15. *Shasta County Water Agency, CVP, California:* Amendatory water service contract to provide for reduction in annual entitlement of 800 acre-feet.

16. *Central Valley Project, California:* Amendatory contracts to include the provision of the Act of July 2, 1956 (70 Stat. 483) and/or the Act of June 21, 1963 (77 Stat. 68) in existing water service contracts.

17. *California Department of Corrections, CVP, California:* Water service for up to 1,000 acre-feet of water annually to serve the Sierra Conservation Center (a State prison) near Jamestown, California.

18. *Redwood Valley Water District, SRPA, California:* Amendatory loan repayment contract.

19. *Placer County Water Agency, CVP, California:* Amend Contract No. 14–06–200–5082A to provide for the current CVP water rates.

20. *Broadview Water District, CVP, California:* Amend Contract No. 14–06–200–8092 to provide for change in point of diversion, right to construct new turnout on the San Luis Canal, and contract renewal.

21. *Sutter Butte Mutual Water Company, CVP, California:* Water service contract for a long-term supplemental water supply. Contract will assure Company's water users an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

22. *Paramount Citrus Association, CVP, California:* Contract to convey nonproject water through Federal facilities with exemption of RRA under 426.18. Up to 4,000 acre-feet of water to be transferred through Friant-Kern Canal for delivery to Southern San Joaquin Municipal District.

23. *Butte Slough Irrigation Company, CVP, California:* Water service contract for a long-term supplemental water supply. Contract will assure Company's water users an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

24. *Lindsay-Strathmore ID, Friant-Kern Canal, CVP, California:* Warren Act contract to convey and/or store nonproject water through project facilities.

25. *Madera ID, Hidden Unit, CVP, California:* Renewal of existing water service contract for 24,000 acre-feet of water which expires February 29, 1992.

26. *Chowchilla WD, Buchanan Unit, CVP, California:* Renewal of existing water service contract for 24,000 acre-feet of water which expires February 28, 1991.

27. *Truckee Carson Irrigation District, Newlands Project, Nevada:* Warren Act contract to convey and/or store nonproject water in Project facilities.

28. *Truckee Carson Irrigation District, Newlands Project, Nevada:* Contract for repayment of construction costs of Newlands Project.

29. *Santa Barbara County Water Agency, Cachuma Project, California:* Repayment contract for reimbursement of funds expended under the Emergency Fund Act for continuation of water service.

30. *San Luis and Delta-Mendota Water Users Authority, CVP, California:* Financing agreement to provide for replacement of impellers at Tracy Pumping Plant.

Lower Colorado Region

Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, Nevada 89005, telephone (702) 293–8536.

1. *Agricultural and M&I water users, CAP, Arizona:* Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

2. *Southern Arizona Water Rights Settlement Act:* Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

3. *Contracts with five agricultural entities located near the Colorado*

River, BCP, Arizona: Water service contracts for up to 1,920 acre-feet per year total.

4. *Gila River Indian Community, CAP, Arizona:* Water service contract for delivery of up to 173,100 acre-feet per year.

5. *ID's and similar water user entities:* Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. *Indian and non-Indian agricultural and M&I water users, CAP, Arizona:* Contracts for repayment of Federal expenditures for construction of distribution systems.

7. *State of Arizona, BCP, Arizona:* Contract for an undetermined amount of Colorado River water for M&I use and for agricultural use and related purposes on state-owned land.

8. *Imperial ID and/or the Coachella Valley Water District, California:* Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal (AAC) for an equivalent quantity and quality of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

9. *Lower Colorado Water Supply Project, California:* Water service and repayment contracts with nonagricultural users in California adjacent to the Colorado River for an aggregate consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the AAC from a well field to be constructed adjacent to the canal.

10. Hutchison present perfected rights contract amendment to reflect the transfer of part of the right to Winterhaven, California, Supreme Court Decree in *Arizona* v. *California* and BCP.

11. Winterhaven present perfected rights contract for a portion of Hutchison Present Perfected Rights transferred to Winterhaven, Supreme Court Decree in *Arizona* v. *California* and BCP.

12. *County of San Bernardino, SRPA, California:* Repayment contract for a $29.6 million loan.

13. *Tohono O' Odham Nation, SRPA, Arizona:* Repayment contract for a $7.3 million loan for the Schuk Toak District.

14. *Sturges Trust, Supreme Court Decree in Arizona v. California and BCP, Arizona:* Contract for delivery of 8,500 acre-feet of Colorado River water per year for agricultural use as recommended by the State of Arizona and to recognize a 780 acre-feet present perfected right to the use of Colorado River water.

15. *Fort Mohave Indian Reservation. Supreme Court Decree in Arizona v. California and BCP, Arizona:* Contract for delivery of Colorado River water for its Federal Establishment Present Perfected Right, totaling 122,648 acre-feet of diversions annually.

16. *Colorado River Commission of Nevada, BCP, Nevada:* A surplus water contract which would allow them to utilize Colorado River water for M&I purposes when available.

17. *BCP, Arizona:* Contracts for additional allocations of Colorado River water to cities located along the Colorado River in Arizona for up to 15,076 acre-feet per year as recommended by the Arizona Department of Water & Resources.

18. *National Park Service for Lake Mead National Recreation Area, Supreme Court decree in Arizona v. California and BCP in Arizona and Nevada:* Memorandum of Understanding for delivery of Colorado River water for its Federal Establishment Present Perfected Right of 500 acre-feet of diversions annually, and the Federal Establishment Perfected Right pursuant to Executive Order No. 5125 (April 25, 1930).

Upper Colorado Region

Bureau of Reclamation, P.O. Box 11568, 125 South State Street, Salt Lake City, Utah 84147, telephone (801) 524-5435.

1. *Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico:* Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) *The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico:* Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

2. *Southern Ute Indian Tribe, Animas-La Plata Project, Colorado:* Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement in principle.

3. *Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico:* Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost-sharing agreement and water right settlement agreement.

4. *Navajo Indian Tribe, Animas-La Plata Project, New Mexico:* Repayment contract for 7,600 acre-feet per year for M&I use.

5. *La Plata Conservancy District, Animas-La Plata Project, New Mexico:* Repayment contract for 9,900 acre-feet per year for irrigation use.

6. *Uintah Water Conservancy District, Jensen Unit, Central Utah Project, Utah:* Amendatory repayment contract to reduce municipal and industrial water supply and corresponding repayment obligation.

7. *Vermejo Conservancy District, Vermejo Project, New Mexico:* Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Public Law 96–550.

8. *Conejos Water Conservancy District, San Luis Valley Project, Colorado:* Amendatory contract to place OM&R costs on a variable basis commensurate with the availability of project water.

9. *Weber Basin Water Conservancy District, Weber Basin Project, Utah:* Repayment Contract for Rehabilitation and Betterment work of selected project facilities.

10. *Uncompahgre Valley Water Users' Association, Dallas Creek Project, Colorado:* Temporary water service contract for 10,000 acre-feet of surplus project water for irrigation use through 1990.

Great Plains Region

Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone (406) 657–6413.

1. *Individual irrigators, Municipal and Industrial (M&I), and miscellaneous water users, Great Plains Region:* Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. *Fort Shaw Irrigation District, Sun River Project, Montana:* R&B loan repayment contract; up to $1.5 million.

3. *Owl Creek Irrigation District, Owl Creek Unit, P–SMBP, Wyoming:* Amendatory water service contract to

reflect reduced water supply benefits being received from Anchor Reservoir.

4. *Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado:* Water service contracts; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

5. *Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado:* Water service contracts; proposed second round contract negotiations for sale of agricultural, municipal, domestic and industrial water from the regulatory capacity of Ruedi Reservoir.

6. *Fryingpan-Arkansas Project, Colorado:* East Slope Storage system consisting of Pueblo Reservoir, Twin Lakes, and Turquoise Reservoir; Contract negotiations for temporary and long-term storage and exchange contracts.

7. *Cedar Bluff Irrigation District No. 6, Cedar Bluff Unit, P–SMBP, Kansas:* Repayment contract; Amend the Cedar Bluff Irrigation District's contract to relieve it of all contract obligations. The use of the District's portion of the reservoir storage capacity has been sold to the State of Kansas for fish, wildlife, recreation, and other purposes.

8. *Mirage Flats Project, Nebraska:* Agreement among the United States, the Mirage Flats Irrigation District, and the Nebraska Game and Parks Commission to retain storage in Box Butte Reservoir for fish, wildlife and recreation purposes.

9. *Frenchman Valley Irrigation District, Frenchman Unit, P–SMBP, Nebraska:* Pending passage of congressional legislation, renegotiate District's existing contract to reduce payments based on payment ability and reduced water supply.

10. *Department of Natural Resources and Conservation, SRPA, Montana:* Grant and loan contract for rehabilitation of Middle Creek Dam to meet required safety criteria and to increase reservoir storage capacity by 1,917 acre-feet which will be utilized for irrigation and municipal purposes.

11. *Garrison Diversion Unit, P–SMBP, North Dakota:* Repayment contract; Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

12. *Corn Creek Irrigation District, Glendo Unit, P–SMBP, Wyoming:* Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir.

13. *Hidalgo County Irrigation District, No. 1, Lower Rio Grand Valley, Texas:* Supplemental SRPA loan contract for approximately $13,017,000 plus reimbursable interest.

14. *Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma:* Amendatory repayment contract for remedial work.

15. *Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma:* Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

16. *Highland-Hanover Irrigation District, Boysen Unit, P–SMBP, Wyoming:* R&B loan repayment contract; $300,000.

17. *Upper Bluff Irrigation District, Boysen Unit, P–SMBP, Wyoming:* R&B loan repayment; $220,000.

18. *Board of Water Commissioners of the City and County of Denver, the Colorado River Water Conservation District, and the Northern Colorado Water Conservancy District. Colorado-Big Thompson Project, Colorado:* Operating agreement for substitution of water in the proposed Muddy Creek or Rock Creek Reservoir for Green Mountain Reservoir water.

19. *Heart River Unit, Dickinson Subunit, P–SMBP, North Dakota:* Renegotiate Water Service Contract No. 179r–1412 with the City of Dickinson. Existing contract expired September 24, 1989.

20. *Malta Irrigation District, Malta Division, Milk River Project, Montana:* R&B contract for repayment of $5,600,000 loan.

21. *Glasgow Irrigation District, Glasgow Division, Milk River Project, Montana:* R&B contract for repayment of $2,050,000 loan.

22. *Midvale Irrigation District, Riverton Unit, P–SMBP, Wyoming:* Long-term contract for water service from Boysen Reservoir.

23. *Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas:* Amendatory contract to increase irrigable acreage within the project.

24. *Kendrick Project, Wyoming:* Temporary contracts for the loan of Kendrick Project water to various Wyoming water use entities for water year 1990.

25. *East Bench Irrigation District, East Bench Unit, P–SMBP:* Deferment of semiannual payments of $21,800 each, due June 30 and December 31, 1990. The deferments are due to extremely low water levels in Clark Canyon Reservoir.

26. *Palmetto Bend Project, Texas:* Amendment of the tripartite contract among the United States, the Lavaca-Navidad River Authority and the Texas Water Development Board to transfer the Board's remaining repayment obligation and interest in the Palmetto Bend Project to the Authority.

27. *City of Havre, Milk River Project, Montana:* New long term water service contract for up to 2,800 acre-feet annually.

28. *Lakeview Irrigation District, Shoshone Project, Wyoming:* New long term water service contract for up to 15,000 acre-feet of water annually from Buffalo Bill Reservoir.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within the time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of a proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties

who requested the contract in response to the initial public notice.

Dated: July 30, 1990.

Dennis B. Underwood,

Commissioner.

[FR Doc. 90-18125 Filed 8-2-90; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Salmonid Introduction in the Delaware River

AGENCY: U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of intent.

SUMMARY: The FWS is issuing this notice to advise the public and all interested parties that they intend to prepare a Draft Environmental Impact Statement (DEIS) on the proposal by New Jersey Division of Fish, Game, and Wildlife (NJDFG&W) to seek Federal funding for the introduction of anadromous salmonids to the Delaware River in New Jersey.

FOR FURTHER INFORMATION CONTACT: Dr. James Weaver, Assistant Regional Director, Fisheries and Federal Aid, USFWS, One Gateway Center, Suite 700, Newton Corner, MA 02158. Phone (617) 965-5100 X208.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service, with the New Jersey Division of Fish, Game and Wildlife, is preparing an Environmental Impact Statement (EIS) in response to a proposal by NJDFG&W to use Federal Aid funds for the introduction of anadromous salmonids to a portion of the Delaware River in New Jersey. The EIS will describe the proposed action, alternatives, including a no action alternative, and the impacts associated with each. The Draft EIS will be tentatively available for public comment in February 1991.

The New Jersey proposal, if selected, would involve upgrading the Charles O. Hayford Fish Hatchery at Hackettstown, New Jersey, to support the production of a minimum of 500,000 smolts annually. The Hayford Hatchery is located on the Musconetcong River, a tributary to the Delaware River. Additionally, a culture and stocking program would be initiated using eggs acquired from a suitable source, (with special attention paid to the strain's timing of migration and freedom from disease). Prior to release, smolts might be exposed to an artificial chemical cue to increase the preciseness for homing to the Musconetcong River. Following initial stocking, a continuous monitoring and evaluation program would be established. A minimum of five years of hatchery production based solely on outside egg sources is expected before returning fish could provide a sufficient brood stock pool to meet necessary production needs.

The Draft EIS will examine the proposal and alternatives in detail including No Action alternative. Fish and Wildlife Service interests are: (1) Whether to provide financial assistance; (2) conformance with agreements on introduction of exotic species. During preliminary planning stages for this action, a number of issues have been identified by the public, various interested parties, and resource agencies of States within the Delaware River Basin. The issues identified include: disease introduction, interspecific competition, genetic degradation of native stocks, straying of fish into other jurisdictions, water quality and aesthetics associated with dead carcasses of post-spawning fish, conflicts with existing fishing and water use, and the potential for creating a fishery during periods unsuitable for angling. Furthermore, the proposal may be contrary to policy of the North Atlantic Commission of the North Atlantic Salmon Conservation Organization. Therefore, FWS will not take a position on the proposed action until the EIS process is completed.

To provide all interested parties with an opportunity to identify issues of concern and potential sources of information that will contribute to the DEIS, two scoping meetings are planned. Because of the basin-wide interest in this proposed action, scoping meetings will be held in two different geographic areas. The locations and dates of the scoping meetings are as follows:

September 4, 1990, 7 to 10 pm, Mercer County Community College, Trenton, NJ 08690.

September 5, 1990, 7 to 10 pm, Port Jervis Holiday Inn, Banquet Room, Port Jervis, NY 12771.

The scoping meetings will: (1) Provide a brief description of the proposal for informational purposes, (2) identify alternatives, environmental impacts and issues that should be addressed in the Draft Environmental Impact Statement, (3) identify other environmental review consultation, coordination, clearance, or permit requirements associated with the proposal, (4) describe the role of the Environmental Impact Statement in the planning and decisionmaking process, and (5) establish projected time frames for preparing the Draft Environmental Impact Statement. Meeting attendees and all interested parties are encouraged to provide written statements, either prior to or within 30 days of the meetings. Written comments should be submitted to: Dr. James Weaver, Assistant Regional Director, FFA, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, MA 02158.

Summaries of issues raised at the scoping meetings will be distributed to all attendees and interested parties.

Dated: July 25, 1990.

Ronald E. Lambertson,

Regional Director.

[FR Doc. 90-18108 Filed 8-2-90; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. (1) Lancaster Colony Corporation, a Delaware corporation 37 W. Board Street, Columbus, Ohio 43215, and its divisions:

a. Brody Company Division
b. Candle-lite Division
c. Koneta Rubber Company Division
d. Pitman-Dreitzer Division

(2) Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(a) Colony Printing & Labeling, Inc.,—Indiana
(b) Dee Zee, Inc.—Ohio
(c) Fostoria Glass Company—West Virginia
(d) Indiana Glass Company—Indiana (Including its division: Tiara Exclusives)
(e) LRV Acquisition Corp.—Ohio (Including its division: Easco)
(f) LaGrange Molded Products, Inc.—Delaware
(g) Lancaster Colony Canada Inc.—Canada
(h) Lancaster Colony Commercial Products, Inc.—Ohio
(i) Lancaster Glass Corporation—Ohio
(j) T. Marzetti Company—Ohio (Including its divisions: (a) Allen Milk; (b) Inn Maid Products; (c) Jackson; and (d) Pfeiffer Foods)
(k) New York Frozen Foods, Inc.—Ohio
(l) Pretty Products, Inc.—Ohio
(m) Quality Bakery Company, Inc.—Ohio
(n) Reames Foods, Inc.—Iowa
(o) Waycross Molded Products, Inc.—Ohio

B. 1. The parent corporation is Sulnel Company, Inc. Its principal office is located at Box 154, Jackson, NE.

2. Wholly-owned subsidiary which will participate in operations is D.J. Michael's Co., Inc. It's principal office is located at Box 154, Jackson, NE. The State of incorporation is Nebraska.

C. 1. Parent corporation and address of principal office:
Temple-Inland Inc., 303 South Temple Drive P.O. Drawer N, Diboll, Texas 75941.
2.Wholly-owned subsidiaries which will participate in the operations and their State of incorporation are:

Subsidiaries	State of incorporation
Temple-Inland Forest Products Corporation.	Delaware.
Inland Container Corporation I.	Delaware.
Anderson Box Company, Inc.	Indiana.
El Morro Corrugated Box Corporation.	Delaware.
El Morro Corrugated Box Corporation.	de Puerto Rico.
Inland Paper Company Inc.	Indiana.
Inland Real Estate Investments, Inc.	Indiana.
Inland-Rome Inc	Delaware.
Inland-Orange Inc	Delaware.
Sabine River & Northern Railroad Company.	Texas.
Inland Container Corporation.	Delaware.

Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 90-18166 Filed 8-2-90; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 234X)]

Chicago and North Western Transportation Co.—Abandonment Exemption; in Cerro Gordo and Franklin Counties, IA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 5.85-mile line of railroad between milepost 168.05, near Rockwell, and milepost 173.9, near Sheffield, in Cerro Gordo and Franklin 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 September 3, 1990 (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 August 13, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 23, 1990, 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 August 8, 1990. 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, 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 31, 1990.

By the Commission, David M. Konschnik, Director, Officer of Proceedings.

Sidney L. Strickland, Jr.
Secretary.
[FR Doc. 90-18198 Filed 8-2-90; 8:45 am]
BILLING CODE 7035-01-M

[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*, 5 I.C.C.2d 377 (1989). 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 exception.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Finance Docket No. 31714]

Consolidated Rail Corp.; Trackage Rights Exemption

CSX Transportation, Inc. (CSXT), has agreed to grant local trackage rights to Consolidated Rail Corporation (Conrail) enabling Conrail to transport coal shipments from the Sunnyhill Mine to American Electric Power Company's Gavin power plant, near milepost 125.1, at Cheshire, Gallia County, OH, on CSXT's track between Gallipolis and Pomeroy, OH. Conrail already has overhead trackage rights over this line under an agreement between the predecessors of CSXT and Conrail dated July 24, 1886. The trackage rights were to have become effective on or after July 23, 1990.

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: John J. Paylor, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959.

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 25, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 90-18092 Filed 8-2-90; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31707]

Shannon Transport, Inc., and Red Bank Railroad Co.; Acquisition and Operation Exemption—Consolidated Rail Corp.

Shannon Transport, Inc. (Shannon), and Red Bank Railroad Company (Red

Bank) have filed a notice of exemption for Shannon to acquire from Consolidated Rail Corporation (Conrail) and for Red Bank to operate two lines in Clarion County, PA: (1) Sligo Running Track (Sligo Industrial Track) between Lawsonham (milepost 0.0) and Sligo (milepost 10.5); and (2) Low Grade Secondary Track, between mileposts 4.0 and 6.0, near Lawsonham.[1]

Any comments must be filed with the Commission and served on: Richard R. Wilson, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219; and William P. Quinn, Rubin Quinn Moss Heaney & Patterson, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

Shannon and Red Bank shall retain their interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 407.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 23, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-18093 Filed 7-30-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 90-4]

Dennis H. Harris, M.D., Phoenix, AZ; Notice of Hearing

Notice is hereby given that on October 30, 1989, the Drug Enforcement Administration, Department of Justice, issued to Dennis H. Harris, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny application for DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on July 31, 1990, commencing at 9:30 a.m., at the United States Tax Court, Federal Building and U.S. Post Office, 522 North Central Avenue, room 235, Phoenix Arizona.

Dated: July 27, 1990.

Terrence M. Burke,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 90-18121 Filed 08-02-90; 8:45 am]

BILLING CODE 4410-09-M

[1] This transaction is related to a notice of exemption in Finance Docket No. 31709, *Dumaines and Authur T. Walker Estate Corporation—Continuance in Control Exemption—Red Bank Railroad Company*, for the continuance in control of Red Bank and numerous non-connecting carriers.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements 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.

Revision

Employment and Training Administration

Experience Rating Report

1205-0164; ETA 204

Annually

State or local governments

53 respondents; 14 total hours; 15 minutes per response; 1 form Measures experience rating, permitting calculation of experience rating index (ERI); permits analysis of factors influencing rates, equity, and soundness of the system.

Extension

Occupational Safety and Health Administration

Report Injuries to employees operating mechanical power presses, 1218-0070

191 respondents; 57 burden hours; 0.3 average burden hours per response; 0 forms;

OSHA is required to conduct an ongoing analysis of mechanical power press injuries to monitor the effectiveness of the standard and to determine the need for revisions. This analysis cannot be made without collecting information on power press accidents.

Employment Standards Administration

OFCCP Recordkeeping/Reporting: Construction

1215-0163

Monthly; Annually

Businesses or other for profit; Non-profit institutions; Small businesses or organizations

136,743 respondents; 5,224,707 total hours; average between .417 hours and 48 hours per response; 1 Form

Recordkeeping and reporting obligations incurred by Federal and federally assisted construction contractors under E.O. 11246, are necessary to substantiate compliance with nondiscrimination and affirmative action requirements monitored by the Office of Federal Contract Compliance Programs (OFCCP).

Uniform Health Insurance Claim Form; Health Insurance Claim Form; Resubmission Turnaround Document

1215–0055; HCFA 1500; UB 82; CM1173

On occasion

Individuals or households, State or local governments; businesses or other for profit; Federal agencies or employees; non-profit institutions; small businesses or organizations

Form	Respondents	Average time per response
HCFA 1500	553,000	5 to 15 min.
UB 82	87,000	9 to 17 min.
CM 1173	30,000	5 min.
		174,266 total hours.

The HCFA 1500 is a standard claim form used by all providers except hospitals and pharmacies to request payment for FEC and BL claimants. UB 82 is used by providers to bill OWCP for payment for inpatient care provided to claimants. RTD collects missing information for the BL protion of HCFA 1500 and UB 82.

Employment and Training Administration

Interstate Arrangement for Combining Employment and Wages, ETA 586

1205–0029; ETA 586

Quarterly

State or local governments

53 respondents; 636 total hours; 3 hrs. per response; 1 form 3304(a)(9)(B) of the I.R.C. of 1954 requires States to participate in an arrangement, as prescribed by the Secretary of Labor, which provide for the payment of UI benefits on the basis of combining employment and wages earned in two or more States. This report is needed to measure the scope and monitor the operation of this program.

Signed at Washington, DC, this 31st day of July, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90–18176 Filed 8–2–90; 8:45 am]

BILLING CODE 4510–22–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, DC 20210.

New General Wage Determinations

Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume III

Colorado:

CO90–5 ..... p. 132a, pp. 132b–132d
CO90–6 ..... p. 132e, pp. 132f–132h
CO90–7 ..... p. 132i, p. 132j
CO90–8 ..... p. 132k, pp. 132l–132n
CO90–9 ..... p. 132o, p. 132p

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I	
New York, NY90–7 (Jan. 5, 1990).	p. 797, pp. 799–814
Pennsylvania:	
PA90–1 (Jan. 5, 1990).	p. 909, p. 912
PA90–4 (Jan. 5, 1990).	p. 941, p. 943
PA90–13 (Jan. 5, 1990).	p. 1017, p. 1018
PA90–22 (Jan. 5, 1990).	p. 1067, p. 1071
Volume II	
Nebraska:	
NE90–1 (Jan. 5, 1990).	p. 717, p. 718
NE90–12 (Jan. 5, 1990).	p. 745, p. 746
NE90–13 (Jan. 5, 1990).	p. 746a, p. 746b
Ohio:	
OH90–2 (Jan. 5, 1990).	p. 791, pp. 792–796, pp. 801, 804–805
OH90–3 (Jan. 5, 1990).	p. 813, pp. 814–815
Volume III	
Arizona, AR90–2 (Jan. 5, 1990).	p. 15, pp. 16–26
California:	
CA90–2 (Jan. 5, 1990).	p. 41, pp. 45–47
CA90–4 (Jan. 5, 1990).	p. 71, pp. 72–80, 82–84, pp. 86–87, 90
Colorado, CO90–4 (Jan. 5, 1990).	p. 125, pp. 126–130
Nevada:	
NV90–1 (Jan. 5, 1990).	p. 243, pp. 247–249, pp. 257–263
NV90–2 (Jan. 5, 1990).	p. 265, pp. 266–267
NV90–5 (Jan. 5, 1990).	p. 289, pp. 292–293, pp. 296–297
Oregon, OR90–1 (Jan. 5, 1990).	p. 309, pp. 310–312, pp. 314, 319
Utah, UT90–3 (Jan. 5, 1990).	p. 359, pp. 361–362, pp. 364, 366
Washington:	
WA90–1 (Jan. 5, 1990).	p. 369, pp. 370–371, 373, pp. 374, 378–379
WA90–2 (Jan. 5, 1990).	p. 395, pp. 396–399
WA90–3 (Jan. 5, 1990).	p. 405, p. 406
WA90–5 (Jan. 5, 1990).	p. 413, p. 415
WA90–7 (Jan. 5, 1990).	p. 419, p. 420
WA90–8 (Jan. 5, 1990).	p. 425, p. 426

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th day of July 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90–17943 Filed 8–2–90; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance, Allergan Pharmaceuticals, Inc., et. al.

Petititions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 13, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 13, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 23rd day of July 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Allergan Pharmaceuticals, Inc. (Workers)	Greenville, TN	7/23/90	7/10/90	24,629	Eye & skin care products.
Alymar Bags Inc. (Workers)	Brooklyn, NY	7/23/90	7/11/90	24,630	Ladies' handbags.
American Lantern Co. (ABGW)	Newport, AR	7/23/90	7/08/90	24,631	Light fixtures.
Anchor Hocking Packaging Co. (Workers)	Connellsville, PA	7/23/90	7/11/90	24,632	Closures caps.
AT&T Tech. Network Systems (CWA)	Phoenix, AZ	7/23/90	7/06/90	24,633	Cable, telephone wires.
Bull HH (Workers)	Edina, MN	7/23/90	7/09/90	24,634	Computers.
Dividend Personnel Service (Workers)	Wichita Falls, TX	7/23/90	7/03/90	24,635	Electrical assembly.
ELCO Dress Co., Inc. (Workers)	New Bedford, MA	7/23/90	7/19/90	24,636	Dresses.
Endicott Johnson (Company)	Forest City, PA	7/23/90	7/09/90	24,637	Mens' & boys' footwear.
Fryburg Trucking Serv., Inc. (Company)	Belfield, ND	7/23/90	7/02/90	24,638	Trucking serv.
J.H. Collectibles (ILGWU)	Nevada, MO	7/23/90	7/29/90	24,639	Ladies' pants & skirts.
J.L. Coombs, Inc. (Workers)	Phillips, ME	7/23/90	7/02/90	24,640	Mens' & boys' shoes.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
J. Schoeneman Co. (Workers)	Chambersburg, PA	7/23/90	7/06/90	24,641	Mens' coats.
Johnson Controls, Inc. (IAMAW)	Milwaukee, WI	7/23/90	7/09/90	24,642	Temperature controls.
Latrobe Steel Co. (USWA)	Latrobe, PA	7/23/90	7/11/90	24,643	Steel.
(The) Lion Knitting Mills Co. (ILGWU)	Cleveland, OH	7/23/90	7/09/90	24,644	Sweaters.
Maxwell House Coffee (UFCWU)	Hoboken, NJ	7/23/90	7/09/90	24,645	Coffee.
Mike Byrd Casing Crews, Inc. (Workers)	Hamlin, TX	7/23/90	7/02/90	24,646	Oil well casings.
Nelson Drilling, Inc. (Company)	Gillette, WY	7/23/90	7/09/90	24,647	Oil & gas.
NJE Corp (Company)	Dayton, NJ	7/23/90	7/13/90	24,648	Power supplies.
Package Machinery Co. Reed Div. (IUE)	Stafford Springs, CT	7/23/90	7/05/90	24,649	Molding machinery.
Phillips Mfg., Co. (IB of T)	Neward, NJ	7/23/90	7/28/90	24,650	Badges.
Standard Guage (Workers)	Pough, NY	7/23/90	7/13/90	24,651	Measuring devices.
Sue Frocks, Inc. (Workers)	Tamaqua, PA	7/23/90	7/16/90	24,652	Childrens' dresses.
Tazewell Div. of Signal Apparel, In	New Tazewell, TN	7/23/90	6/22/90	24,653	Knitted garments.
Terex Corp./Northwest Engineering (USWA)	Green Bay, WI	7/23/90	7/10/90	24,654	Mining & construction equip.
(The) Timberland Co. (Company)	Bangor, ME	7/23/90	7/03/90	24,655	Footwear.
Welchem Inc. (Company)	Houston, TX	7/23/90	7/17/90	24,656	Oil drilling chemicals.
White Consolidated Industries, Inc. (IUE)	Mansfield, OH	7/23/90	7/16/90	24,657	Washing machines.
Woodstock Die Cast (Workers)	Woodstock, IL	7/23/90	7/10/90	24,658	Zinc die castings.

[FR Doc. 90-18177 Filed 8-2-90; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-24-408; Biltwell Co., Tipton, MO

TA-W-24-521; Cone Mills Corp., Greenville, SC

TA-W-24-418; Kellwood Co., Sportswear Div., Pauls Valley, OK

TA-W-24-461; Tungsten Alloy Mfg. Co., Inc., Harrison, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24-454; Rhode Island Lace Works, Inc., Barrington, RI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24-462; Turbine Support Div. Chromalloy Corp., San Antonio, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24-450; Par Microsystems Corp., Div of Par Technology Corp., New Hartford, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24-424; Par Technology Corp. New Hartford, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24-434; Bonwit Teller, Philadelphia, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24-463; Uniroyal Goodrich, Miami, OK

Workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24-483; Proknit Corp., Hazelton, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24-428; American Electric, St. Louis, MO

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24-549; Glen Raven Mills, Inc., Rockingham, NC

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24-442; IMO Industries, Inc., Delroyd Worm Gear Div., Trenton, NJ

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-24-449; Merrimaid Manufacturing, Barre Div., Barre, VT

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24-469; Brudi Equipment, Kelso, WA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24-417; Grove Textiles, Inc., Dunmore, PA

U.S. imports of yarn declined absolutely and relative to U.S. shipment in 1989 compared to 1988.

Affirmative Determinations

TA-W-24-499; Fante Clothing, Philadelphia, PA

A certification was issued covering all workers separated on or after May 29, 1989.

TA-W-24,472; Jantzen, Inc., Eunice, LA

A certification was issued covering all workers separated on or after May 22, 1989.

TA-W-24,457; Sprague Electric Co., Hillsville, VA

A certification was issued covering all workers separated on or after May 15, 1989.

TA-W-24,558; M.G.H. Garments, Inc., San Francisco, CA

A certification was issued covering all workers separated on or after June 18, 1989.

TA-W-24,489; WI Forest Products Co., Northwest Timer Div., Coeur D'Alene, ID

A certification was issued covering all workers separated on or after May 25, 1989, and before August 8, 1990.

TA-W-24,447; Marala Shingle & Shake, Inc., Sekiu, WA

A certification was issued covering all workers separation on or after May 9, 1989.

TA-W-24,448; Meridian Manufacturing Co., Meridian, MS

A certification was issued covering all workers separated on or after May 16, 1989.

TA-W-24,511; Pandora Industries, Inc., New York, NY

A certification was issued covering all workers separated on or after May 21, 1989.

TA-W-24,452; Plaskon Electronic Materials, Inc., Toledo, OH

A certification was issued covering all workers separated on or after September 30, 1989.

I hereby certify that the aforementioned determinations were issued during the month of July 1990. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213, during normal business hours or will be mailed to persons to write to the above address.

Dated: July 29, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR DFoc. 90-18178 Filed 8-2-90; 8:45 am]

BILLING CODE 4150-30-M

Trico Products Corp.

[TA-W-23,656 and TA-W-23,656A]

Buffalo, NY and Kansas City, MO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 19, 1990 applicable to all workers of Trico Products Corporation, Buffalo, New York. The notice was published in the **Federal Register** on January 31, 1990 (55 FR 3287).

The Department is amending the certification to include the Kansas City, Missouri warehouse of Trico Products Corporation which was closed in January 1990. The warehouse handled the windshield wiping systems produced at Buffalo, New York. The amended notice applicable to TA-W-23,656 is hereby issued as follows:

All workers of Trico Products Corporation, Buffalo, New York and Kansas City, Missouri who become totally or partially separated from employment on or after September 17, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of July 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-18179 Filed 8-2-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 407]

Warrenton Rubber Co., Warrenton, GA; Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for workers adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated on May 7, 1990 in response to a petition received on May 7, 1990 and filed on behalf of workers and former workers at Warrenton Rubber Company, Warrenton, Georgia. The workers produced innertubes.

Warrenton Rubber Company, Warrenton, Georgia closed October 30, 1989.

U.S. imports innertubes for pneumatic tires increased in the January through March 1990 period compared to the same period in 1989.

The Department conducted a survey of the major declining customers of the Warrenton Rubber Company regarding their purchases of imported innertubes in 1989 compared with 1988. The survey revealed that several customers accounting for a significant portion of the subject firm's sales decline increased their purchases of imports in the relevant period.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with innertubes produced at Warrenton Rubber Company, Warrenton, Georgia contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers and former workers at Warrenton Rubber Company, Warrenton, Georgia who became totally or partially separated from employment on or after April 23, 1989 and before November 30, 1989 are eligible to apply for adjustment assistance benefits under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of July 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-18180 Filed 8-2-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-101-C]

Shamrock Coal Co., Inc., Petition for Modification of Application of Mandatory Safety Standard

Shamrock Coal Company, Inc., P.O. Box 130, Manchester, Kentucky 40962-0130 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Beech Fork No. 18-19 Mine (I.D. No. 15-02502) located in Leslie County, Kentucky. The petition is

filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M–90–102–C), petitioner proposes to use air in the belt entry to ventilate active working places.

3. As an alternate method, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries used as intake aircourses. The petitioner outlines specific procedures and equipment in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided 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 September 4, 1990. Copies of the petition are available for inspection at that address.

Dated: July 27, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–18181 Filed 8–2–90; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90–57]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Communications and Information Systems Subcommittee (CISS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Communications and Information Systems Subcommittee.

DATES: August 22, 1990, 8:30 a.m. to 5 p.m., and August 23, 1990, 8:30 a.m. to 5 p.m.

ADDRESSES: National Council on the Aging, West Wing, suite 100, 600 Maryland Avenue, SW, room 141, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code SC, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1510).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Communications and Information Systems Subcommittee provides technical support to the Committee and will conduct ad hoc studies and assessments. The Subcommittee will meet to review Program Status and Plans, and discuss Strategic and Discipline Data Management Plans. The Subcommittee is chaired by Dr. Robert T. Filep and is composed of 10 members. The meeting will be open to the public up to the capacity of the room (approximately 45 people including members of the Subcommittee).

Type of Meeting: Open.

Agenda:

Wednesday, August 22, 1990.

8:30 a.m.—Satellite Applications Program Initiatives Discussion.

10:15 a.m.—Concurrent Sessions: Communications and Information Systems.

5 p.m.—Adjourn.

Thursday, August 23, 1990.

8:30 a.m.—Data Management Planning Discussion.

10:15 a.m.—Reconvene: Concurrent Sessions—Communications and Information Systems.

1 p.m.—Committee Discussion and Recommendations.

4 p.m.—Subcommittee Wrap-up.

5 p.m.—Adjourn.

Dated: July 30, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90–18100 Filed 8–2–90; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

NARA Tour Evaluation Card; Proposed Information Collection Submission

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed information collection submitted to OMB for approval.

SUMMARY: The National Archives and Records Adminstration (NARA) is submitting a proposed collection of information to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320.

The information collection is a tour evaluation to be completed on a voluntary basis by one adult member of each tour party participating in a Behind-the-Scenes tour of the National Archives Building. Approximately 1,300 tours were conducted for 32,500 individuals in fiscal year 1989. The evaluation, a postcard to be returned at NARA expense, requests opinions on the content and length of the tour as well as the overall tour experience. We estimate that each response will take approximately 5 minutes and that we will achieve a response rate of 75 percent. The information will assist NARA in planning and improving future tours.

DATES: NARA invites the public to comment on the proposed information collection. Comments should be submitted by September 4, 1990.

ADDRESSES: Copies of the proposed information collection and supporting documentation can be obtained from the Policy and Program Analysis Division (NAA), room 409, National Archives Building, 7th and Pennsylvania Avenue NW., Washington, DC 20408. Telephone requests may be made to (202) 501–5110.

Comments should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408. A copy of the comments should be sent to the Office of information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at (202) 501–5110.

Dated: July 24, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90–18138 Filed 8–2–90; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by September 4, 1990.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Dance on Tour FY 92 Application Guidelines.

Frequency of Collection: One time.

Respondents: State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations and state or regional arts agencies that apply for funding under the Dance on Tour category. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 20.

Average Burden Hours per Response: 35.

Total Estimated Burden: 700.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 90–18124 Filed 8–2–90; 8:45 am]

BILLING CODE 7537-01-M

PEACE CORPS

Information Collection Request Under OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. A copy of the information collection may be obtained from Ms. Shirley Puchalski, Office of World Wise Schools, United States Peace Corps, 1990 K Street NW., Washington, DC 20526. Ms. Puchalski may be called at 202–606–3294. Comments on this information collection should be addressed to Mr. Marshall Mills, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract

Title: World Wise Schools Enrollment Form and Questionnaire to Educators.

Need for and Use of the Information: Peace Corps needs this information in order to enroll classrooms in the World Wise School Program and evaluate the effectiveness of the program.

Respondents: Teachers.

Burden on the public:

a Annual reporting burden: 1250 hours.

b. Annual recordkeeping burden: 0 hours.

c. Estimated average burden per response: 15 minutes.

d. Frequency of response: On occasion and annually.

e. Estimated number of likely respondents: 5,000.

This notice is issued in Washington, DC, on July 30, 1990.

Collins Reynolds,

Associate Director for Management.

[FR Doc. 90–18104 Filed 8–2–90; 8:45 am]

BILLING CODE 6051-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28283; File No. S7–9–90]

Self-Regulatory Organizations; Order Granting Extension of the Temporary Exemption From Registration as a Securities Information Processor to National Association of Securities Dealers for Market Services, Inc.

On March 28, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 11A(b)(2) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 11Ab2–1 thereunder,[2] an application for registration of its subsidiary, Market Services, Inc. ("MSI"), as an "exclusive securities information processor" ("ESIP") [3] for the operation of the PORTAL Market.[4] Section 11A(b)(1) of the Act provides for the registration with the Commission of those securities information processors which perform the function of an exclusive securities information processor on behalf of a national securities exchange or registered securities association. On April 27, 1990, the Commission noticed the application and temporarily exempted MSI from registration as a securities information processor through July 26, 1990.[5] To date, the Commission has received no comments concerning this application.

Pursuant to section 11A(b)(3) of the Act,[6] the NASD consented by letter dated July 27, 1990 to a sixty (60) day extension for Commission action. The Commission requested the extension in order to complete its review of the application and to discuss with the NASD whether any additional information is necessary. The Commission finds that an extension

[1] 15 USC 78k–1(b)(2) (1987).

[2] *See* letter to Jonathan G. Katz, Secretary, SEC, from Frank J. Wilson, Executive Vice-President and General Counsel, NASD, dated March 28, 1990.

[3] MSI is a securities information processor within the definition of Section 3(a)(22)(A) of the Act and an exclusive processor within the definition of section 3(a)(22)(B) of the Act.

[4] The PORTAL Market is a screen-based system for primary placements and secondary trading of Rule 144A securities. The Commission, in separate releases, adopted Rule 144A under the Securities Act of 1933 and approved an NASD proposed rule change to implement the PORTAL Market under the Exchange Act. *See* Securities Act Release No. 6862, April 23, 1990; and Securities Exchange Act Release No. 27956, April 27, 1990.

[5] *See* Securities Exchange Act Release No. 27957 (April 27, 1990).

[6] Section 11A(b)(3) of the Act requires the Commission to grant or deny the registration application within ninety days of publication of the notice of application or within such longer period as to which the applicant consents.

until August 27, 1990 of the order granting MSI a temporary exemption from registration is appropriate and consistent with the public interest, the protection of investors and the purposes of Section 11A of the Act provided, however, that all the terms and conditions of the April 27 order shall continue in full effect during the term of this exemption.

It is therefore ordered, pursuant to section 11A(b)(1) of the Act, that the (90) day exemptive period following publication of notice of the MSI application for registration as a securities information processor is hereby extended until September 24, 1990. It is further ordered that MSI, during the term of the exemption, is subject to all the terms and conditions of Securities Exchange Act Release No. 27957 (April 27, 1990), which initially exempted MSI from registration.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 30, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-18127 Filed 8-2-90; 8:45 am]

BILLING CODE 8010-01M

[Rel. No. IC-17623; 811-5384]

Dreyfus Connecticut Tax Exempt Bond Fund, Inc.; Application

July 30, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Dreyfus Connecticut Tax Exempt Bond Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on July 19, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 23, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 666 Old Country Road, Garden City, New York 10153.

FOR FURTHER INFORMATION CONTACT: Brion Thompson, Special Counsel, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant is an open-end, non-diversified, management investment company incorporated under the laws of the state of Maryland. On November 9, 1987, Applicant filed a notification of registration on Form N-8A under the 1940 Act. On the same date, Applicant filed a registration statement on Form N-1A under the 1940 Act and the Securities Act of 1933. The registration statement became effective on November 17, 1987, but Applicant never made a public offering of its securities.

2. At a meeting held on July 12, 1990, Applicant's Board of Directors determined to liquidate Applicant's assets and distribute the proceeds to Applicant's shareholder, The Dreyfus Corporation.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-18161 Filed 8-2-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17622; 811-5297]

Dreyfus Government Cash Management Plus, Inc.; Application

July 30, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Dreyfus Government Cash Management Plus, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on July 19, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 23, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 666 Old Country Road, Garden City, New York 10153.

FOR FURTHER INFORMATION CONTACT: Brion Thompson, Special Counsel, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company incorporated under the laws of the state of Maryland. On August 24, 1987, Applicant filed a notification of registration on Form N-8A under the 1940 Act. On the same date, Applicant filed a registration statement on Form N-1A under the 1940 Act and the Securities Act of 1933. The registration statement became effective on September 18, 1987, but Applicant never made a public offering of its securities.

2. At a meeting held on July 12, 1990, Applicant's Board of Directors

determined to liquidate Applicant's assets and distribute the proceeds to Applicant's shareholder, The Dreyfus Corporation.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-18162 Filed 8-2-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17624; 811-4134]

National Premium Income Fund; Application

July 30, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: National Premium Income Fund.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application on Form N-8F was filed on July 18, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 23, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 600 Third Avenue, New York, NY 10016.

FOR FURTHER INFORMATION CONTACT: Brion Thompson, Special Counsel, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant registered under the 1940 Act and the Securities Act of 1933 with the Commission on October 15, 1984. Applicant's initial registration statement was declared effective on December 5, 1985, and the initial public offering of its shares commenced immediately thereafter.

2. On December 14, 1989, the Board of Trustees of Applicant took action authorizing an Agreement and Plan of Reorganization (the "Plan") under which all of the assets and liabilities of Applicant would be transferred to National Total Income Fund ("Total Income"), a registered investment company (File No. 811-4728), on May 30, 1990. Applicant's board determined in accordance with Rule 17a-8 under the 1940 Act that the Plan was in the best interest of the shareholders and that the interests of the shareholders would not be diluted as a result of the Plan.

3. Proxy materials relating to the Plan were mailed to Applicant's shareholders on or about April 29, 1990, and definitive proxy materials were filed with the SEC on May 2, 1990. A majority of Applicant's shareholders approved the Plan at a Special meeting held on May 24, 1990.

4. Pursuant to the Plan, at the closing on May 30, 1990, Applicant assigned, conveyed, transferred and delivered to Total Income all of its then existing assets. In consideration, Total Income assumed all of Applicant's obligations and liabilities then existing and delivered to Applicant a number of full and fractional shares of beneficial interest of Total Income. Applicant distributed in complete liquidation pro rata to its shareholders of record as of May 30, 1990, the Total Income shares received by Applicant. The voting rights of Total Income shares are identical to those of Applicant's shares.

5. No brokerage commissions were paid in connection with the Plan.

6. As of April 9, 1990, the record date for determination of shareholders of Applicant entitled to notice of, and to vote at, the Special Meeting held on May 24, 1990, Applicant had 897,338 shares of beneficial interest outstanding, having an aggregate net asset value of $8,568,568 and a per share net asset value of $9.55. Following implementation of the Plan on May 30, 1990, Applicant had no shareholders. Of the total reorganization expenses of $40,000.00, Applicant was allocated $20,000.00. Applicant currently has no assets and no liabilities.

7. All of Applicant's required N-SAR filings have been or will be made, and all N-SAR filings will continue to be made until the order requested herein has been entered.

8. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

9. Except for the transaction described herein, Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of Applicant.

10. Following Applicant's reorganization with Total Income, Applicant's registration as a Massachusetts business trust was terminated by the Office of the Secretary of State, Boston, Massachusetts, as of May 30, 1990.

11. Applicant is not a party to any current or pending litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-18163 Filed 8-2-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25122]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 27, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 20, 1990 to the Secretary, Securities and Exchange Commission,

Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CSW Credit, Inc., et al. (70–7218)

Central and South West Corporation ("CSW"), a registered holding company, and CSW Credit, Inc. ("Credit"), its nonutility subsidiary company, both located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), I0 and I2(b) of the Act and rules 45 and 50(a)(5) thereunder.

By prior Commission orders dated July 19, 1985, July 31, 1986 and February 8, 1988 (HCAR Nos. 23767, 24157 and 24575, respectively), CSW was authorized to form Credit for the purpose of factoring the accounts receivable of CSW's subsidiaries and nonassociate utilities. Credit's ratio of debt to equity was to be maintained at approximately 80% debt to 20% equity; however, that requirement was changed by order dated December 27, 1989 (HCAR No. 25009) to a requirement that the equity ratio be no less than I5%. CSW and Credit are now seeking to change this requirement to a requirement that the equity ratio be no less than 5%.

Entergy Corporation (70–7757)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric public-utility subsidiary companies, Arkansas Power & Light Company, 425 W. Capitol Street, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 317 Baronne Street, New Orleans, Louisiana 70112 and System Energy Resources, Inc., Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213 (collectively, "Operating Subsidiaries"), and its service company subsidiary Entergy Operations, Inc. ("EOI"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213, have filed a declaration pursuant to section 12(b) of the Act and rule 45 thereunder.

By prior order, dated June 5, 1990 (HCAR No. 25100), the Commission approved the formation of EOI as a subsidiary service company to operate certain Entergy system nuclear generating facilities, and the execution of related Operating Agreements ("Operating Agreements") between EOI and each of the Operating Subsidiaries who own nuclear generating facilities ("Plant Owners").

Entergy now proposes to enter into separate Guarantee Agreements with each of the Plant Owners, whereby Entergy would guarantee the financial ability of EOI to meet its various financial obligations to each of the Plant Owners under the Operating Agreements, as long as each such Plant Owner continues to meet its payment obligations to EOI under the applicable Operating Agreement.

Mississippi Power & Light Company (70–7760)

Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39215–1640, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

MP&L proposes to institute certain programs ("program") to seek out and meet the electric utility needs of its residential, commercial and industrial customers. It is contemplated that the Program will be divided into four discreet areas: (1) "Space Conditioning," involving the marketing, selling, leasing, financing the acquisition and installation of, and selling service plans for, space conditioning equipment such as water heaters and heat pumps and related weatherization, ductwork and wiring improvements; (2) "Premium Power," involving audits of customers' facilities to detect power quality and reliability problems, marketing, selling, leasing and financing the acquisition and installation of transient voltage surge control, power conditioning and standby power equipment to resolve such power quality and reliability problems, selling and financing manufacturer warranties and maintenance agreements, and the employment of consultants; (3) "Electrotechnologies," involving the marketing, selling, leasing to and financing of equipment utilizing electric power and energy for MP&L's commercial and industrial customers; and (4) "Field Services," involving marketing and selling to MP&L's commercial and industrial customers of testing, maintenance, repair and training services to enhance the operating efficiency and help reduce the cost of operation of such customers.

The services of the Field Services Program will be provided to customers for a market based fee, and charges will be rendered for each service when performed.

MP&L will obtain financing for the Space Conditioning, Premium Power and Electrotechnologies Programs from its general corporate funds. Financing of customers' purchases under the Space Conditioning and Premium Power Programs would be provided through direct loans and lease agreements. Interest on loans and imputed interest included in lease payments will range from zero percent to the prevailing market rate; the terms of the obligations will be three months to five years. The obligations may be either secured or unsecured. The maximum amounts outstanding under the Space Conditioning Program and the Premium Power Program at any one time will be approximately $1 million and $2 million, respectively.

MP&L will provide financing to customers in the Electrotechnologies Program through direct loans and operating or finance lease agreements. The maximum amount of obligations outstanding at any time for the Electrotechnologies equipment will be approximately $20 million in the aggregate, or $2 million per customer. Under this program, MP&L may also offer performance based shared savings contracts to customers. The maximum amount of obligations outstanding for such contracts will be approximately $4 million, or $2 million per customer. Interest on loans and imputed interest included in lease payments for the Electrotechnologies Program will range from zero percent to the prevailing market rate. Such obligations will have terms ranging from one to five years and will be unsecured.

From time to time, MP&L may assign evidence of indebtedness acquired from customers in connection with the Space Conditioning, Premium Power and Electrotechnologies Programs to banks or other financial institutions at a discount and with or without recourse.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–18165 Filed 8–2–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC—17625; 812-7546]

The Thai Capital Fund, Inc.; Application

July 30, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: The Thai Capital Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from the provisions of Section 12(d)(3) and Rule 12d3-1.

SUMMARY OF APPLICATION: Applicant seeks a conditional order permitting it to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to rule 12d3–1.

FILING DATE: The application was filed on June 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 23, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, NJ 08536.

FOR FURTHER INFORMATION CONTACT: Brion Thompson, Special Counsel, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (302) 258–4300).

Applicant's Representations

1. Applicant, a Maryland corporation, is a closed-end management investment company registered under the 1940 Act. Applicant's investment manager is The Mutual Fund Co., a company organized under the laws of the Kingdom of Thailand. Applicant's investment adviser, Daiwa International Capital Management (H.K.) Ltd., is a company organized under the laws of the Republic of Hong Kong and is a subsidiary of Daiwa International Capital Management Co., Ltd.

2. Applicant's investment objective is to seek long-term capital appreciation through investment primarily in Thai equity securities as described in the application, and Applicant anticipates that at least 75% of its assets will be invested in Thai equity securities. The remainder of Applicant's assets generally will consist of bank deposits, short-term debt obligations and cash. Applicant seeks to diversify its portfolio further by being permitted to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

3. Applicant seeks relief from section 12(d)(3) of the 1940 Act and rule 12d3-1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to rule 12d3–1. See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Proposed amended Rule 12d3–1 would, among other things, facilitate the acquisition by Applicant of equity securities issued by foreign securities companies. Applicant's proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of proposed amended Rule 12d3–1.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the 1940 Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the 1940 Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Paragraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * (must be) a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one which is traded in the United States markets, securities issued by many foreign securities firms would not meet this test. Accordingly, Applicant seeks an exemption from the "margin security" requirements of Rule 12d3–1.

2. Proposed amended rule 12d3–1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicant's Condition

Applicant agrees to the following condition in connection with the relief requested:

1. Applicant will comply with the provisions of the proposed amendments to rule 12d3–1 (Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)), and as such amendments may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–18164 Filed 08–02–90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before September 4, 1990. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review

may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395–7340.

Title: Questionnaire of SBIC's.

Form Nos.: n/a.

Frequency: On time Questionnaire.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 400.

Annual Burden Hours: 1,800.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 90–18149 Filed 8–2–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

International Organization Affairs

[Public Notice 1236]

Participation of Private-Sector Representatives on U.S. Delegations

As announced in Public Notice No. 655 (44 FR 17846), March 23, 1979, the Department is submitting its November, December 1989 and January, February, March, April, May and June 1990 list of U. S. accredited Delegations which included private-sector representatives.

Publication of this list is required by Article III (c) 5 of the guidelines published in the **Federal Register** on March 23, 1979.

Dated: July 24, 1990.

Frank R. Provyn,

Director, Office of International Conferences.

United States Delegation to the 25th Session of the Conference of the Food and Agriculture Organization (FAO), Rome, November 11–30, 1989

Representative

The Honorable Clayton Yeutter, Secretary of Agriculture

Alternates

Ann M. Veneman, Deputy Under Secretary of Agriculture for International Affairs and Commodity Programs, Department of Agriculture

Gerald Monore, United States Representative to the United Nations Agencies for Food and Agriculture, Rome

John R. Bolton, Assistant Secretary, Bureau of International Organization Affairs, Department of State

Jane E. Becker, Deputy Assistant Secretary, Bureau of International Organization Affairs, Department of State

Advisers

Dawson Ahalt, Agricultural Attache, United States Mission to the United Nations Agencies for Food and Agriculture, Rome

Patrick Demongeot, Chief, Evaluation and Planning, Office of International Development Assistance, Bureau of International Organization Affairs Department of State

E. Wayne Denney, International Relations Advisor, International Organization Affairs, Office of International Cooperation and Development, Department of Agriculture

Joan Dudick-Gayoso, Director, Office of International Development Assistance, Bureau of International Organization Affairs, Department of State

Neil G. Gallagher, International Relations Advisor, International Organization Affairs, Office of International Cooperation and Development, Department of Agriculture

Steven Hill, United States Mission to the United Nations Agencies for Food and Agriculture, Rome

Teresa D. Hobgood, Office of United Nations System Budgets, Bureau of International Organization Affairs, Department of State, Washington, DC.

David Joslyn, United States Mission to the United Nations Agencies for food and Agriculture, Rome

David McGaffey, Deputy Director, Office of International Development Assistance, Bureau of International Organization Affairs, Department of State

Richard Seifman, Agencies for United States Mission to the United Nations Food and Agriculture, Rome

Congressional Adviser

The Honorable Larry Pressler, United States Senate

Private Sector Adviser

Daniel G. Amstutz, former Under Secretary of Agriculture for International Afairs and Commodity Programs, Arlington, Virginia

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Working Parties 1–8, Study Group XV (Transmission Systems and Equipment), Geneva, Switzerland, November 20–December 1, 1989

Representative

Theodore J. Lemanski, Office of Cable and Satellite Policy, Bureau of International Communication and Information Policy, Department of State

Private Sector Advisers

Allen Gersho, President, Voicecraft, Inc., Goleta, California

Francis C. Horn, Technical Staff, Bell Communications Research, Inc., Red Bank, New Jersey

William T. Kane, Manager, Measurement Standards, Corning Glass Works, Corning, New York

Michael Onufry, Jr., Associate Director, Telecommunications Technology Division, COMSAT Laboratory, Clarksburg, Maryland

Anthony Schiano, Senior Engineer, AT&T, Bedminster, New Jersey

John R. Sergo, Jr., Vice President, Broadband Systems, Northern Telecom, Inc., Atlanta, Georgia

Private Sector Advisers

Garry Mauro, Commissioner, Texas General Land Office, Austin, Texas

LaVerne E. Ragster, Professor of Marine Biology, University of the Virgin Islands, St. Thomas, Virgin Islands

Gilberto Cintron, Special Assistant to the Secretary of Natural Resources, Commonwealth of Puerto Rico, San Juan, Puerto Rico

Miranda Wecker, Associate Director, Council on Ocean Law, Washington, DC

United States Delegation to the United Nations Educational, Scientific, and Cultural Organization (UNESCO), Intergovernmental Oceanographic Commission (IOC), Third Session of the IOC Submission for the Caribbean and Adjacent Regions (IOCARIBE), Caracas, Venezuela, December 4–8, 1989

Representative

William A. Erb, Marine Science Branch, Office of Marine Science and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Alternate Representative

Harris B. Stewart, Jr., United States Representative to IOCARIBE, Coral Cables, Florida

Advisers

Muriel J. Cole, International Affairs Staff, National Oceanic and Atmospheric Administration, Department of Commerce

George Maul, Physical Oceanography Division, Atlantic Oceanographic and Meteorological Laboratory, National Oceanic and Atmospheric Administration, Department of Commerce, Miami, Florida

Private Sector Advisers

Robert Langford, University of Puerto Rico, Mayaguez, Puerto Rico

David Ross, Chairman, Department of Geology and Geophysics, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XI (ISDN and Telephone Switching and Signalling), Geneva, Switzerland, December 4–15, 1989

Representative

Otto J. Gusella, Executive Director, Exchange Carrier Standards Association, Bethesda, Maryland

Alternate Representative

Milton Weiner, Lead Engineer, The Mitre Corporation, McLean, Virginia

Private Sector Advisers

Jay R. Hilton, Engineering Manager, GTE Service Corporation, D/FW Airport, Texas
Gerald Peterson, District Manager, AT&T, Bedminster, New Jersey
Michael E. Varrassi, Technical Adviser, Federal Express Corporation, Memphis, Tennessee
Shang Shen Yi, Manager, Technical Standards, MCI Telecommunications, McLean, Virginia

United States Delegation to the First Session of the Hotel, Catering and Tourism Committee, International Labor Organization (ILO) Geneva, December 6–14, 1989

Representing the Government of the United States

Delegates

Richard Booth, Labor Attache, United States Mission, Geneva
Barbara A. Dunkak, Assistant Director, Office of International Organizations, Bureau of International Labor Affairs, Department of Labor

Representing the Employers of the United States

Delegates

Carl Madda, Vice President and Director of Employee Relations, Sheraton Corporation, Boston, Massachusetts
James Stamas, Consultant, Andover, Massachusetts

Representing the Workers of the United States

Delegates

Vito J. Pitta, Vice President, Hotel Employees and Restaurant Employees International Union, New York, New York
Vincent Sirabella, Director of Organization, Hotel Employees and Restaurant Employees International Union, Washington, DC

United States Delegation to the Maritime Transport Committee, Organization for Economic Cooperation and Development (OECD), Paris, December 11–14, 1989

Representative

Stephen M. Miller, Office of Maritime and Land Transport, Bureau of Economic Affairs, Department of State

Advisers

Greg Hall, Office of International Affairs, Maritime Administration, Department of Transportation
C. William Johnson, Office of Service Industries, Department of Commerce
Appropriate USOECD, Mission Officer, Paris

Private Sector Advisers

Donald O'Hare, Director, Public Affairs, Sea-Land Corporation, Washington, DC
Peter Prowett, Director, Government Affairs, American President Lines, Washington, DC

United States Delegation to the Working Party on Telecommunications and Information Services (TISP), Committee on Information, Computers, and Communications Policy (ICCP), Organization for Economic Cooperation and Development (OECD), Paris, December 12–13, 1989

Representative

Lucy H. Richards, Director, Office of Industrialized Country Policy, Bureau of International Communications and Information Policy, Department of State

Advisers

Suzanne R. Settle, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce
J. Russell Trowbridge, Developed Country Trade Division, Office of Trade, Bureau of Economic and Business Affairs, Department of State
Appropriate USOECD, Mission Officer, Paris

Private Sector Adviser

Cathy Slesinger, Executive Director—International Affairs, NYNEX Government Affairs, Washington, DC

United States Delegation to the Special Meeting of the Executive Board, United Nations Children's Fund, New York, New York, December 18, 1989

Representatives

The Honorable Thomas R. Pickering, Permanent Representative, United States Mission to the United Nations
Rita DeMartino, United States Representative to UNICEF

Alternate Representatives

The Honorable Jonathan Moore, Alternate United States Representative, United States Mission to the United Nations
Jane Becker, Deputy Assistant Secretary, Bureau of International Organization Affairs, Department of State

Congressional Adviser

The Honorable Christopher H. Smith, United States House of Representatives

Advisers

John D. Fox, Managing Director, Office of UN System Administration, Bureau of International Organization Affairs, Department of State
David C. McGaffey, Deputy Director, Office of International Development Assistance, Bureau of International Organization Affairs, Department of State
Gordon MacArthur, Economic Division, United States Mission to the United Nations
Susan Shearouse, Resources Management Division, United States Mission to the United Nations

Private Sector Adviser

Lawrence E. Bruce, Jr., President, United States Committee for UNICEF

United States Delegation to the 21st Session of the Subcommittee on Standards of Training and Watchkeeping, International Maritime Organization (IMO), London, January 8–12, 1990

Representative

Frederic J. Grady III, Captain, Chief, Merchant Vessel Personnel Division, United States Coast Guard, Department of Transportation

Alternate Representative

Charles F. Guldenschuh, Chief, Vessel Manning Branch, Merchant Vessel Personnel Division, United States Coast Guard, Department of Transportation

Advisers

Stephen T. Ciccalone, Lieutenant Commander, Offshore Activities Branch, Merchant Vessel Inspection and Documentation Division, United States Coast Guard, Department of Transportation
Christopher Krusa, Office of Maritime Labor and Training, Maritime Administration, Department of Transportation
William A. Luther, International Adviser of the Field Operations Bureau, Federal Communications Commission
Christopher M. Young, Vessel Manning Branch, Merchant Vessel Protection Division, United States Coast Guard, Department of Transportation

Private Sector Adviser

William S. Person, Manager, Industrial Relations, Rowan Companies, Inc., Houston, Texas

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XVIII (Digital Networks, Including ISDN), Geneva, Switzerland, January 8–19, 1990

Representative

William F. Utlaut, Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

Alternate Representative

Gary M. Fereno, Deputy Director, Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

Adviser

Neil Seitz, Deputy Director, Systems and Networks Development, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

Private Sector Advisers

James A. Dahl, U.S. West Advanced Technologies, Englewood, Colorado
Glen H. Estes, Jr., Engineering Manager, Bellcore, Morristown, New Jersey

Gary Fishman, District Manager, Technical Industry Standards, AT&T Communications, Bedminster, New Jersey
Gerard T. Keeler, Senior Integrated Services Network Engineer, COMSAT Corporation, Washington, DC
Demosthenes J. Kostas, Manager, Technical Standards, GTE Telephone Operations, Irving, Texas
John R. Sergo, Jr., Manager, Transmission Standards, Northern Telecom Incorporated, Norcross, Georgia
Yi-Shang Shen, Manager, Technical Standards, Western Union International, Inc., McLean, Virginia
Carmine Taglialatella, Jr., Head of International Standards, MCI Telecommunications Corporation, McLean, Virginia
Richard E. Weadon, Senior Technologist, Southwestern Bell Corporation, St. Louis, Missouri

United States Delegation to the Third Session of the Joint World Meteorological Organization (WMO)/ Intergovernmental Oceanographic Commission (IOC), Intergovernmental Board on the Tropical Ocean and Global Atmosphere (TOGA), UN Educational, Scientific and Cultural Organization (UNESCO) Geneva, January 9–12, 1990

Representative

J. Michael Hall, Director, Office of Climatic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce

Alternate Representative

Richard B. Lambert, Associate Program Director, Division of Ocean Sciences, National Science Foundation

Advisers

James L. Buizer, Director of International Activities, Office of Climatic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce
Kenneth Mooney, Assistant Program Director for TOGA, Office of Climatic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

Jagadish Shukla, Director, Center for Ocean-Land-Atmosphere Interactions, Department of Meteorology, University of Maryland, College Park, Maryland

United States Delegation to the 8th Session of the Monitoring Committee on the Action Plan for the Caribbean Environment Program and the Meeting of the Bureau of the Cartagena Convention, United Nations Environment Program (UNEP), Kingston, January 10–12, 1990

Principal Observer

Andrew D. Sens, Director, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Observers

Sharon Cleary, Office of International Affairs, National Park Service, Department of the Interior
Joan Donoghue, Office of the Legal Adviser, Department of State
Pedro Gelabert, Director, Caribbean Field Office, Environmental Protection Agency
John Henriksen, Captain, Deputy Representative for Ocean Policy Affairs, Department of Defense
George Kopf, United States Embassy, Kingston
Galen McEachin, Lieutenant Commander, Office of Merchant Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Arthur Paterson, International and Intergovernmental Liaison, Office of International Affairs, National Oceanic and Atmospheric Administration, Department of Commerce
Herbert Raffaele, Office of International Affairs, United States Fish and Wildlife Service, Department of the Interior
Herman J. Rossi, Economic Counselor, United States Embassy, Kingston
Marilyn Varela, Office of International Activities, Environmental Protection Agency
Philip Williams, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Mark Willis, Office of Ecology, Health and Natural Resources, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Private Sector Advisers

Gilberto Cintron, Special Assistant to the Secretary of Natural Resources, Commonwealth of Puerto Rico, San Juan, Puerto Rico
Thomas Henderson, Texas General Land Office, Austin, Texas
LaVerne E. Ragster, Professor of Marine Biology, University of the Virgin Islands, St. Thomas, Virgin Islands
Miranda Wecker, Associate Director, Council on Ocean Law, Washington, DC

United States Delegation to the Meeting of Plenipotentiaries to Draft a Protocol on Specially Protected Areas and Wildlife Under the Cartagena Convention (SPAW) and to Amend the Protocol Concerning Cooperation in Combating Oil Spills, United Nations Environment Program (UNEP), Kingston, January 15–16, 1990

Representative

Andrew D. Sens, Director, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Alternate Representative

Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Advisers

Sharon Cleary, Office of International Affairs, National Park Service, Department of the Interior
Joan Donoghue, Office of the Legal Adviser, Department of State
Pedro Gelabert, Director, Caribbean Field Office, Environmental Protection Agency
John Henriksen, Captain, Deputy Representative for Ocean Policy Affairs, Department of Defense
The Honorable Glen Holden, Ambassador, United States Embassy, Kingston
Douglas Lipka, Director, Gulf of Mexico Program Office, Environmental Protection Agency
Nicholas MacNeil, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Galen McEachin, Lieutenant Commander, Office of Merchant Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Arthur Paterson, International and Intergovernmental Liaison, Office of International Affairs, National Oceanic and Atmospheric Administration, Department of Commerce
Herbert Raffaele, Office of International Affairs, United States Fish and Wildlife Service, Department of the Interior
Herman J. Rossi, Economic Counselor, United States Embassy, Kingston
Marilyn Varela, Office of International Activities, Environmental Protection Agency
Phillip Williams, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Mark Willis, Office of Ecology, Health, and Natural Resources, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

United States Delegation to the Fifth Intergovernmental Meeting on the Action Plan for the Caribbean Environment Program and the Second Meeting of Contracting Parties to the Cartagena Convention, United Nations Environment Program (UNEP), Kingston, January 17–18, 1990

Representative

Andrew D. Sens, Director, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Alternate Representative

Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Advisers

Joan Donoghue, Office of the Legal Adviser, Department of State
Pedro Gelabert, Director, Caribbean Field Office, Environmental Protection Agency

John Henriksen, Captain, Deputy Representative for Ocean Policy Affairs, Department of Defense
The Honorable Glen Holden, Ambassador, United States Embassy, Kingston
Douglas Lipka, Director, Gulf of Mexico Program Office, Environmental Protection Agency
Nicholas MacNeil, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Galen McEachin, Lieutenant Commander, Office of Merchant Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Arthur Paterson, International and Intergovernmental Liaison, Office of International Affairs, National Oceanic and Atmospheric Administration, Department of Commerce
Herman J. Rossi, Economic Counselor, United States Embassy, Kingston
Marilyn Varela, Office of International Activities, Environmental Protection Agency

Private Sector Advisers

Gilberto Cintron, Special Assistant to the Secretary of Natural Resources, Commonwealth of Puerto Rico, San Juan, Puerto Rico
Garry Mauro, Commissioner, Texas General Land Office, Austin, Texas
Miranda Wecker, Associate Director, Council on Ocean Law, Washington, DC

United States Delegation to the Thirteenth Session of the Technical Committee on International Oceanographic Data Exchange (IODE), Intergovernmental Oceanographic Commission (IOC), United Nations Educational, Scientific and Cultural Organization (UNESCO), New York, January 17–24, 1990

Representative

Gregory W. Withee, Director, National Oceanographic Data Center, National Environmental Satellite, Data and Information Service, National Oceanic and Atmospheric Administration, Department of Commerce

Alternate Representative

Joseph Caponio, Director, National Technical Information Service, Department of Commerce

Advisers

Dorothy Bergamaschi, Office of Marine Science and Technology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
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Steve Tibbitt, Marine Information Management, National Environmental Satellite, Data and Information Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Advisers

D. James Baker, Joint Oceanographic Institution, Washington, DC
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Warren White, Scripps Institution of Oceanography, University of California at San Diego, La Jolla, California

United States Delegation to the 30th Session of the Subcommittee on Containers and Cargoes, International Maritime Organization (IMO), London, January 22–26, 1990

Representative

Joseph J. Angelo, Assistant Chief, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

William P. Cummins, Lieutenant Commander, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Department of Transportation

Adviser

Dawn Anderson, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Advisers

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James J. McNamara, Captain, Chief Surveyor, National Cargo Bureau, New York, New York
S. Fraser Sammis, Captain, President, National Cargo Bureau, New York, New York

United States Delegation to the World Intellectual Property Organzation (WIPO)/ International Union for the Protection of New Varieties of Plants (UPOV), Committee of Experts on the Interface Between Patent Protection and Breeders' Rights, Geneva, Switzerland, January 29–February 2, 1990

Representative

H. Dieter Hoinkes (Delegate), United States Representative to the Council of UPOV, Office of the Assistant Commissioner for External Affairs, Patent and Trademark Office, Department of Commerce

Advisers

Janes E. Elgin, Agricultural Research Service, Department of Agriculture
Charles Van Horn, Special Assistant to the Assistant Commissioner for Patents, Patent and Trademark Office, Department of Commerce

Private Sector Advisers

Dale Porter, Counsel, Pioneer Hi-Bred International, Inc., Des Moines, Iowa
William Schapaugh, Executive Vice President, American Seed Trade Association, Washington, DC

UNITED STATES DELEGATION TO THE 46TH SESSION OF THE UN HUMAN RIGHTS COMMISSION ECONOMIC AND SOCIAL COUNCIL (ECOSOC), GENEVA, JANUARY 29–MARCH 9, 1990

Representative

The Honorable Armando Valladares, Ambassador, United States Representative to the UN Human Rights Commission

Alternate Representatives

The Honorable Morris Abram, Ambassador, Permanent Representative to the International Organizations, Geneva
Marshall J. Breger, Chairman, Administrative Conference of the United States, Washington, DC
Beverly Zweiben, Deputy Director, Office of Human Rights and Women's Affairs, Bureau of International Organization Affairs, Department of State

Congressional Adviser

The Honorable Christopher H. Smith, United States House of Representatives

Senior Advisers

Jackie Wolcott, Deputy Assistant Secretary, Bureau of International Organization Affairs, Department of State

Advisers

Kristina Arriaga, Office of Human Rights and Women's Affairs, Bureau of International Organization Affairs, Department of State
David A. Balton, Attorney-Adviser, Office of the Legal Adviser, Department of State
John Cook, United States Mission, Geneva
Peter Enzminger, United States Mission, Geneva
David Everett, United States Mission, Geneva
Gordon Foote, United States Mission, Geneva
John Garner, United States Mission, Geneva
Thomas A. Johnson, United States Mission, Geneva
Craig Kuehl, United States Mission, Geneva
Edward Marks, Minister Counsellor, United States Mission, New York
William Marsh, United States Mission, Geneva
Juliette Clagett McLennan, United States Representative to the UN Commission on the Status of Women
Anne Patterson, United States Mission, Geneva
Spencer Pobenz, United States Mission, Geneva
Charlotte Ponticelli, Director, Policy and Planning Staff, Bureau of International Organization Affairs, Department of State

Bruce C. Rashkow, United Nations Legal Affairs, Office of the Legal Adviser, Department of State
Kyle R. Scott, United States Mission, Geneva

Private Sector Advisers

J. Kenneth Blackwell, Cincinnati, Ohio
Jeffrey M. Busch, New York, New York
Jay P. Lefkowitz, Paul, Weiss, Rifkind, Wharton & Garrison, New York, New York
Raul Fernandez, Valladares Foundation, Washington, DC

United States Delegation to the International Telecommunication Union, International Telegraph and Telephone Consultative Committee (CCITT), Joint Meeting of Study Groups I, III and XI, Rome, Italy, February 5–9, 1990

Representative

Earl S. Barbely, Director, Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

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Robert Smith, Manager, International Standards, NYNEX Corporation, White Plains, New York
Carmine Taglialatela, Jr., Advisory Engineer, MCI Telecommunications Company, McLean, Virginia

United States Delegation to the Fifth Session of the Regional Committee for the Western Pacific (WESTPAC), Intergovernmental Oceanographic Commission (IOC), United Nations Educational, Scientific and Cultural Organization (UNESCO), Hangzhou, China, February 5–9, 1990

Representative

Louis B. Brown, International Science Associate, National Science Foundation

Alternate Representative

John A. Withrow, Lieutenant Commander, Coastal Ocean Program Office, National Oceanic and Atmospheric Administration, Department of Commerce

Adviser

James L. Buizer, Chief, International Activities Division, Office of Climatic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

Gary T. Mitchum, TOGA Sea Level Center, University of Hawaii, Honolulu, Hawaii

United States Delegation to the 35th Session of the Subcommittee on Radiocommunications, International Maritime Organization (IMO), London, February 5–9, 1990

Representative

Robert E. Williams, Captain, Chief, Telecommunications Systems Division, United States Coast Guard, Department of Transportation

Alternate Representative

Joseph D. Hersey, Jr., Chief, Marine Radio Policy Branch, United States Coast Guard, Department of Transportation

Advisers

Jim Ayres, Scientific Adviser for Hydrology Headquarters, Defense Mapping Agency, Department of Defense
William Luther, Field Operations Bureau, Federal Communications Commission
Robert C. McIntyre, Chief, International Staff, Private Radio Bureau, Federal Communications
Roy Soluri, Chief, Navigational Aids Division, Defense Mapping Agency, Department of Defense

Private Sector Advisers

John Fuechsel, Maritime Services Division, COMSAT, Washington, DC
Jack Oslund, Director, INMARSAT Relations, COMSAT, Washington, DC

United States Delegation to the United Nations Commission on International Trade Law (UNCITRAL), Working Group on International Procurement, New York, New York, February 5–16, 1990

Representative

Donald Wallace, Shearman and Sterling, Washington, DC

Alternate Representatives

Harold S. Burman, Office of the Legal Adviser, Department of State
Philip R. Stansbury, Covington and Burling, Washington, DC

Private Sector Adviser

James Myers, Gadsby & Hanna, Boston, Massachusetts

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XVII (Digital Networks), Second Meeting, Geneva, Switzerland, February 5–16, 1990

Representative

Gary M. Fereno, Deputy Director, Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

Advisers

Stephan Perschau, Senior Telecommunication Standards Engineer, National Communications System
Dale L. Walters, National Institute of Standards and Technology, Department of Commerce, Gaithersburg, Maryland

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Fred M. Burg, Supervisor, AT&T Laboratories, Holmdel, New Jersey
Charles R. Combs, MCI Corporation, Piscataway, New Jersey
Alfred S. Grimstad, Bellcore, Red Bank, New Jersey
Christopher K.A. Hsieh, Principal Engineer, ARINC, Annapolis, Maryland
James R. Moulton, District Manager, Bell Communications Research, Inc., Red Bank, New Jersey
Mark Neibert, Manager, International Digital and Protocol Standards, COMSAT, Washington, DC
Valgene Earl White, Vice President, Network Management Services, Inc., Annapolis, Maryland
Roy M. Vandoorn, Senior Software Engineer, Information Networks Division Hewlett-Packard, Cupertino, California

United States Delegation to the Third Meeting of the Aeronautical Mobile-Satellite Service Panel (AMSSP), International Civil Aviation Organization (ICAO), Montreal, February 5–23, 1990

Panel Member

Clyde A. Miller, Manager, Requirements and Concepts Development Division, Advanced System Design Service, Federal Aviation Administration, Department of Transportation

Alternate Member

Keith McDonald, Program Manager, Satellite Technology and Application, Requirements and Concepts Branch, Advanced System Design Service, Federal Aviation Administration, Department of Transportation

Advisers

Victor E. Foose, Manager, Frequency Engineering Branch, Federal Aviation Administration, Department of Transportation
Frank Rose, International Liaison Staff, Private Radio Bureau, Federal Communications Commission
Robert D. Till, Technical Program Manager, Airborne Systems Technology Branch, Federal Aviation Administration, Department of Transportation, Atlantic City, New Jersey

Private Sector Adviser

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United States Delegation to the American Forestry Commission, 15th Session, Food and Agriculture Organization (FAO), San Diego, California, February 6–9, 1990

Representative

F. Dale Robertson, Chief, Forest Service, Department of Agriculture

Alternate Representatives

Melvin D. Berg, Chief, Division of Forestry, Bureau of Land Management, Department of the Interior
Allan J. West, Deputy Chief, State and Private Forestry, Forest Service, Department of Agriculture

Advisers

David A. Harcharik, Director of International Forestry, Forest Service, Department of Agriculture

Private Sector Advisers

William Banzhaf, Executive Vice President, Society of American Foresters, Bethesda, Maryland
James E. Hubbard, President, National Association of Schools of Forestry, Colorado State Forestry, Colorado State University, Ft. Collins, Colorado

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group III, Working Parties 3 and 4 and Special Rapporteur Groups, Geneva, Switzerland, February 12–23, 1990

Representative

Earl S. Barbely, Director, Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

Alternate Representative

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William Kirsh, Deputy Assistant Chief-International, Common Carrier Bureau, Federal Communications Commission

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Wanda Glanzman Montano, Regulatory Manager, Telenet Communications Corporation, Reston, Virginia
Marcel E. Scheidegger, Vice President, Regulatory Matters, MCI International, Rye Brook, New York

United States Delegation to the 34th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety, International Maritime Organization (IMO), London, February 19–23, 1990

Representative

H. Paul Cojeen, Assistant Chief, Naval Architecture Branch, Marine Technical and Hazardous Materals Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Glenn W. Anderson, Lieutenant Commander, Chief, Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Patricia L. Carrigan, Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Randall Gilbert, Lieutenant Chief, Stability Section, Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
William M. Hayden, Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Advisers

William S. Peters, C.R. Cushing & Co., New York, New York
Robert D. Tagg, Herbert Engineering Corporation, San Francisco, California

United States Delegation to the United Nations General Assembly, Special Session on Narcotics, New York, February 20–23, 1990

Representatives

The Honorable James A. Baker, Secretary of State (Chairman—ex officio), Department of State, Washington
The Honorable Thomas R. Pickering (Chairman), Ambassador Extraordinary and Plenipotentiary, United States Permanent Representative to the United Nations, New York
The Honorable Melvin Levitsky, Assistant Secretary for International Narcotics Matters, Department of State

Alternate Representatives

The Honorable John R. Bolton, Assistant Secretary for International Organization Affairs, Department of State
The Honorable John C. Lawn, Administrator, Drug Enforcement Administration
The Honorable Jonathan Moore, United States Alternate Representative for Special Political Affairs of the United Nations, New York
The Honorable Alexander F. Watson, Ambassador Extraordinary and Plenipotentiary, United States Deputy Permanent Representative to the United Nations, New York

Congressional Advisers

The Honorable Orrin Hatch, United States Senate
The Honorable John F. Kerry, United States Senate
The Honorable Lawrence Coughlin, United States House of Representatives
The Honorable Charles Rangel, United States House of Representatives

Senior Advisers

Paul Higdon, Deputy Assistant Administrator, Drug Enforcement Administration
Edward Marks, Minister-Counselor, Deputy United States Representative on the Economic and Social Council of the United Nations, New York
Charles Saphos, Director, Narcotics and Dangerous Drugs Section, Department of Justice
James Shaver, Assistant Commissioner, United States Customs Service
John P. Walters, Chief of Staff/National Security Adviser, Office of National Drug Control Policy

Advisers

Douglas Browning, United States Customs Service
Dianne Graham, Bureau of International Narcotics Matters, Department of State
Lynne Gressett, Office of National Drug Control Policy
Lee Ann Howdershell, Office of Technical Specialized Agencies, Bureau of International Organization Affairs, Department of State
Lowell Kilday, Bureau of International Narcotics Matters, Department of State
Richard Lindblad, National Institute of Drug Abuse
Elo-Kai Ojamaa, United States Mission to United Nations, New York
Gregory Sprow, United States Mission to the United Nations, Vienna
Gordon Stirling, Department of State
Carolyn Willson, United States Mission to the United Nations, New York

Public Sector Advisers

Barbara Franklin
Gary MacDougal

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group I (Services), Geneva, Switzerland, February 20–March 2, 1990

Representative

Douglas V. Davis, Senior Attorney Adviser, Common Carrier Bureau, Federal Communications Commission

Advisers

Dongho Choi, Senior Electronics Engineer, Defense Communications Agency, Department of Defense
Michael Durrwachter, Technical Staff, Defense Communications Agency, Department of Defense
Granger Kelly, Office of Interoperability and Standards, Defense Communications Agency, Department of Defense

Private Sector Advisers

Billie Cool, Standards Engineer, COMSAT Corporation, Washington, DC
Stephen J. Engleman, Senior Engineer, MCI Communications Corporation, McLean, Virginia

United States Delegation to the Seventh Annual Meeting of the North American Commission of the North Atlantic Salmon Conservation Organization (NASCO), Halifax, February 21–22, 1990

Commissioners

The Honorable Allen E. Peterson, Jr. (head of delegation), Director, Northeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts
The Honorable Richard A. Buck, Chairman, Restoration of Atlantic Salmon In America, Inc., Savannah, Georgia
The Honorable Frank E. Carlton, Vice President, National Coalition for Marine Conservation, Inc., Savannah, Georgia

Advisers

Vaughn C. Anthony, Northeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts
Howard N. Larsen, Special Adviser to the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior, Gainesville, Florida
H. Stetson Tinkham, Atlantic Fisheries Officer, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
James Weaver, U.S. Fish and Wildlife Service, Department of the Interior

Private Sector Advisers

Robert A. Jones, Commissioner, Connecticut River Atlantic Salmon Commission, State of Connecticut, Hartford, Connecticut
William J. Vail, Commissioner, Department of Natural Resources, State of Maine, Augusta, Maine

United States Delegation to the 34th Session of the Commission on the Status of Women, Vienna, February 26–March 9, 1990

Representative

Juliette Clagett McLennan, United States Representative to the United Nations Commission on the Status of Women

Alternate Representatives

Theresa Elmore Beherendt, Tuxedo Park, New York
Jennifer Dunn, Bellevue, Washington
Bonnie F. Guiton, Special Adviser to the President for Consumer Affairs
The Honorable Michael H. Newlin, Ambassador, United States Representative to the United Nations, Vienna
Elsie Vartanian, Assistant Majority Leader, New Hampshire House of Representatives
Adis Maria Vila, Assistant Secretary for Administration, Department of Agriculture

Advisers

John A. Buche, Deputy United States Representative, Vienna
Christine Cervenak, United Nations Legal Affairs, Office of the Legal Adviser, Department of State
Kay Davies, Office of Women in Development, Bureau for Program and Policy Coordination, Agency for International Development
Richard Hoover, United States Mission, Vienna
Sharon Kotok, Office of Human Rights and Women's Affairs, Bureau of International Organization Affairs, Department of State
Elo-Kai Ojamaa, United States Mission to the United Nations, New York

Public Sector Advisers

Esther Coopersmith, Potomac, Maryland
D. C. Gray, Washington, DC

United States Delegation to the XIV Quadrennial General Assembly, Pan American Institute of Geography and History, Organization of American States (OAS/PAIGH), San Jose, February 26–March 10, 1990

Representative

Clarence W. Minkel, Chairman, Commission on Geography, Dean, Graduate School, University of Tennessee, Knoxville, Tennessee

Alternate Representatives

Peter F. Bermel, Assistant Director for Programs, U.S. Geological Survey, Reston, Virginia
Margarita Riva-Geoghegan, Alternate Representative of the United States to the Organization of American States, Department of State
Richard D. Sanchez, National Mapping Division, U.S. Geological Survey, Reston, Virginia

Advisers

Donald B. Hoover, U.S. Member, Commission on Geophysics, U.S. Geological Survey, Reston, Virginia
Paul L. Peeler, Jr., U.S. Member, Cartography, Technical Director of the Reston Center, Defense Mapping Agency

Private Sector Advisers

David Bushnell, U.S. Member, Commission on History, University of Florida, Gainesville, Florida
Ernst C. Griffin, U.S. Member, Commission on Geography, San Diego State University, San Diego, California
Robert N. Thomas, Vice Chairman, Geography Commission, Michigan State University, East Lansing, Michigan

United States Delegation to the World Conference on Education for all United Nations Development Programs, Jomtien, Thailand, March 5–9, 1990

Representative

The Honorable Thomas H. Kean, New Jersey

Advisers

The Honorable John R. Bolton, Assistant Secretary for International Organization Affairs, Department of State
Julie Cook, Office of the President
Robert Duncan, Economic Counselor, United States Embassy, Bangkok

Private Sector Adviser

James Duffey, Project Literacy, Maryland

United States Delegation to the Thirteenth Meeting of the All Weather Operations Panel (AWOP) International Civil Aviation Organization (ICAO) Montreal, March 5–23, 1990

Panel Member

Seymour Everett, Assistant Manager, Ground to Air Systems Division, Federal Aviation Administration, Department of Transportation

Advisers

Barry Billman, Technical Program Manager, Airborne Systems Technology Branch, Federal Aviation Administration, Department of Transportation, Atlantic City, New Jersey
James Enias, Manager, Flight Technical Program Branch, Federal Aviation Administration, Department of Transportation
William L. Hyland, Manager, International Technical Programs Office, Federal Aviation Administration, Department of Transportation
Paul Manning, Surveillance and Sensors Division, Federal Aviation Administration, Department of Transportation
Donald Pate, Manager, Standards Development Branch, Federal Aviation Administration, Department of Transportation
Robert Pierce, Terminal Procedures Branch, Federal Aviation Administration, Department of Transportation
George Sakai, Assistant Manager, Spectrum Engineering Division, Federal Aviation Administration, Department of Transportation

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Robert Kelly, Bendix Communications Division, Towson, Maryland
Kelly Markin, MITRE Corporation, McLean, Virginia
Andrew Nelson, MITRE Corporation, Bedford, Massachusetts
Douglas Vickers, Assistant Director, Avionics Engineering Center, Ohio University, Athens, Ohio

United States Delegation to the 23rd Session of the Executive Council of the Intergovernmental Oceanographic Commission (IOC) United Nations Educational, Scientific and Cultural Organization (UNESCO) Paris, March 7–14, 1990

Representative

The Honorable John A. Knauss, Under Secretary for Oceans and Atmosphere, Department of Commerce

Alternate Representatives

Louis B. Brown, International Science Associate, Division of Ocean Sciences, National Science Foundation
William Erb, Director, Division of Marine Science and Technology, Bureau of Oceans

and International Environmental and Scientific Affairs, Department of State

Advisers

Neil Andersen, Director, Chemical Oceanography Program, National Science Foundation
Dorothy Bergamaschi, Office of Marine Science and Technology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Candyce Clark, Office of International Activities, National Oceanic and Atmospheric Administration, Department of Commerce
James Neilon, Chief, International Affairs Division, Office of Meteorology, National Oceanic and Atmospheric Administration, Department of Commerce
Richard Podgorny, Chief, International Affairs Staff, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce
Virginia Tippie, Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce
Gregory Withee, Director, National Oceanographic Data Center, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

James Baker, President, Joint Oceanographic Institutions, Inc., Washington, DC

United States Delegation to the 31st Session of the Working Party on Facilitation of International Trade Procedures, Economic Commission for Europe (ECE), Geneva, March 12–16, 1990

Representative

Bruce Butterworth, Chief, Trade, Facilitation and Technical Issues Division, Office of International Transportation and Trade, Department of Transportation

Advisers

William H. Kenworthey, Jr., Data Systems Manager, Office of the Deputy Assistant Secretary of Defense for Management Systems, Department of Defense
Alice Rigdon, Customs Attache, United States Mission to the European Communities, Brussels

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Robert Hurd, International Project Manager, Data Interchange Standards Association, Alexandria, Virginia
Jennifer Lori Kandel, Vice President, ACS Network Systems, Concord, California
Philip V. Otero, Counsel, General Electric Information Services, Rockville, Maryland
Jeffrey B. Ritter, Schwartz, Kelm, Warren & Rubenstein, Columbus, Ohio
Harriet Rusk, President, Data Interchange Standards Association, Alexandria, Virginia
Jeffrey Sturrock, Director, EDI Systems, Texas Instruments, Inc., Plano, Texas
Nicole Willenz, Price Waterhouse, Chicago, Illinois

United States Delegation to the 29th Session of the Marine Environment Protection Committee (MEPC), International Maritime Organization (IMO), London, March 12–16, 1990

Representative

Joel D. Sipes, Rear Admiral, Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representatives

Joseph J. Angelo, Assistant Chief, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Sidney A. Wallace, Rear Admiral, USCG, (Ret.), Chairman, Marine Board, National Academy of Sciences, Washington, DC

Advisers

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Robert C. Blumberg, Deputy Director, Office of Ocean Law and Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Gene Hammel, Division of International Affairs, Office of the Commandant, United States Coast Guard, Department of Transportation
William F. Holt, Commander, Chief, Marine Environmental Response Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Timothy R. Keeney, Director of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, Department of Transportation
John M. Lishman, Office of Marine and Estuarine Protection, Environmental Protection Agency
John P. Nolan, United States Coast Guard Academy, United States Coast Guard, Department of Transportation
David B. Pascoe, Commander, Chief, Environmental Coordination Branch, Marine Environmental Response Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Frederick Presley, Division of Maritime and International Law, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Private Sector Advisers

Joseph J. Cox, Vice President, American Institute of Merchant Shipping, Washington, DC
Sally A. Lentz, Oceanic Society, Washington, DC

United States Delegation to the 21st Session of the Subcommittee on Lifesaving, Search and Rescue (LSR), International Maritime Organization (IMO), London, March 19–23, 1990

Representative

Robert L. Markle, Jr., Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Dan E. Lemon, Search and Rescue Division, Office of Navigation, Safety and Waterways Services, United States Coast Guard, Department of Transportation

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Private Sector Advisers

Margaret M. McMillan, President, McMillan Offshore Survival Technology, Lafayette, Louisiana
James K. Nelson, Jr., Associate Professor, Clemson University, Charleston, South Carolina

United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), 10th and Special Meeting of the Interim Working Party 11/6, Geneva, Switzerland, March 22–28, 1990

Representative

Warren G. Richards, Office of Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State

Alternate Representative

Robert S. Hopkins, Jr., Executive Director, Advanced TV Systems Committee, Washington, DC

Advisers

Bradley Holmes, United States Coordinator and Director, Bureau of International Communications and Information Policy, Department of State
Paul E. Misener, National Telecommunications and Information Administration, Department of Commerce
John Reiser, Mass Media Bureau, Federal Communications Commission

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William Connolly, Sony Advanced Systems, Teaneck, New Jersey

Leroy DeMarch, Eastman Kodak Company, Rochester, New York
Bernard L. Dickens, Senior Staff Scientist, CBS, Inc., New York, New York
Richard R. Green, President, Cable Television Laboratories, Inc., Boulder, Colorado
Donald M. Jansky, Jansky-Barmat Telecommunications, Washington, DC
Ralph Justus, Director, Engineering, Regulatory and International Affairs, Department of Science and Technology, National Association of Broadcasters, Washington, DC
Christy Kehbeck, Advanced TV Systems Committee, Washington, DC
Bernard J. Lechner, Princeton, New Jersey
James C. McKenney, Chairman, Advanced TV Systems Committee, Washington, DC
Michael Rau, Vice President of Engineering, National Association of Broadcasters, Washington, DC
Bruce P. Sidran, BELCORE, Red Bank, New Jersey
Antoon G. Uyttendaele, Capital Cities-ABC, Inc., New York, New York

United States Delegation to the International Communication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group VIII Working Parties, Budapest, Hungary, March 26–April 4, 1990

Representative

Dennis Bodson, Manager, Technical Standards, National Communications System

Alternate Representative

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Advisers

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Stephen Perschau, Systems Engineer, National Communications System

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Cornelius J. Starkey, Vice President, Databeam Corporation, Lexington, Kentucky
Herman Silbiger, AT&T Bell Laboratory, Holmdel, New Jersey
Charles Touchton, Systems Engineer, IBM Information Services, Tampa, Florida
Stephen Urban, Vice President, Delta Information Systems, Horsham, Pennsylvania

United States Delegation to the International Conference on Revision of the 1974 Athens Convention, 62nd Session of the Legal Committee, International Maritime Organization (IMO), London, March 26–April 6, 1990

International Conference on Revision of the 1974 Athens Convention (March 26–30, 1990

Representative

Jonathan Collom, Captain, Chief, Maritime and International Law Division, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Alternate Representative

Frederick M. Rosa, Jr., Lieutenant Commander, Maritime and International Law Division, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Adviser

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Ernest J. Corrado, President, American Institute of Merchant Shipping, Washington, DC
Reginald P. Hayden, President, Hayden & Milliken, Miami, Florida

62nd Session of the Legal Committee (April 2–6, 1990)

Representative

Jonathan Collom, Captain, Chief, Maritime and International Law Division, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Alternate Representatives

Robert C. Blumberg, Deputy Director, Office of Ocean Law and Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Frederick M. Rosa, Jr., Lieutenant Commander, Maritime and International Law Division, Office of Chief Counsel, United States Coast Guard, Department of Transportation

Adviser

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Private Sector Advisers

Ernest J. Corrado, President, American Institute of Merchant Shipping, Washington, DC
Neil D. Hobson, Chairman, Committee on Transportation of Hazardous Substances, Maritime Law Association, New Orleans, Louisiana
Michael P. Walls, Assistant General Counsel, Chemical Manufacturers Association, Washington, DC

United States Delegation to the Organization of American States (OAS), Meeting of Ministers on the Illicit Use and Production of Narcotic Drugs and Psychotropic Substances and Traffic Therein, Ixtapa, Mexico, April 17–20, 1990

Representative

The Honorable Dick Thornburgh, Attorney General

Alternate Representatives

The Honorable Terrence Burke, Acting Administrator, Drug Enforcement Administration, Department of Justice
The Honorable Luigi R. Einaudi, Permanent Representative of the United States to the Organization of American States
The Honorable Paula Hawkins, United States Representative to the Inter-American Drug Abuse Control Commission
The Honorable Herbert Kleber, Deputy Director for Demand, Office of National Drug Control Policy
The Honorable Melvyn Levitsky, Assistant Secretary of State for International Narcotics Matters, Department of State
The Honorable John D. Negroponte, Ambassador, United States Embassy, Mexico
Robert S. Ross, Jr., Executive Assistant to the Attorney General, Department of Justice

Advisers

Julie Andrews, Special Assistant, Office of the Attorney General, Department of Justice
Drew Arena, Director, Office of International Affairs, Department of Justice
Samuel V. Brock, Alternate Representative, to the Organization of American States, Department of State
Douglas Browning, Office of Chief Counsel, United States Customs Service, Department of the Treasury
Elizabeth F. Carroll, Bureau of International Narcotics Matters, Department of State
Carlos Correa, Office of International Affairs, Department of the Treasury
John Crowe, United States Embassy, Mexico
Robert Fernandez, United States Embassy, Mexico
Richard Hines, Alternate Representative to the Organization of American States, Department of State
Arthur Houghton, Office of International Affairs, Office of National Drug Control Policy
Robert S. Mueller, Jr., Office of International Affairs, Department of Justice
Arthur Muirhead, Office of International Affairs, United States Customs Service, Department of the Treasury
Donna Roginski, United States Embassy, Mexico
Dave Runkel, Assistant to the Attorney General, Press Spokesman, Department of Justice
Tom Ryan, United States Embassy, Mexico
Charles Saphos, Chief, Narcotics and Dangerous Drugs Section, Department of Justice
Ralph Saucedo, United States Embassy, Mexico

Kenneth Taylor, United States Embassy, Mexico
Cuyler H. Walker, Assistant to the Attorney General, Department of Justice
Xenia V. Wilkinson, Alternate Representative to the Organization of American States, Department of State

United States Delegation to the Tenth Session of the Commission for Atmospheric Sciences, World Meteorological Organization (WMO), Offenbach, April 17–28, 1990

Representative

Eugene W. Bierly, Director, Division of Atmospheric Sciences, National Science Foundation

Alternate Representative

Eugenia Kalnay, Chief, Development Division, National Meteorological Center, National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce

Adviser

Robert McClatchey, Director, Atmospheric Division, Hanscom Air Force Base, Department of the Air Force, Bedford, Massachusetts

Private Sector Adviser

John J. Cahir, Associate Dean, Pennsylvania State University, University Park, Pennsylvania

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT) Study Group XVII and its Working Parties (Modems and Terminal Adaptors and Network Management and Interfaces), Geneva, Switzerland, April 19–27, 1990

Representative

Gary M. Fereno, Deputy Director, Office of Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

Adviser

Robert Fenichel, Electronics Engineer, National Communications Systems

Private Sector Advisers

Richard P. Brandt, President, D.B. Consultants, Annandale, New Jersey
Kenneth R. Krechmer, Engineering Consultant, Action Consulting, Palo Alto, California
John E. MacCrisken, Vice President, Adaptive Computer Technologies, Palo Alto, California
Toby L. Nixon, Principal Engineer, Hayes Microcomputer Products, Inc., Norcross, Georgia
Larrabee M. Smith, Standards Engineer, Bellcore, Red Bank, New Jersey

United States Delegation to the First Preparatory Meeting for the Revision of the UPOV Convention, 41st Session of the Consultative Committee, 9th Extraordinary Session of the Council, Union for the Protection of New Plant Varieties (UPOV), Geneva, April 23–27, 1990

First Preparatory Meeting for the Revision of the UPOV Convention (April 23–26, 1990)

Representative

H. Dieter Hoinkes, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce

Adviser

James E. Elgin, Agricultural Research Service, Department of Agriculture

Private Sector Advisers

Dale L. Porter, General Counsel, Pioneer Hi-Bred International, Inc., Des Moines, Iowa
Craig J. Regelbrugge, Director of Regulatory Affairs, American Association of Nurserymen, Washington, DC

41st Session of the Consultative Committee and 9th Extraordinary Session of the Council (April 27, 1990)

Representative

H. Dieter Hoinkes, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce

United States Delegation to the Organization of American States (OAS), Inter-American Telecommunications Commission (CITEL), 3rd Meeting of the Permanent Technical Committee (PTC) I, Public Telecommunications Services, Montevideo, Uruguay, April 23–27, 1990

Representative

Earl S. Barbely, Director, Office of Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

Advisers

Daniel H. Clare, Director, Diplomatic and Public Initiatives, Bureau of International Communications and Information Policy, Department of State
Douglas V. Davis, Senior Attorney-Adviser, International Conference Staff, Common Carrier Bureau, Federal Communications Commission
William Moran, Program Manager, International Organizations, National Telecommunication and Information Administration, Department of Commerce

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Cecil Crump, District Manager, International Organizations and Standards, American Telephone and Telegraph Company, Morristown, New Jersey
Frank Urbany, Director, International and Agency Relations, Bell South Corporation, Washington, DC

United States Delegation to the 33rd Session of the Subcommittee on Ship Design and Equipment, International Maritime Organization (IMO), London, April 23–27, 1990

Representative

John C. Maxham, Captain , Chief, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Edward F. Murphy, Commander, Chief, Engineering Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

H. Paul Cojeen, Chief, Structures and Subdivision Section, Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Peter A. Richardson, Lieutenant Commander, Assistant Chief, Engineering Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
Michael M. Rosecrans, Lieutenant Commander, Chief, Ship Design Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Advisers

Roderick A. Barr, Tracor Hydronautics, Inc., Laurel, Maryland
James J. Gaughan, American Bureau of Shipping, Paramus, New Jersey

United States Delegation to the Forty-Third World Health Assembly of the World Health Organization (WHO) Geneva, May 7–18, 1990

Delegates

The Honorable Louis W. Sullivan, M.D. (Chief Delegate), Secretary, Department of Health and Human Services
The Honorable James Mason, M.D. (Deputy Chief Delegate), Assistant Secretary for Health, U.S. Public Health Service, Department of Health and Human Services
The Honorable John R. Bolton (Deputy Chief Delegate), Assistant Secretary of State for International Organization Affairs, Department of State

Alternate Delegates

The Honorable Antonia C. Novello, M.D., Surgeon General, U.S. Public Health Service, Department of Health and Human Services
The Honorable Morris Abram, Ambassador, United States Permanent Representative to

the European Office of the United Nations, Geneva
Neil A. Boyer, Director, Health and Transportation Programs, Bureau of International Organization Affairs Department of State

Advisers

Rose Belmont, Associate Director for Multilateral Programs, Office of International Health, U.S. Public Health Service, Department of Health and Human Services
Jarrett Clinton, M.D., Acting Administrator, Agency for Health Care Policy and Research, U.S. Public Health Service, Department of Health and Human Services
Joe H. Davis, M.D., Director, International Health Program Office, Centers for Disease Control, U.S. Public Health Service, Department of Health and Human Services
Paula Feeney, U.S. Mission, Geneva
John Garner, U.S. Mission, Geneva
William Green, U.S. Mission, Geneva
Dennis O. Johnsen, U.S. Mission, Geneva
Thomas A. Johnson, Legal Adviser, Department of State
Craig Kuehl, U.S. Mission, Geneva
John La Montagne, Director, Division of Microbiology and Infectious Diseases, National Institute of Allergy and Infectious Diseases, National Institutes of Health, U.S. Public Health Service, Department of Health and Human Services
William H. Marsh, Minister Counsellor, Deputy Chief of Mission, Geneva
Stuart Nightingale, M.D., Associate Commissioner for Health Affairs, Food and Drug Administration, U.S. Public Health Service, Department of Health and Human Services
Anne W. Patterson, Counsellor for Political Affairs, U.S. Mission, Geneva
Nancy Pielemeier, Deputy Director, Office of Health, Bureau for Science and Technology, U.S. Agency for International Development
Edith A. Reidy, U.S. Mission, Geneva
William L. Roper, Director, Centers for Disease Control, U.S. Public Health Service, Department of Health and Human Services
Philip Schambra, Director, Fogarty International Center, National Institutes of Health, U.S. Public Health Service, Department of Health and Human Services
Kyle Scott, U.S. Mission, Geneva
Arthur Skop, U.S. Mission, Geneva

Private Sector Advisers

Tenley Albright, M.D., General Surgeon, Harvard Medical School, Boston, Massachusetts
Vivian W. Pinn-Wiggins, M.D., Chairman, Department of Pathology, Howard University, and President, National Medical Association, Washington, DC
William Walsh, M.D., Director, Project Hope, Washington, DC

United States Delegation to the Tenth Session of the Regional Association VI World Meterorological Organization (WMO) Sofia, May 8–15, 1990

Representative

Ronald D. McPherson, Deputy Assistant Administrator for Weather Services, National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

Gordon D. Cartwright, Consultant, Geneva, Switzerland

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XVIII and its Working Parties, Geneva, Switzerland, May 9–25, 1990

Representative

William F. Utlaut, Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

Alternate Representative

Gary M. Fereno, Deputy Director, Office of Telecommunication and Information Standards, Bureau of International Communications and Information Policy, Department of State

Adviser

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Private Sector Advisers

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Gary Fishman, District Manager, Technical Industry Standards, AT&T Communications, Bedminster, New Jersey
Gerard T. Keeler, Network Engineer, Senior Integrated Services, COMSAT Corporation, Washington, DC
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Yi-Shang Shen, Manager, Technical Standards, Western Union International, Inc., McLean, Virginia
Richard E. Weadon, Senior Technologist, Southwestern Bell Corporation, MCI Telecommunications Corporation, St. Louis, Missouri

United States Delegation to the Tenth Session of the Statistics Panel, International Civil Aviation Organization (ICAO), Montreal, May 14–18, 1990

Panel Member

Stuart E. Robinson, Chief, International Data Systems Division, Department of Transportation

Adviser

Jerold Coffee, Office of Aviation Information Management, Department of Transportation

Private Sector Adviser

William Hawkins, Vice President, Finance and Taxation, Air Transport Association of America, Washington, DC

United States Delegation to the Preparatory Meeting for the Conference on International Cooperation on Oil Spill Pollution and Preparedness and Response, International Maritime Organization (IMO), London, May 14–18, 1990

Representative

Joel D. Sipes, Rear Admiral, Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Susan J. Blood, United States Coast Guard Academy, United States Coast Guard, Department of Transportation
William F. Holt, Commander, Chief, Marine Environmental Response Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation
David Kennedy, Hazardous Materials Response Branch, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce
Gary Larsen, Shipping Attache, United States Embassy, London
John P. Nolan, United States Coast Guard Academy, United States Coast Guard, Department of Transportation
Frederick D. Presley, Division of Maritime and International Law, Office of Chief Counsel, United States Coast Guard, Department of Transportation

United States Delegation to the 14th Joint Meeting of the Chemicals Group and Management Committee, Organization for Economic Cooperation and Development (OECD), Paris, May 15–18, 1990

Representative

Linda J. Fisher, Assistant Administrator for Pesticides and Toxic Substances, Environmental Protection Agency

Alternative Representative

Breck Milroy, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Charles Auer, Office of Toxic Substances, Environmental Protection Agency
David Ogden, Office of International Activities, Environmental Protection Agency
Appropriate USOECD, Mission Officer, Paris

Private Sector Advisers

Frances Irwin, World Wildlife Fund/ Conservation Foundation, Washington, DC
Kenneth Murray, Exxon Corporation, Linden, New Jersey

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group III, Working Parties 1, 2, 5, 6, and 7, Geneva, Switzerland, May, 15–31, 1990

Representative

Earl S. Barbely, Director, Telecommunications and Information

Standards, Bureau of International Communications and Information Policy, Department of State

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Wendell Harris, Assistant Bureau Chief/ International, Federal Communications Commission, Washington, DC

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Kenneth Leeson, Telecommunications Adviser, IBM, Purchase, New York
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John O'Boyle, Vice President, Facility Management, World Communications, Inc., New York, New York
Philip Onstad, Consultant, International Communications Association, Washington, DC
Carmine Taglialatella, Jr., Advisory Engineer, MCI Telecommunications Corporation, McLean, Virginia

United States Delegation to the International Tropical Timber Organization Bali, Indonesia, May 16–23, 1990

Representative

Wesley S. Scholz, Director, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

Diana M. Tasnadi, Economist, International Trade Administration, Department of Commerce
Stephanie Caswell, Senior Conservation Officer, Office of Ecology, Health and Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Jerry Bisson, USAID Project Officer, Natural Resources Management (ARD), U.S. Embassy, Jakarta
Gary R. Lindell, Program Manager, Forest Products Laboratories, Department of Agriculture

Private Sector Advisers

Robert Buschbacher, Director, Tropical Forestry Program, World Wildlife Fund, Washington, DC
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United States Delegation to the 58th Session of the Maritime Safety Committee International Maritime Organization (IMO) London, May 21–25, 1990

Representative

Joel D. Sipes, Rear Admiral, Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Daniel F. Sheehan, Office of Marine Safety and Environmental Protection, United States Coast Guard, Department of Transportation

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Randall Gilbert, Lieutenant Commander, Naval Architecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety and Environmental Protection, United States Coast Guard, Department of Transportation
Gene Hammel, Deputy Chief, International Affairs Staff, United States Coast Guard, Department of Transportation
Ralph E. Johnson, Deputy Director, Office of Surface Transportation Safety, National Transportation Safety Board, Department of Transportation
Robert McIntyre, Chief, International Liaison Branch, Federal Communications Commission
Sydney A. Wallace, Rear Admiral, USCG, (Ret.), Chairman, Marine Science Board, National Academy of Science, Washington, DC

Private Sector Advisers

Robert Alario, Offshore Marine Services Association, New Orleans, Louisiana
Walter J. Czerny, Jr., American Bureau of Shipping, Paramus, New Jersey
Donald C. Hintze, Captain, USCG, (Ret.), National Ocean Industries Association, Washington, DC
Robert J. Oslund, Director of INMARSAT Relations, COMSAT, Washington, DC
Frazier Sammis, Captain, President National Cargo Bureau, New York, New York

United States Delegation to the International Telecommunication Union (ITU) International Radio Consultative Committee (CCIR) XVIIth Plenary Assembly May 21–June 1, 1990, Dusseldorf, Federal Republic of Germany

Representative

Warren G. Richards, Deputy Director, Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State

Alternate Representative

Richard D. Parlow, Associate Administrator, National Telecommunications and Information Administration, Department of Commerce
John Reiser, Mass Media Bureau, Federal Communications Commission

Senior Advisers

Richard C. Beaird, Deputy Director, Bureau of International Communications and Information Policy, Department of State
The Honorable, Bradley P. Holmes, Ambassador, United States Coordinator and Director, Bureau of International Communications and Information Policy, Department of State

Advisers

Roger E. Beehler, Manager, NBS Broadcast Services, National Institute of Standards and Technology, Department of Commerce, Boulder, Colorado
John F. Cavanagh, Naval Surface Warfare Center, Dahlgren, Virginia
Michael Fitch, Executive Assistant, Bureau of International Communications and Information Policy, Department of State
Gerald F. Hurt, Program Manager, Office of Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
Harold G. Kimball, Deputy Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce
Alex C. Latker, International Policy Division, Common Carrier Bureau, Federal Communications Commission
Robert J. Mayher, Director, Spectrum Plans and Policy, National Telecommunications and Information Administration, Department of Commerce
Robert C. McIntyre, International Adviser, Private Radio Bureau, Federal Communications Commission
Mathew Rooney, United States Embassy, Bonn, Federal Republic of Germany
Charles M. Rush, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce
Richard E. Shrum, Director, Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State
Robert M. Taylor, Spectrum Management Specialist, Spectrum Management Program, National Aeronautics and Space Administration

Private Sector Advisers

Jeffery B. Binckes, Principal Engineer, COMSAT—INTELSAT Satellite Services, Washington, DC
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Cecil R. Crump, International District Manager, American Telephone and Telegraph, Morristown, New Jersey
Bernard L. Dickens, Senior Staff Scientist, Engineering and Development, CBS, Inc., New York, New York
Ben C. Fisher, Fisher, Wayland, Cooper, and Leader, Washington, DC
Ronald J. Gnidziejko, Director, Advanced Television, National Broadcasting Company, New York, New York
Robert Hopkins, Executive Director, Advanced TV Systems Committee, Washington, DC

Donald M. Jansky, Jansky-Barmat Telecommunications, Washington, DC
John C. Kelleher, Consultant, Silver Spring, Maryland
Louis Libin, National Broadcasting Company, New York, New York
Travis Marshall, Senior Vice President and Director of Government Relations, Motorola, Inc., Washington, DC
James C. McKinney, Chairman, Advanced TV Systems Committee, Washington, DC
Edward E. Reinhart, Consultant, McLean, Virginia
Francis S. Urbany, Director, International and Agency Relations, BellSouth Corporation, Washington, DC
Antoon Uyttendaele, Capital Cities-ABC, Inc., New York, New York
Hans J. Weiss, Vice President, Technical Policy, COMSAT Laboratories, Clarksburg, Maryland

United States Delegation to the Twenty-Sixth Meeting of the North Atlantic Systems Planning Group International Civil Aviation Organization (ICAO) Paris, May 21–June 1, 1990

Panel Member

John Mayrhofer, Assistant Manager, Procedures Division, Federal Aviation Administration, Department of Transportation

Advisers

Howard Hess, Federal Aviation Administration, Department of Transportation
Robert Howard, Assistant Manager (Oceanic), Federal Aviation Administration, Department of Transportation, Ronkonkoma, New York
Dale Livingston, Supervisor, Analysis Branch, Federal Aviation Administration, Department of Transportation, Atlantic City, New Jersey
Peter Massoglia, Automatic Dependent Surveillance Program Manager, Automation Systems Division, Federal Aviation Administration, Department of Transportation
Konstantine Nezer, International Procedures Branch, Federal Aviation Administration, Department of Transportation

Private Sector Advisers

Richard K. Covell, Manager, Air Ground Operations, Aeronautical Radio Inc., Annapolis, Maryland
Ray J. Hilton, Director, Air Traffic Management, Air Transport Association of America, Washington, DC

United States Delegation to the First Session of the Future Air Navigation System II Panel International Civil-Aviation Organization (ICAO) Montreal, May 22–June 8, 1990

Panel Member

John E. Turner, Associate Administrator for NAS Development, Federal Aviation Administration, Department of Transportation

Alternate Member

Norman Solat, Chief Scientist, Research and Development Service, Federal Aviation Administration, Department of Transportation

Advisers

Jamil Abbasi, NAS International Programs Office, Office of the Associate Administrator for System Engineering and Development, Federal Aviation Administration, Department of Transportation
Jerry W. Bradley, Program Manager, Satellite Navigation Systems, Aircraft/CNS System Division, Federal Aviation Administration, Department of Transportation
Frank Colson, Director for Transportation and Federal Aviation, Office of the Secretary, Department of the Air Force
David DeCarme, Acting Manager, International Operations Branch, Office of International Aviation, Federal Aviation Administration, Department of Transportation
William K. Wertz, Advanced Systems and Facilities Division, Federal Aviation Administration, Department of Transportation

Private Sector Advisers

Larry Chesto, Director, Telecommunications Systems, Aeronautical Radio, Inc., Annapolis, Maryland
Raymond J. Hilton, Director, Air Traffic Management, Air Transport Association of America, Washington, DC

United States Delegation to the Organization of American States (OAS) Twentieth Regular Session of the General Assembly Asuncion June 3-9, 1990

Representatives

The Honorable Lawrence S. Eagleburger (Chairman), Deputy Secretary of State, Department of State
The Honorable Carla T. Hills (Vice Chairman), United States Trade Representative
The Honorable Luigi R. Einaudi (Vice Chairman), Permanent Representative of the United States to the Organization of American States
The Honorable Bernard W. Aronson (Vice Chairman), Assistant Secretary of State for Inter-American Affairs, Bureau of Inter-American Affairs, Department of State
John F. Maisto (Vice Chairman), Deputy Permanent Representative of the United States to the Organization of American States
The Honorable Timothy L. Towell (Vice Chairman), Ambassador, United States Embassy, Asuncion

Alternate Representatives

Samuel V. Brock, Alternate Representative to the Organization of American States, Department of State
Owen B. Lee, Alternate Representative to the Organization of American States, Department of State
James J. Reilly, Alternate Representative to the Organization of American States, Department of State
Margarita Riva-Geoghegan, Alternate Representative to the Organization of American States, Department of State
James C. Todd, Alternate Representative to the Organization of American States, Department of State
Xenia V. Wilkinson, Alternate Representative to the Organization of American States, Department of State

Advisers

Maureen U. Bader, United States Mission to the Organization of American States, Department of State
Elizabeth R. Beyene, Office of International Conference Administration, Bureau of International Organization Affairs, Department of State
Marcel Bouquet, Office of Language Services, Bureau of Administration, Department of State
Catherine W. Brown, Office of the Legal Adviser, Department of State
William R. Brownfield, Bureau of Inter-American Affairs, Department of State
Torie Clarke, Assistant United States Trade Representative for Public Affairs, Office of the United States Trade Representative, Executive Office of the President
Gary Edson, Chief of Staff and Counselor, Office of the United States Trade Representative, Executive Office of the President
Jonathan Farrar, Economic Counselor, United States Embassy, Asuncion
James B. Foley, Special Assistant to the Deputy Secretary of State, Office of the Deputy Secretary, Department of State
Mark C. Glyptis, Office of United Nations System Budgets, Bureau of International Organization Affairs, Department of State
Mary A. Haines, Executive Secretariat, Office of the Secretary, Department of State
Eve D. Henderson, Office of the Deputy Secretary, Department of State
Jon Huenemann, Director for Brazil and Southern Cone Affairs, Office of the United States Trade Representative, Executive Office of the President
Warren Lavorel, United States Coordinator for the Uruguay Round, Office of the United States Trade Representative, Executive Office of the President
Rose Likins, Political Counselor, United States Embassy, Asuncion
Elizabeth Lee Martinez, Bureau of Inter-American Affairs, Department of State
Bernadette M. McCarron, United States Mission to the Organization of American States, Department of State
Wendela C. Moore, Bureau of Economic and Business Affairs, Department of State
Lillian Nigaglioni, Office of Language Services, Bureau of Administration, Department of State
Barbara Phillips, Office of Language Services, Bureau of Administration, Department of State
William T. Pryce, Special Assistant to the President, Senior Director for Latin America and the Caribbean, National Security Council
Michael Ranneberger, Deputy Chief of Mission, United States Embassy, Asuncion
George Seay, Staff Assistant, Office of the Deputy Secretary, Department of State
J. Michael Shelton, Bureau of Inter-American Affairs, Department of State

Dennis E. Skocz, Bureau of Inter-American Affairs, Department of State
Michael M. Skol, Deputy Assistant Secretary of State for South America, Bureau of Inter-American Affairs, Department of State
Donald E. Stewart, United States Mission to the Organization of American States, Department of State
Janice C. Williams, Deputy Assistant Secretary of State for Trade and Commercial Affairs, Bureau of Economic and Business Affairs, Department of State
Vonzella L. Taylor, United States Mission to the Organization of American States, Department of State

Private Sector Advisers

Ramon Claudio Ortiz, Director, Office of the Legal Adviser, United Retailers Association of Puerto Rico, San Juan, Puerto Rico
The Honorable Jorge Roman Santiago, Secretary of Commerce, Government of Puerto Rico, San Juan, Puerto Rico
Elliott Rivera Rivera, President, United Retailers Association of Puerto Rico, San Juan, Puerto Rico

United States Delegation to the Working Group on Statistics and the Insurance Committee Organization for Economic Cooperation and Development (OECD) Paris, June 5–8, 1990

Representative

Mark Young, Director, Office of Service Industries, Department of Commerce

Adviser

Appropriate USOECD, Mission Officer, Paris

Private Sector Advisers

L. Oakley Johnson, Vice President, Corporate Affairs, American International Group, Inc., Washington D.C.
Hans Miller, Managing Director, Hartford International, Brussels
Harold Skipper, Georgia State University, Center for Insurance Research, Atlanta
Zack Stamp, Director of Insurance, 320 W. Washington St., 4th Floor, Springfield, ILL

United States Delegation to the Maritime Transport Committee, Organization for Economic Cooperation and its Special Group on International Organizations, and Development (OECD), Paris, June 5–8, 1990

Representative

Thomas J. Wajda, Director, Office of Maritime and Land Transport, Bureau of Economic Affairs, Department of State

Advisers

Gregory Hall, Office of International Affairs, Maritime Administration, Department of Transportation
C. William Johnson, Office of Industries, Department of Commerce

Private Sector Advisers

Michael M. Murphy, Vice President, American President Lines, Ltd., Washington, DC
Donald O'Hare, United Shipowners of America (USA), Washington, DC
William P. Verdon, President, United Shipowners of America (USA), Washington, DC

United States Delegation to the Hague Conference on Private International Law (HCOPIL), Special Commission on Inter-Country Adoption of Children, the Hague, June 11–21, 1990

Representative

Peter H. Pfund, Assistant Legal Adviser, Office of the Legal Adviser, Department of State

Alternate Representative

Harry D. Krause, Professor, College of Law, University of Illinois, Champaign, Illinois

Adviser

William L. Pierce, President, National Committee for Adoption, Washington, DC

United States Delegation to the Seventh Annual Meeting of the Council of the North Atlantic Salmon Conservation Organization (NASCO), Helsinki, June 12–15, 1990

Commissioner

The Honorable Frank E. Carlton (head of delegation), Vice President, National Coalition for Marine Conservation, Inc., Savannah, Georgia

Alternate Commissioners

The Honorable Richard B. Roe, Director, Northeast Region, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts
The Honorable Clinton B. Townsend, Canaan, Maine

Congressional Staff Adviser

James K. McCallum, Staff Member, Committee on Merchant Marine and Fisheries, United States House of Representatives

Advisers

Vaughn C. Anthony, Northeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts
Howard N. Larsen, Special Adviser to the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior, Gainesville, Florida
Dean Swanson, Office of International Affairs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
H. Stetson Tinkham, Atlantic Fisheries Officer, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
James Weaver, U.S. Fish and Wildlife Service, Department of the Interior

Private Sector Advisers

Davis F. Egan, Chairman, Connecticut River Atlantic Salmon Commission, Guilford, Connecticut
Robert A. Jones, Commissioner, Connecticut River Atlantic Salmon Commission, State of Connecticut, Hartford, Connecticut
Gilbert C. Radonski, President, Sports Fishing Institute, Washington, DC
William J. Vail, Commissioner, Department of Natural Resources, State of Maine, Augusta, Maine

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group II (Network Operation and ISDN), Geneva, Switzerland, June 12-22, 1990

Representative

Earl S. Barbely, Director, Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

Alternate Representative

Ivor Knight, Vice President, International System Standards, Communications Satellite Corporation, Washington, DC

Private Sector Advisers

Henry Hudson, Director, Bell Atlantic Corporation, Arlington, Virginia
Robert J. Keevers, District Manager, Special Switching Requirements, Bellcore, Red Bank, New Jersey
Robert W. Madden, Manager, American Telephone and Telegraph Company, Morristown, New Jersey

United States Delegation to the 14th Session of the Committee on Shipping, United Nations Conference on Trade and Development (UNCTAD), Geneva, June 21–July 5, 1990

Representative

Stephen M. Miller, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State

Private Sector Advisers

Philip J. Loree, Attorney and Chairman, Federation of American Controlled Shipping, New York, New York
Donald L. O'Hare, Sea-Land Corporation, Washington, DC
Peter D. Prowitt, Director, Government Affairs, American President Lines, Washington, DC

United States Delegation to the 27th Session of the Administrative and Legal Committee Union for the Protection of New Plant Varieties (UPOV) Geneva, June 25–29, 1990

Representative

H. Dieter Hoinkes, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce

Adviser

James E. Elgin, Agricultural Research Service, Department of Agriculture

Private Sector Adviser

Craig J. Regelbrugge, Director of Regulatory Affairs, American Association of Nurserymen, Washington, DC

United States Delegation to the United Nations Commission on International Trade Law (UNCITRAL), 23rd Plenary Session, New York, New York, June 25–July 6, 1990

Representative

Peter H. Pfund, Assistant Legal Adviser for Private International Law, Office of the Legal Adviser, Department of State

Alternate Representatives

Arthur Aronoff, Office of the Chief Counsel for International Commerce, Department of Commerce
Harold S. Burman, Office of the Legal Adviser, Department of State

Adviser

Robert B. Rosenstock, Legal Adviser, United States Mission to the United Nations, New York, New York

Private Sector Adviser

Thomas McVey, McVey and Sherman Chartered, Washington, DC

United States Delegation to the 42nd Annual Meeting of the International Whaling Commission (IWC), Noordwijk An Zee, June 25–July 6, 1990

Representative

The Honorable William E. Evans, United States Commissioner, Galveston, Texas

Alternate Representative

Norman Roberts, Deputy United States Commissioner, La Jolla, California

Congressional Staff Advisers

Kerry Bolognese, Staff Member, Committee on Foreign Affairs, United States House of Representatives
Lori Williams, Staff Member, Committee on Merchant Marine and Fisheries, United States House of Representatives

Advisers

James Brennan, Deputy General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce
Melinda Chandler, Office of the Legal Adviser, Department of State
Kevin Chu, Office of Oceans Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Anne Crichton, Office of the Solicitor, Department of the Interior
Sylvia Earle, Chief Scientist Designate, National Oceanic and Atmospheric Administration, Department of Commerce
Rebecca Rootes, Office of International Affairs, National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce
Eileen Sobeck, Wildlife and Marine Resources Unit, Department of Justice
Dean Swanson, Office of International Affairs, National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce
Michael F. Tillman, Chief Scientist, National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Advisers

Nancy Azzam, Windstar Foundation, Golden Valley, Minnesota
Barbara Britten, American Cetacean Society, Arlington, Virginia
Arnold Brower, Alaskan Eskimo Whaling Commission, Barrow, Alaska
Mark Fraker, Sohio Alaska Petroleum Company, Anchorage, Alaska
Nancy Hicks, Animal Protection Institute of America, Washington, DC
Edward Hopson, Chairman, Alaska Eskimo Whaling Commission, Barrow, Alaska
John Prescott, American Association of Zoological, Parks and Aquariums, Boston, Massachusetts
Lee J. Weddig, Executive Vice President, National Fisheries Institute, Arlington, Virginia

United States Delegation to the Meeting of the Standing Committee of the Convention on Wetlands of International Importance, Especially as Waterfowl Habitat (RAMSAR) Montreux, Switzerland, June 26–July 4, 1990

Representatives

The Honorable E.U. Curtis Bohlen, Assistant Secretary of State for (Designate) Oceans and International Environmental and Scientific Affairs, Department of State
John F. Turner, Director, United States Fish and Wildlife Service, Department of the Interior

Alternate Representative

Lawrence N. Mason, Chief, Office of International Affairs, United States Fish and Wildlife Service, Department of the Interior

Congressional Staff Adviser

Donald J. Barry, Majority Counsel, Merchant Marine and Fisheries Committee, United States House of Representatives

Advisers

Cory Giacobbe, Office of Wetlands Protection, Environmental Protection Agency
William O. Wilen, Chief, National Wetlands Inventory, United States Fish and Wildlife Service, Department of the Interior
Mark W. Willis, Office of Ecology and Natural Resources, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Private Sector Advisers

Carroll D. Besadny, Secretary, Wisconsin Department of Natural Resources, Madison, Wisconsin
Joseph S. Larson, Director, Environmental Institute, University of Massachusetts, Pittsfield, Massachusetts

[FR Doc. 90–18086 Filed 8–2–90; 8:45 am]
BILLING CODE 4710–19–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Territorial Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 90–7–61, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Territorial Airlines, Inc., fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, (202) 366–2343.

Dated: July 27, 1990.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–18098 Filed 8–2–90; 8:45 am]
BILLING CODE 4910–62–M

Maritime Administration

Approval of Applicant as Mortgagee; Baton Rouge Bank and Trust Co.

Notice is hereby given that Baton Rouge Bank & Trust Company, having offices at 617 North Boulevard, Baton Rouge, Louisiana, has been approved as Mortgagee pursuant to Public Law 100–710 and 46 CFR 221.43.

By Order of the Maritime Administrator.

Dated: July 31, 1990.

James E. Saari,

Secretary.

[FR Doc. 90–18150 Filed 8–2–90; 8:45 am]
BILLING CODE 4910–81–M

Change of Name of Approved Trustee; Boatmen's Trust Co.

Notice is hereby given that effective December 9, 1988, Centerre Trust

Company of St. Louis, St. Louis, Missouri, changed its name to Boatmen's Trust Company.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 90-18151 Filed 8-2-90; 8:45 am]

BILLING CODE 4910-81-M

Approval of Applicant as Trustee; Maryland National Bank

Notice is hereby given that Maryland National Bank, with offices at 10 Light Street, Baltimore, Maryland, has been approved as Trustee pursuant to Public Law 100-710 and 46 CFR 221.51.

By Order of the Maritime Administrator.

Dated: July 31, 1990.

James E. Saari,

Secretary.

[FR Doc. 90-18152 Filed 8-2-90; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 30, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Opinion Survey of Taxpayers Contacted by the EP/EO Determination Program
Description: Information gathering for operation and program evaluation: The data collected will be used to evaluate the level of satisfaction of taxpayers contacted by the IRS Employee Plan (EP)/Exempt Organizations (EO) Determination Program, to identify possible areas of program improvement, and thereby improve the effectiveness of EP/EO activities.
Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 4,000
Estimated Burden Hours Per Respondent: 10 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 667 hours

OMB Number: 1545-1023
Form Number: IRS Form 8453-S
Type of Review: Extension
Title: S Corporation Declaration for Magnetic Media/Electronic Filing
Description: This form will be used to secure the corporate officer's signature and declaration in conjunction with the Magnetic/Electronic Filing Pilot. This form, together with the magnetic media/electronic transmission, will comprise the S corporation tax return.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/Recordkeepers: 1,000
Estimated Burden Hours Per Respondent/Recordkeeping:
Recordkeeping—7 minutes
Learning about the law or the form—2 minutes
Preparing the form—13 minutes
Copying, assembling, and sending the form to IRS—17 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 640 hours

OMB Number: 1545-1158
Form Number: None
Type of Review: Extension
Title: 1990 Taxpayer Opinion Survey
Description: IRS needs to obtain trend data that will enable the Service to monitor and evaluate the effectiveness of current tax policies and programs. Questions are duplicated from previous surveys and directed toward the general taxpaying population. Some new questions are also added.
Respondents: Individuals or households
Estimated Number of Respondents: 3,000
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: Other (One-time)
Estimated Total Reporting/Recordkeeping Burden: 1,600 hours

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington. DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-18106 Filed 8-2-90; 8:45 am]

BILLING CODE 4830-01-M

Fiscal Service

[Dept. Circ. 570, 1989—Rev., Supp. No. 31]

Surety Companies Acceptable on Federal Bonds; Suspension of Authority of National Automobile and Casualty Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to National Automobile and Casualty Insurance Company, of Pasadena, CA, under the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is hereby suspended, effective June 30, 1990. This action was taken in light of the recently announced liquidation of this company's parent, Prospect Group, Inc. and the proposed sale of the company in such liquidation. The suspension will remain in effect until the sale has been completed and reviewed and approved by this Department.

The Company was last listed as an acceptable surety on Federal bonds at 54 FR 27816, June 30, 1989. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect the suspension.

With respect to any bonds currently in force with National Automobile and Casualty Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: July 13, 1990.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

[FR Doc. 90-18130 Filed 8-2-90; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by September 4, 1990.

Dated: July 19, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration.
2. Request for Supplemental Information on Medical and Nonmedical Applications.
3. VA Form Letter 29–615.
4. The information collected is used by VA to determine the insured's eligibility for reinstatement, change of plan, or a new issue of Government Life Insurance.
5. On occasion.
6. Individuals and households.
7. 9,000 responses.
8. 1/3 hour.
9. Not applicable.

[FR Doc. 90–18133 Filed 8–2–90; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463, section 10(a)(2), that a meeting of the Subcommittee of the Veterans' Advisory Committee on Environmental Hazards will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, Room 1010 (Omar Bradley Conference Room), on August 22, 1990, and Room 119, on August 23, 1990. The Committee will review the proposed regulation recognizing a significant statistical association between exposure to a herbicide containing dioxin and soft tissue sarcoma; the association between such an exposure and porphyria cutanea tarda and chloracne; and the fifth report of the Committee on the Biological Effects of Ionizing Radiation (BEIR V). The Committee will also consider recommendations derived from the Subcommittee's July, 1990, meeting.

The meeting will convene at 9 a.m. on August 22 in room 1010 and 8 a.m. on August 23 in room 119. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Loretta Young Pines, Department of Veterans Affairs Central Office (phone 202/233-8019) prior to August 15, 1990.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Deputy Assistant General Counsel (026B), Room 1075B, Department of Veterans Affairs Central Office. Submitted material must be received at least 5 days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: July 24, 1990.

By direction of the Secretary.

Sylvia Chavez-Long,

Deputy Assistant Secretary for Program Coordination and Evaluation.

[FR Doc. 90–18131 Filed 8–2–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 150
Friday, August 3, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, August 8, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 31, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–18216 Filed 7–31–90; 4:46 pm]

BILLING CODE 6210–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: A meeting of the Board of Directors will be held on August 9, 1990. The meeting will commence at 9:00 a.m.

PLACE: Washington Court Hotel, 525 New Jersey Ave., NW., Ballroom B, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open (A portion of the meeting will be closed, subject to a vote by a majority of the Board of Directors, to discuss matters related to Presidential Search as authorized under The Government in the Sunshine Act (5 U.S.C. 552b (c)(2), (6), and (9)(B) and 45 CFR 1622.5 (a), (e), and (g)) and to discuss personnel, privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act (5 U.S.C. 552b (c)(2), (4), (5), (6), and (10) and 45 CFR 1822.5 (a), (c), (d), (e), (f), and (h))).

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Chairman's Remarks.
3. President's Report.

Closed Session:

1. Review of Presidential Search Matters.

Open Session:

4. Selection of President of the Legal Services Corporation.
5. Report on Issues Regarding the Office of the Inspector General.
6. Discussion and Consideration of Reauthorization "Mark-up" Meeting and Reform Proposals.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Dated Issued: August 1, 1990.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 90–18373 Filed 8–1–90; 4:19 pm]

BILLING CODE 7050–01–M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:22 p.m. on Tuesday, July 31, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) the resolution of failed thrift institutions; (2) delegation of authority to make expenditures under contracts related to the management, servicing, and disposition of assets, and to establish a reporting cycle to the Board; and (3) matters regarding the Corporation's internal administration activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), and concurred in by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required it consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550–17th Street, NW., Washington, DC.

Dated: July 31, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–18230 Filed 8–1–90; 10:08 am]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 55, No. 150
Friday, August 3, 1990

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 DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area, Naval Supply Center Pier, San Diego Bay, San Diego, CA

Correction

In rule document 90-15144 appearing on page 27102 in the issue of Friday, June 29, 1990, make the following correction:

§ 334.870 [Corrected]

In the third column, in § 334.870(d)(1), in the table, under "Latitude", the second entry should read "32°42'50" N".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

34 CFR Part 769

RIN 1850-AA36

Library Services and Construction Act Discretionary Grant Programs

Correction

In rule document 90-16498 beginning on page 28990, in the issue of Monday, July 16, 1990, make the following correction:

§ 769.20 How do the State public libraries review applications submitted under the Library Literacy Program.

On page 28991, in the second column, under "Subpart C", the section heading was omitted and should read as set forth above.

BILLING CODE 1505-01-D

FEDERAL TRADE COMMISSION

16 CFR Part 453

Mandatory Review of the Funeral Industry Practices Trade Regulation Rule

Correction

In proposed rule document 90-17679 beginning on page 30925 in the issue of Monday, July 30, 1990, make the following correction:

On page 30926, in the first column, in the fourth paragraph, in the seventeenth line, the date printed should read "October 15, 1990,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 103

[Docket No. 89N-0469]

Quality Standards for Foods With No Identity Standards; Bottled Water

Correction

In proposed rule document 90-15687 beginning on page 27831 in the issue of Friday, July 6, 1990, make the following correction:

§ 103.35 [Corrected]

On page 27834, in the third column, in § 103.35(d)(3)(ii)(A), in the first line, "Method 501.1" should read "Method 502.1".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 430

Performance Management and Recognition System

Correction

Rule document 90-14747 beginning on page 25947 in the issue of Tuesday, June 26, 1990, contained § 430.204 which was corrected at 55 FR 27760, July 5, 1990 and at 55 FR 27933, July 6, 1990. Please disregard the correction at 55 FR 27933, July 6, 1990.

BILLING CODE 1505-01-D

federal register

Friday
August 3, 1990

Part II

Environmental Protection Agency

40 CFR Part 421

Nonferrous Metals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[OW-FRL-3729-8]

RIN 2040-AB31

Nonferrous Metals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final regulation.

SUMMARY: EPA is promulgating amendments to the regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that conduct metal manufacturing operations in the metallurgical acid plants subcategory (subpart I), primary beryllium subcategory (subpart O), primary molybdenum subcategory (subpart S), secondary molybdenum and vanadium subcategory (subpart T), secondary precious metals subcategory (subpart X), and secondary tungsten and cobalt subcategory (subpart AC). EPA proposed these amendments April 28, 1989 (54 FR 18412) in accordance with settlement agreements which resolved petitions for review of the final nonferrous metals manufacturing regulation promulgated by EPA on September 20, 1985 (50 FR 38276).

These final amendments are promulgated with only typographical corrections from proposal and include: (1) Certain modifications of the effluent limitations for "best practicable technology" (BPT), "best available technology economically achievable" (BAT), and "new source performance standards" (NSPS) for direct dischargers; and (2) certain modifications to the pretreatment standards for new and existing indirect dischargers (PSNS and PSES).

DATES: In accordance with 40 CFR 23.2 this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern time on August 17, 1990. This regulation shall become effective September 17, 1990. The compliance date for the BAT regulations is as soon as possible, but in any event, no later than September 17, 1990. The compliance date for new source performance standards (NSPS) and pretreatment standards for new sources (PSNS) is the date the new source begins operations. The compliance date for pretreatment standards for existing sources (PSES) is September 17, 1990. (These dates only apply to the limitations in today's amendments. They do not affect previously-promulgated guidelines and standards.)

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in a United States Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Address questions on this final rule to Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention Nonferrous Metals Manufacturing Rules (WH-552).

The basis for this amendment is detailed in the record. The record for the final rule will be available for public review not later than September 17, 1990, in EPA's Public Information Reference Unit, room 2904 (Rear) (EPA Library), 401 M Street SW., Washington, DC. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of this Notice

I. Legal Authority
II. Background
  A. Rulemaking and Settlement Agreements
  B. Effect of the Settlement Agreements for Nonferrous Metals Manufacturing
III. Amendments to the Nonferrous Metals Manufacturing Regulation
IV. Environmental Impact of the Amendments to the Nonferrous Metals Manufacturing Regulation
V. Economic Impact of the Amendments
VI. Public Participation and Response to Major Comments
VII. Executive Order 12291 and OMB Review
VIII. Regulatory Flexibility Analysis
IX. Paperwork Reduction Act

I. Legal Authority

The amendments described in this notice are promulgated under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217 and the Water Quality Act of 1987, Pub. L. 100-41).

These amendments were proposed in response to the Settlement Agreements in *AMAX Inc.* v. *U.S. Environmental Protection Agency, Brush Wellman Inc.*, v. *U.S. Environmental Protection Agency, Engelhard Corporation* v. *U.S. Environmental Protection Agency, GTE Products Corp.* v. *U.S. Environmental Protection Agency, Gulf Chemical and Metallurgical Co.* v. *U.S. Environmental Protection Agency,* and *Johnson Matthey, Inc.* v. *U.S. Environmental Protection Agency,* Nos. 85-3560, 86-3072, 85-3694, 85-3625, 86-3039 and 85-3726 respectively (3rd Cir. 1986).

II. Background

A. Rulemaking and Settlement Agreements

On March 8, 1984, EPA promulgated Best Practicable Control Technology Currently Available (BPT) and Best Available Technology Economically Achievable (BAT) effluent limitations guidelines and new source performance standards (NSPS), pretreatment standards for existing sources (PSES) and pretreatment standards for new sources (PSNS) for the 12 subcategories in the nonferrous metals manufacturing (NFM) point source category (49 FR 8714). At that time the Agency recognized that we would regulate additional subcategories in the nonferrous metals manufacturing subcategory at some future date. On June 27, 1984 (49 FR 26352) EPA proposed an amendment to establish Best Practicable Control Technology Currently Available (BPT) and Best Available Technology Economically Achievable (BAT) effluent limitations guidelines, New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for new Sources (PSNS) for some 25 additional subcategories in the nonferrous metals manufacturing point source category. The final rule amending the nonferrous metals manufacturing industry point source category (*i.e.*, NFMII) was promulgated on September 20, 1985 (50 FR 38276) and established effluent limitations guidelines and standards to control specific toxic, nonconventional and conventional pollutants for 20 new subcategories in the nonferrous metals manufacturing point source category. Only six of these subcategories (the metallurgical acid plants subcategory (subpart I), the primary beryllium subcategory (subpart O), the primary molybdenum and rhenium subcategory (subpart S), the secondary molybdenum and vanadium subcategory (subpart T), the secondary precious metals

subcategory (subpart X), and the secondary tunsgsten and cobalt subcategory (subpart AC)) are affected by today's amendments. The remaining subcategories are unchanged by today's amendments.

B. Effect of the Settlement Agreements for Nonferrous Metals Manufacturing

After promulgation of the NFM final regulation, September 20, 1985, petitions for judicial review of the final regulation were filed in various United States Courts of Appeals by AMAX Inc., Brush Wellman Inc., Engelhard Corporation, GTE Products Corp., Gulf Chemical and Metallurgical Co., Johnson Matthey, Inc., Remacor Inc., Teledyne WaChang Albany Inc., Oregon Metallurgical Inc. and Tex Tin Inc. On April 9, 1986, these petitions were consolidated in the United States Court of Appeals for the Third Circuit for judicial review. The Agency held extensive negotiations with the petitioners on issues relating to the effluent limitations guidelines and standards for the nonferrous metals manufacturing point source categories. As a result of these negotiations, three petitioners, Teledyne WaChang Albany Inc., Oregon Metallurgical Inc., and Tex Tin Inc. withdrew their petitions for review. The agency took a voluntary remand in response to Remacor's petition. The remaining petitioners entered into comprehensive settlement agreements with the Agency resolving all issues raised in the litigation. In these agreements EPA agreed to propose amendments to the NFM regulation and to solicit comments regarding these proposed amendments. EPA also agreed to propose specific preamble language. The petitioners agreed to move to dismiss their petitions for judicial review within 30 days from the date any final amendments and preamble are published by the EPA provided each provision of the final NFM regulation is substantially the same as that called for by the settlement agreements. Copies of the settlement agreements were promptly sent to EPA's Regional offices and States NPDES permit issuing authorities.

As part of the settlement agreements, EPA and the petitioners jointly requested the United States Court of Appeals for the Third Circuit to stay the effectiveness of those portions of 40 CFR part 421 that EPA agreed to propose to amend, pending final action by EPA on the proposed amendments. On June 2, 1987 and June 23, 1987, the Court entered orders staying the following sections of the regulation promulgated on September 20, 1985:

Subpart I—Metallurgical Acid Plant Subcategory

40 CFR 421.93—The molybdenum limitations only.
40 CFR 421.94—The molybdenum limitations only.
40 CFR 421.96—The molybdenum limitations only.

Subpart O—Primary Beryllium Subcategory

40 CFR 421.152(d)—All limitations except pH.
40 CFR 421.152(f)—Fluoride limitations only.
40 CFR 421.153(d)—All limitations.
40 CFR 421.153(f)—Fluoride limitations only.
40 CFR 421.154(d)—All limitations except pH.
40 CFR 421.154(f)—Fluoride limitations only.

Subpart S—Primary Molybdenum and Rhenium Subcategory

40 CFR 421.212(a)(e)—The molybdenum limitations only.
40 CFR 421.213(a)(e)—The molybdenum limitations only.
40 CFR 421.214(a)(e)—The molybdenum limitations only.
40 CFR 421.216(a)(e)—The molybdenum limitations only.

Subpart T—Secondary Molybdenum and Vanadium Subcategory

40 CFR 421.222(a)(b)—All pollutants except for the pH limitation.
40 CFR 421.223(a)(b)—All pollutants.
40 CFR 421.224(a)(b)—All pollutants except for the pH limitations.
40 CFR 421.226(a)(b)—All pollutants.

Subpart X—Secondary Precious Metals Subcategory

40 CFR 421.262(a)–(i); (k)–(m)—All limitations for gold, platinum and palladium.
40 CFR 421.262(j)—All limitations except pH.
40 CFR 421.263(a)–(i); (k)–(m)—All limitations for gold, platinum and palladium.
40 CFR 421.263(j)—All limitations.
40 CFR 421.264(a)–(i); (k)–(m)—All limitations.
40 CFR 421.264(j)—All limitations except pH.
40 CFR 421.265(a)–(i); (k)–(m)—All limitations for gold, platinum and palladium.
40 CFR 421.265(j)—All limitations.
40 CFR 421.266(a)–(i); (k)–(m)—All limitations for gold, platinum and palladium.
40 CFR 421.266(j)—All limitations

Subpart AC—Secondary Tungsten and Cobalt Subcategory

40 CFR 421.312(a)–(k)—The Cobalt limitations only.
40 CFR 421.313(a)–(k)—The Cobalt limitations only.
40 CFR 421.314(a)–(k)—The Cobalt limitations only.
40 CFR 421.315(a)–(k)—The Cobalt limitations only.
40 CFR 421.316(a)–(k)—The Cobalt limitations only.

On April 28, 1989 (54 FR 18412) EPA published proposed amendments to the five subcategories of 40 CFR part 421 listed above. Editorial corrections of the published proposed amendments were made on May 26, 1989 (54 FR 22838). All limitations and standards in the final nonferrous metals manufacturing regulation promulgated on September 20, 1985 (50 FR 38276) that were not specifically stayed or remanded by order of the Third Circuit Court remained in effect.

III. Amendments to the Nonferrous Metals Manufacturing Regulation

EPA is promulgating changes to the NFM regulation for the following subcategories: Subpart I—Metallurgical Acid Plants Subcategory, Subpart O—Primary Beryllium Subcategory, Subpart S—Primary Molybdenum and Rhenium Subcategory, Subpart T—Secondary Molybdenum and Vanadium Subcategory, Subpart X—Secondary Precious Metals Subcategory, and Subpart AC—Secondary Tungsten and Cobalt Subcategory. These changes are discussed below.

A. Primary Beryllium Subcategory (Subpart O)

1. Treatment Effectiveness Concentration for Fluoride Removal

EPA is amending the BPT and BAT limitations and NSPS, PSES and PSNS for fluoride in the beryllium hydroxide supernatant building block when fluoride is treated under a specific set of circumstances. EPA effluent limitations and standards, promulgated September 20, 1985, were based on fluoride removal using lime, settle and filter model technology. In the September 20, 1985 rule (50 FR 38346), these limitations and standards applied regardless of the composition of the influent being treated. The petitioners indicated that although they could meet these values for most of their streams, the wastewater stream from the beryllium hydroxide supernatant process step could not be treated to this level because it contains unusually high concentrations of total dissolved solids (TDS). They stated that TDS at such high concentrations could interfere with the model technology performance by significantly inhibiting the precipitation of fluoride.

EPA reconsidered the promulgated fluoride limit in the beryllium hydroxide supernatant wastewater stream which contains reported levels of TDS as high as 200,000 mg/1. Upon further review and analysis of the available data bearing on fluoride treatment effectiveness of wastewater with high TDS levels, the Agency concluded the long term average value for fluoride in the treated wastewater (14.6 mg/1) used as the basis for the limitations is inappropriate for this wastewater stream. EPA is establishing a mass discharge allowance for wastewater

from the beryllium hydroxide supernatant building block based upon a long term average fluoride treatment effectiveness concentration value of 170.0 mg/1. This revised treatment effectiveness value for fluoride is based upon data from an EPA treatability study of cathode reprocessing wastewater in the primary aluminum subcategory. The reprocessing wastewater there had TDS and fluoride levels comparable to the influent values found for the beryllim hydroxide supernatant process. We are transferring the lime, settle and filter treatment performance for the beryllium hydroxide supernatant building block from the primary aluminum subcategory.

The only building block in the primary beryllium subcategory that contains these high TDS and fluoride levels affecting the treatment effectiveness of fluoride is beryllium hydroxide supernatant. Thus, today's amendment is limited to revising the fluoride limit in that building block.

2. Regulatory Flows

EPA is increasing the mass pollutant discharge limits for the beryllium hydroxide filtrate building block. Based on more detailed information, EPA has determined that the regulatory flow allowance used as the basis for developing the discharge limit should be revised from 52,600 to 136,000 1/kkg. The pollutants regulated in this building block and the associated treatment effectiveness values for those pollutants will remain the same as originally promulgated (September 20, 1985). Additionally, the Agency is clarifying that the production of beryllium hydroxide is additive to the production of beryllium carbonate and both the beryllium carbonate and beryllium hydroxide alowance are applied when beryllium is produced.

3. New Building Blocks

EPA is also adding new building blocks for the following six processes in the primary beryllium subcategory: beryl ore gangue dewatering, bertrandite ore gangue dewatering, beryl ore processing (comprises quench pit, scrubber and washdown), AIS area wastewater, bertrandite ore leaching scrubber, and bertrandite ore counter current decantation scrubber. These building blocks were not included in the originally promulgated rule (September 20, 1985) because the Agency anticipated they would be addressed through permit limits developed on the basis of best professional judgment. As part of the settlement negotiations, however, petitioner requested that EPA establish national regulations for these processes. Today's rule regulates the same pollutants as regulated in other primary beryllium building blocks and relies on the same end of pipe wastewater treatment technology. The flow basis for this proposal is as follows: 1,043 1/kkg for beryl ore gangue dewatering; 2,665 1/kkg for bertrandite ore gangue dewatering; 7,303 1/kkg for beryl ore processing; 468,000 1/kkg for aluminum iron sludge (AIS) area wastewater; 1,511 1/kkg for bertrandite ore leaching scrubber; and 101 1/kkg for bertrandite ore counter current decantation scrubber.

4. Monitoring Requirements

EPA has reviewed the processes employed in generating beryllium hydroxide and carbonate and finds that certain building blocks of the manufacturing processes do not use cyanide. If a plant uses these non-cyanide processes and does not use cyanide elsewhere in the facility, the requirement for cyanide monitoring may appropriately be reduced. Accordingly, EPA will allow yearly confirmatory analysis in any beryllium manufacturing plant which discharges to a navigable water or a POTW and which certifies that it does not use or generate cyanide at the facility.

B. Primary Molybdenum and Rhenium Subcategory (Subpart S) and Metallurgical Acid Plants Subcategory (Subpart I)

1. Treatment Effectiveness Concentration for Molybdenum Removal

EPA is amending the BAT limitations, NSPS and PSNS for the metallurgical acid plant subcategory, and BPT and BAT limitations, and NSPS, and PSNS for the primary molybdenum and rhenium subcategories. The originally promulgated (September 20, 1985) effluent limitations and standards were based on molybdenum removal using iron coprecipitation model technology. The petitioners raised technical concerns about the operating data upon which the model technology is based and the ability of that technology to achieve the molybdenum limitations originally promulgated for these two subcategories. EPA is suspending the molybdenum limitations and standards for the metallurgical acid plant and the primary molybdenum and rhenium subcategories. EPA will propose and promulgate new molybdenum limits for these two subcategories at a future date taking into account data provided to the Agency by petitioners under the terms of the settlement agreement. Petitioners have expressed their belief to the Agency that they can achieve a one-day maximum of 60 mg/l and a monthly average of 30 mg/l based on data from the equivalent of a properly operated lime, settle and filter system. Based on these representations, any BPJ limitation should not be less stringent than this daily maximum and monthly average.

C. Secondary Molybdenum and Vanadium Subcategory (Subpart T)

1. Regulatory Flows for the Pure Grade Molybdenum Building Block

EPA is establishing BPT and BAT limitations, NSPS, and PSNS for a new pure grade molybdenum building block for the secondary molybdenum and vanadium subcategory. This building block applies to the production of pure grade molybdenum from commercial grade molybdenum and is based on a production normalized flow of 23,280 liters per kkg of pure molybdenum produced. This building block was not included in the originally promulgated rule (September 20, 1985) because the wastewater from this operation was included as part of the flow from the molybdenum filtrate solvent extraction building block. Petitioners indicated that the pure grade molybdenum process and the molybdenum solvent extraction operations are not directly linked as the Agency had believed. Today's action establishes a new building block for the pure grade molybdenum process. As noted below, the regulatory flow for the molybdenum solvent extraction raffinate will be adjusted accordingly.

2. Change in Production Normalized Flows ("PNF")

EPA is modifying the flow allowance for the molybdenum filtrate solvent extraction building block from 60,548 to 58,239 liters per kkg of technical grade and pure grade molybdenum and vanadium produced. This adjustment reflects the establishment of a new pure grade molybdenum building block as discussed above. The Agency is also modifying the flow allowance for the leach tailings building block from 12,540 to 19,511 liters per kkg technical grade and pure grade of molybdenum and vanadium produced. This second change reflects a recalculation of the average flows for this building block and the incorporation of new data.

3. Indicator Pollutants

In the originally promulgated rule (September 20, 1985), the Agency indicated that molybdenum was considered to be an indicator pollutant for operation and removal efficiency of the model technology treatment chain as a whole (50 FR 38,306). In response to

concerns raised by petitioners, EPA has reviewed and reconsidered its earlier preamble statement on the status of molybdenum as an indicator pollutant. Based on this reconsideration, the EPA is clarifying today that the Agency does not consider molybdenum to be an indicator pollutant. Molybdenum is considered for regulation as a nonconventional pollutant because it is a principal metal produced in this subcategory.

4. Treatment Effectiveness Concentration for Molybdenum Removal

EPA is amending the BPT and BAT limitations, NSPS, and PSNS for the secondary molybdenum and vanadium subcategory. EPA originally promulgated effluent limitations and standards (September 20, 1985) based on iron coprecipitation as the model technology for molybdenum removal. The petitioners raised technical concerns about the operating data upon which the model technology was based and the ability of that technology to achieve the molybdenum limitations for the secondary molybdenum and vanadium subcategory (subpart T). EPA is suspending the molybdenum limitations and standards for the secondary molybdenum and vanadium subcategory as well as in the metallurgical acid plant and the primary molybdenum and rhenium subcategories. As in the metallurgical acid plant and primary molybdenum and rhenium subcategories, EPA will propose and promulgate new molybdenum limits at a future date, taking into account data provided to the Agency by petitioners under the terms of the settlement agreement. Petitioners have expressed their belief to the Agency that they can achieve a one-day maximum of 60 mg/l and a monthly average of 30 mg/l based on data from the equivalent of a properly operated lime, settle and filter system. Based on these representations, any BPJ limitation should not be less stringent than this daily maximum and monthly average.

D. Secondary Precious Metals Subcategory (Subpart X)

1. Regulatory Flows for the Preliminary Treatment ("PT") Building Block

EPA is today establishing BPT and BAT limitations and NSPS, PSES, and PSNS for a new preliminary treatment (PT) building block for the secondary precious metals subcategory. The PT building block applies to the pretreatment of noncombustible, nonmetallic-based basis materials containing precious metals and is based on a production normalized flow of 50 liters per troy ounce of precious metals produced. This building block was not included in the originally promulgated rule (September 20, 1985) because the Agency believed that the Furnace Wet Air Pollution Control (FWAPC) building block accounted for the flows generated by the preparatory processing of basis materials required before these materials can be introduced into the main hydrometallurgical refining system. Petitioners indicated that while the FWAPC building block applies to the preparatory processing of certain carbon-based basis material through combustion in a furnace, it does not reflect the raw material processing steps required for noncombustible, nonmetallic-based basis materials. Today's amendment address this aspect of the secondary precious metals manufacturing process and regulates the same pollutants as are regulated in the FWAPC building block. The flow basis for this amendment is based upon information that has been claimed confidential.

This amendment provides that the production normalizing parameter of the PT building block is troy ounces of precious metals produced. The production basis for assigning appropriate flows for this building block may also be calculated as the total of precious metals input into the building block less the amount of precious metals sent to off-site refiners. The Agency expects that either calculation will arrive at essentially the same production value.

2. Change in Production Normalized Flow ("PNF")

EPA is amending the flow allowance for the palladium precipitation and filtration building block from 3.5 to 6.0 liters per troy ounce of precious metals produced. This change reflects a recalculation of the average flows for this building block and the incorporation of new data.

3. Changes in Applicability

EPA is amending the applicability provisions of the refinery wet air pollution control (RWAPC) building block to provide separate flow allowances for RWAPC acid and alkaline scrubbers at facilities with both types of scrubbers in operation. The RWAPC building block was based upon data from facilities which use alkaline scrubbers for this process. Petitioners indicated that the RWAPC step in their facilities requires the use of an acid scrubber as well. Today's amendments modify the final regulation to reflect this information. The originally promulgated (September 20, 1985) production normalized parameters and flows for this building block remain unchanged.

EPA is also clarifying the Agency's intent that the spent plating solution (SPS) building block applies to gold bearing stripping solutions received by a facility from off-site.

In addition, the Agency is clarifying that it considers the wastewater flows associated with the recovery of molybdenum from a molybdenum precious metal alloy to be outside the scope of this subpart. This pre-precious metal processing step creates the precious metal bearing residue which is then introduced into the precious metal building block process. Flows from secondary molybdenum recovery are regulated under the appropriate subcategory.

4. Treatment Effectiveness Basis for Precious Metals Limitations

EPA is changing the manner of regulating gold, platinum and palladium in the final regulation from 0.1 mg/l (as the maximum for any day) for each of these pollutants to 0.3 mg/l for "combined metals" produced (as the maximum for any day). The term "combined metals" shall mean the sum of the measured amounts of gold, platinum and palladium. Petitioners indicated that production is variable among these three precious metals depending in part upon whether high or low grade feed materials are used. Petitioners have also indicated concern about the analytical accuracy of certain chemical analysis procedures when used to detect these low levels of regulated precious metals. Today's amendment addresses both of these concerns. While the amount of any particular precious metal discharged may increase beyond 0.1 mg/liter, the total amount of precious metals allowed to be discharged will not increase beyond 0.3 mg/liter.

E. Secondary Tungsten and Cobalt Subcategory (Subpart AC)

1. Treatment Effectiveness Concentration for Cobalt Removal

EPA is amending the BPT and BAT limitations and NSPS, PSES and PSNS for cobalt in the secondary tungsten and cobalt subcategory (tungsten-cobalt subcategory). The originally promulgated (September 20, 1985) effluent limitations and standards were based on cobalt removal using lime, settle and filter model technology. The treatment effectiveness value underlying these cobalt limits was based upon lime, settle and filter operating data from the

porcelain enameling category. The petitioners indicated that the wastewater streams from the tungsten-cobalt subcategory cannot be treated to the same level as porcelain enameling because they contain significantly higher concentrations of complexed cobalt than were found in the porcelain enameling category.

Upon further review and analysis of the available data bearing on cobalt treatment effectiveness at the concentration levels and conditions found in the effluent from the tungsten-cobalt subcategory, the Agency concluded that the long term average value of 0.03 mg/l used as the basis for the originally promulgated (September 20, 1985) limitations is inappropriate for these wastewater streams. Therefore, EPA is promulgating mass discharge allowances for wastewater from the tungsten-cobalt subcategory based upon a long term average cobalt treatment effectiveness value of 0.667 mg/l. The one day maximum from this long term average is 2.76 mg/l and the monthly average is 1.21 mg/l. These treatment effectiveness concentrations are based upon 30 days of lime settle and centrifuge data with associated TSS values supplied by the petitioner based upon the operation of a secondary tungsten and cobalt facility. The revised BPT for cobalt is based on model lime and settle treatment technology which will be 30 percent less effective than the lime settle and centrifuge technology. The revised BAT limitations and NSPS, PSES, and PSNS for cobalt are based upon the data from lime settle and centrifuge technology which is equivalent to lime, settle, and filter model technology.

F. Clarifications

In addition to the changes to the regulatory sections described above, the Agency is clarifying the intent of Response No. 11 (Permit Writer Guidance) in section IX of the preamble to the originally promulgated (September 20, 1985) regulation (50 FR 38325) by adding the following paragraph:

In developing site specific mass limits related to non-scope flows for nonferrous metals manufacturing for inclusion in a NPDES permit, the permit writer is encouraged to apply the treatment effectiveness concentrations used as the basis for establishing this regulation. However, the permit writer is not necessarily bound to use these concentrations as the basis for the mass limits and he may use other appropriate treatment effectiveness concentrations if the nature of the non-scope flows requires special consideration.

IV. Environmental Impact of the Amendments to the Nonferrous Metals Manufacturing Regulation

Because of the limited nature of the amendments described above only about 13 facilities are expected to be affected by these amendments. The nature of these changes do not substantially increase the amounts of pollutants allowed to be discharged to the environment. These changes are projected to allow the discharge of an additional 71.33 kg/yr (156.9 lbs/yr) of toxic pollutants and 2736.5 kg/yr (6020.3 lb/yr) of nonconventional pollutants. These quantities of pollutants are small compared to the estimated 340,800 kg/yr toxic pollutant removed by application of the originally promulgated (September 20, 1985) regulation.

V. Economic Impact of the Amendments

These amendments do not alter the model technologies for complying with the nonferrous metals manufacturing regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated September 20, 1985 (50 FR 38276). EPA concluded at that time that the regulation was economically achievable. Since today's amendments are based on the same model technologies, EPA's conclusions as to the economic impact and achievability are unaffected.

VI. Public Participation and Response to Major Comments

Following the April 28, 1989 proposal of these amendments, comments were received from six parties: Amax Mineral Resources Co. (two submissions), Brush Wellman Inc., Gulf Chemical and Metallurgical Corp., Johnson Matthey Inc., GTE Products Corporation, and Engelhard Corp. All six commenters recommended that the amendments be promulgated as proposed (with editorial corrections). Some comments included editorial corrections to the proposal. These corrections have been made in the final rule.

This final rule does not make any changes from the guidelines and standards proposed on April 28, 1989 (as corrected on May 26, 1989). The Agency requests that anyone who believes that typographical errors have been made in this final rule advise the Agency of such errors in writing to Mr. Ernst P. Hall, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 before September 4, 1990.

All comments received on the proposed rule are included in the public record supporting this final rule.

VII. Executive Order 12291 and OMB Review

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This regulation, which modestly reduces regulatory requirements, is not a major rule.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at room M2404, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9 a.m. to 4 p.m. Monday through Friday, excluding Federal holidays.

VIII. Regulatory Flexibility Analysis

Public Law 96-354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the September 20, 1985 final nonferrous metals manufacturing regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (50 FR 38276). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these amendments, since the amendments slightly reduce the regulatory requirements.

IX. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*, EPA must submit a copy of any rule that contains a collection of information requirement to the Director of the Office of Management and Budget for review and approval. These amendments contain no additional information collection requirements, and therefore the Paperwork Reduction Act requirements are not applicable.

List of Subjects in 40 CFR Part 421

Metals, Nonferrous metals manufacturing, Water pollution control, Waste treatment and disposal.

Dated: July 5, 1990.

William K. Reilly,

Administrator.

For the reason stated above, EPA is amending 40 CFR part 421 as follows:

PART 421—NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for part 421 is revised to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) and the Water Quality Act of 1987 (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), 1318 and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217; 101 Stat. 7, Pub. L. 100-4.

2. 40 CFR 421.3 is amended by adding new paragraph (b) to read:

§ 421.3 Monitoring and reporting requirements.

* * * * *

(b) Periodic analysis for cyanide are not required for a facility in the primary beryllium subcategory (subpart O of this part) when both of the following conditions are met:

(1) The first wastewater sample taken in each calandar year has been analyzed and found to contain less than 0.07 mg/1 cyanide.

(2) The owner or operator of the primary beryllium manufacturing facility certifies in writing to the POTW authority or permit issuing authority that cyanide is neither generated nor used in the beryllium manufacturing process employed at that facility.

3. 40 CFR 421.93 is amended by revising the entry for molybdenum to read as follows:

§ 421.93 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

* * * * *

SUBPART I—METALLURGICAL ACID PLANT—BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum [1]	[Reserved]	[Reserved].
* * * * *		

[1] For Molybdenum acid plants only.

4. 40 CFR 421.94 is amended by revising the entry for molybdenum to read as follows:

§ 421.94 Standards of performance for new sources.

* * * * *

SUBPART I—METALLURGICAL ACID PLANTS—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum [1]	[Reserved]	[Reserved].
* * * * *		

[1] For Molybdenum acid plants only.

5. 40 CFR 421.96 is amended by revising the entry for molybdenum to read as follows:

§ 421.96 Pretreatment standards for new sources.

* * * * *

SUBPART I—METALLURGICAL ACID PLANT—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum [1]	[Reserved]	[Reserved].
* * * * *		

[1] For Molybdenum acid plants only.

§ 421.152 [Amended]

6. 40 CFR 421.152(d) is amended by revising all of the values for Beryllium, Chromium [Total], Copper, Cyanide [Total], Ammonia [as N], Fluoride, and Total Suspended Solids to read as follows:

* * * * *

(d) Beryllium Hydroxide Filtrate.

* * * * *

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced as beryllium	
Beryllium	167.280	74.800
Chromium (Total)	59.840	24.480
Copper	258.400	136.000
Cyanide (Total)	39.440	16.320
Ammonia (as N)	18128.800	7969.600
Fluoride	4760.000	2706.400
Total Suspended Solids	5576.000	2652.000
* * * * *		

* * * * *

§ 421.152 [Amended]

7. 40 CFR 421.152(f) is amended by revising the entry for fluoride to read as follows:

* * * * *

(f) Beryllium Hydroxide Supernatant.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Fluoride	160,308.0	71,201.0
* * * * *		

§ 421.152 [Amended]

* * * * *

8. 40 CFR 421.152 is amended by adding paragraphs (k) through (p) to read as follows:

* * * * *

(k) Beryl Ore Gangue Dewatering.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	1.283	0.574
Chromium (Total)	0.459	0.188
Copper	1.982	1.043
Cyanide (Total)	0.302	0.125
Ammonia (as N)	139.032	61.120
Fluoride	36.505	20.756
Total Suspended Solids	42.763	20.339
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Bertrandite Ore Gangue Dewatering.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of bertrandite ore processed	
Beryllium	3.279	1.466
Chromium (Total)	1.173	0.480
Copper	5.064	2.665
Cyanide (Total)	0.773	0.320
Ammonia (as N)	355.245	156.169
Fluoride	93.275	53.034
Total Suspended Solids	109.265	51.968
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Beryl Ore Processing.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	8.983	4.017
Chromium (Total)	3.213	1.315
Copper	13.876	7.303
Cyanide (Total)	2.117	0.876
Ammonia (as N)	973.490	427.956
Fluoride	255.605	145.330
Total Suspended Solids	299.423	142.409
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Aluminum Iron Sludge (AIS) Area Wastewater.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total beryllium carbonate produced as beryllium	
Beryllium	575.640	257.400
Chromium (Total)	205.920	84.240
Copper	889.200	468.000
Cyanide (Total)	135.720	56.160
Ammonia (as N)	62384.400	27424.800
Fluoride	16380.000	9313.200
Total Suspended Solids	19188.000	9126.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Bertrandite Ore Leaching Scrubber.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	1.859	0.831
Chromium (Total)	0.665	0.272
Copper	2.871	1.511
Cyanide (Total)	0.438	0.181
Ammonia (as N)	201.416	88.545
Fluoride	52.885	30.069
Total Suspended Solids	61.951	29.465
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) Bertrandite Ore Countercurrent and Decantation (CCD) Scrubber.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	0.124	0.056
Chromium (Total)	0.044	0.018
Copper	0.192	0.101
Cyanide (Total)	0.029	0.012
Ammonia (as N)	13.463	5.919
Fluoride	3.535	2.010
Total Suspended Solids	4.141	1.970
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.153 [Amended]

9. 40 CFR 421.153(d) is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Beryllium Hydroxide Filtrate.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced as beryllium	
Beryllium	111.520	50.320
Chromium (Total)	50.320	20.400
Copper	174.080	82.960
Cyanide (Total)	27.200	10.880
Ammonia (as N)	18128.800	7969.600
Fluoride	4760.000	2706.400

* * * * *

§ 421.153 [Amended]

10. 40 CFR 421.153(f) is amended by revising the entry for fluoride to read as follows:

* * * * *

(f) Beryllium Hydroxide Supernatant.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced from scrap and residues as beryllium	
* * * * *		
Fluoride	160,308.0	71,201.0

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		

* * * * *

§ 421.153 [Amended]

11. 40 CFR 421.153 is amended by adding paragraphs (k) through (p) to read as follows:

* * * * *

(k) Beryl Ore Gangue Dewatering.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	0.855	0.386
Chromium (Total)	0.386	0.156
Copper	1.335	0.636
Cyanide (Total)	0.209	0.083
Ammonia (as N)	139.032	61.120
Fluoride	36.505	20.756

(l) Bertrandite Ore Gangue Dewatering.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of bertrandite ore processed	
Beryllium	2.185	0.986
Chromium (Total)	0.986	0.400
Copper	3.411	1.626
Cyanide (Total)	0.533	0.213
Ammonia (as N)	355.245	156.169
Fluoride	93.275	53.034

(m) Beryl Ore Processing.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	5.988	2.702
Chromium (Total)	2.702	1.095
Copper	9.348	4.455
Cyanide (Total)	1.461	0.584

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia (as N)	973.490	427.956
Fluoride	255.605	145.330

(n) Alumium Iron Sludge (AIS) Area Wastewater.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total beryllium carbonate produced as beryllium	
Beryllium	383.760	173.160
Chromium (Total)	173.160	70.200
Copper	599.040	285.480
Cyanide (Total)	93.600	37.440
Ammonia (as N)	62384.400	27424.800
Fluoride	16380.000	9313.200

(o) Bertrandite Ore Leaching Scrubber.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	1.239	0.559
Chromium (Total)	0.559	0.227
Copper	1.934	0.922
Cyanide (Total)	0.302	0.121
Ammonia (as N)	201.416	88.545
Fluoride	52.885	30.069

(p) Bertrandite Ore Countercurrent and Decantation (CCD) Scrubber.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	0.083	0.037
Chromium (Total)	0.037	0.015
Copper	0.129	0.062
Cyanide (Total)	0.020	0.008
Ammonia (as N)	13.463	5.919
Fluoride	3.535	2.010

§ 421.154 [Amended]

12. 40 CFR.154(d) is amended by revising the entries for Beryllium, Chromium (Total), Copper, Cyanide (Total), Ammonia (as N), Fluoride, and Total Suspended Solids to read as follows:

* * * * *

(d) Beryllium Hydroxide Filtrate.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced as beryllium	
Beryllium	111.520	50.320
Chromium (Total)	50.320	20.400
Copper	174.080	82.960
Cyanide (Total)	27.200	10.880
Ammonia (as N)	18128.800	7969.600
Fluoride	4760.000	2706.400
Total Suspended Solids	2040.000	1632.000
*	*	*

* * * * *

§ 121.154 [Amended]

13. 40 CFR 421.154(f) is amended by revising the entry for fluoride to read as follows:

* * * * *

(f) Beryllium Hydroxide Supernatant.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced from scrap and residues as beryllium	
*	*	*
Fluoride	160,308.0	71,201.0
*	*	*

* * * * *

§ 421.154 [Amended]

14. 40 CFR 421.154 is amended by adding paragraphs (k) through (p) to read as follows:

* * * * *

(k) Beryl Ore Gangue Dewatering.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	0.855	0.386
Chromium (Total)	0.386	0.156
Copper	1.335	0.636
Cyanide (Total)	0.209	0.083
Ammonia (as N)	139.032	61.120
Fluoride	36.505	20.756
Total Suspended Solids	15.645	12.516
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Bertrandite Ore Gangue Dewatering.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of bertrandite ore processed	
Beryllium	2.185	0.986
Chromium (Total)	0.986	0.400
Copper	3.411	1.626
Cyanide (Total)	0.533	0.213
Ammonia (as N)	355.245	156.169
Fluoride	93.275	53.034
Total Suspended Solids	39.975	31.980
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Beryl Ore Processing.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	5.988	2.702
Chromium (Total)	2.702	1.095
Copper	9.348	4.455
Cyanide (Total)	1.461	0.584
Ammonia (as N)	973.490	427.956
Fluoride	255.605	145.330
Total Suspended Solids	109.545	87.636
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Aluminum Iron Sludge (AIS) Area Wastewater.

NSPS for the Primary Beryllium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total beryllium carbonate produced as beryllium	
Beryllium	383.760	173.160
Chromium (Total)	173.160	70.200
Copper	599.040	285.480
Cyanide (Total)	93.600	37.440
Ammonia (as N)	62384.400	27424.800
Fluoride	16380.000	9313.200
Total Suspended Solids	7020.000	5616.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Bertrandite Ore Leaching Scrubber.

NSPS for the Primary Beryllium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	1.239	0.559
Chromium (Total)	0.559	0.227
Copper	1.934	0.922
Cyanide (Total)	0.302	0.121
Ammonia (as N)	201.416	88.545
Fluoride	52.985	30.069
Total Suspended Solids	22.665	18.132
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) Bertrandite Ore Countercurrent and Decantation (CCD) Scrubber.

NSPS for the Primary Beryllium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	0.083	0.037
Chromium (Total)	0.037	0.015
Copper	0.129	0.062
Cyanide (Total)	0.020	0.008
Ammonia (as N)	13.463	5.919
Fluoride	3.535	2.010
Total Suspended Solids	1.515	1.212
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.156 [Amended]

15. 40 CFR 421.156(d) is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Beryllium Hydroxide Filtrate.

NSPS for the Primary Beryllium Subcategory

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced as beryllium	
Beryllium	111.510	50.320
Chromium (Total)	50.320	20.400
Copper	174.080	82.960
Cyanide (Total)	27.200	10.880
Ammonia (as N)	18128.800	7969.600
Fluoride	4760.000	2706.400

* * * * *

§ 421.156 [Amended]

16. 40 CFR 421.156(f) is amended by revising the entry for flouride to read as follows:

* * * * *

(f) Beryllium Hydroxide Supernatant.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced from scrap and residues as beryllium	
*	*	*
Flouride	160,308.0	71,201.0
*	*	*

§ 421.156 [Amended]

17. 40 CFR 421.156 is amended by adding paragraphs (k) through (p) to read as follows:

* * * * *

(k) Beryl Ore Gangue Dewatering.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	0.855	0.386
Chromium (Total)	0.386	0.156
Copper	1.335	0.636
Cyanide (Total)	0.209	0.083
Ammonia (as N)	139.032	61.120
Flouride	36.505	20.756

(l) Bertrandite Ore Gangue Dewatering.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of bertrandite ore processed	
Beryllium	2.185	0.986
Chromium (Total)	0.986	0.400
Copper	3.411	1.626
Cyanide (Total)	0.533	0.213
Ammonia (as N)	355.245	156.169
Flouride	93.275	53.034

(m) Beryl Ore Processing.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryl ore processed	
Beryllium	5.988	2.702
Chromium (Total)	2.702	1.095
Copper	9.348	4.455
Cyanide (Total)	1.461	0.584
Ammonia (as N)	973.490	427.956
Flouride	255.605	145.330

(n) Aluminum Iron Sludge (AIS) Area Wastewater.

PSNS FOR THE PRIMARY BERRYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total beryllium carbonate produced as beryllium	
Beryllium	383.760	173.160
Chromium (Total)	173.160	70.200
Copper	599.040	285.480
Cyanide (Total)	93.600	37.440
Ammonia (as N)	62384.400	27424.800
Fluoride	16380.000	9313.200

Bertrandite Ore Leaching Scrubber.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	1.239	0.559
Chromium (Total)	0.559	0.227
Copper	1.934	0.922
Cyanide (Total)	0.302	0.121
Ammonia (as N)	201.416	88.545
Fluoride	52.885	30.069

(p) Bertrandite Ore Countercurrent and Decantation (CCD) Scrubber.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg of bertrandite ore processed	
Beryllium	0.083	0.037
Chromium (Total)	0.037	0.015
Copper	0.129	0.062
Cyanide (Total)	0.020	0.008
Ammonia (as N)	13.463	5.919
Fluoride	3.535	2.010

18. 40 CFR 421.212(a) is amended by revising the entry for molybdenum to read as follows:

§ 421.212 [AMENDED]

(a) Molybdenum Sulfide Leachate.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§ 421.212 [Amended]

19. 40 CFR 421.212(b) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(b) Roaster SO_2 Scrubber.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§ 421.212 [Amended]

20. 40 CFR 421.212(c) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(c) Molybdic Oxide Leachate.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved]
* * * * *		

§ 421.212 [Amended]

21. 40 CFR 421.212(d) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(d) Hydrogen Reduction Furnace Scrubber.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved]
* * * * *		

§ 421.212 [Amended]

22. 40 CFR 421.212(e) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(e) Depleted Rhenium Scrubbing Solution.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved]
* * * * *		

§ 421.213 [Amended]

23. 40 CFR 421.213(a) is amended by revising the entry for molybdenum to read as follows:

(a) Molybdenum Sulfide Leachate.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved]
* * * * *		

§ 421.213 [Amended]

24. 40 CFR 421.213(b) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(b) Roaster SO_2 Scrubber.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved]
* * * * *		

§ 421.213 [Amended]

25. 40 CFR 421.213(c) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(c) Molybdic Oxide Leachate.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved]
* * * * *		

§ 421.213 [Amended]

26. 40 CFR 421.213(d) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(d) Hydrogen Reduction Furnance Scrubber.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§ 421.213 [Amended]

27. 40 CFR 421.213(e) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(e) Depleted Rhenium Scrubbing Solution.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§421.214 [Amended]

28. 40 CFR 421.214(a) is amended by revising the entry for molybdenum to read as follows:

(a) Molybdenum Sulfite Leachate

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§ 421.214 [Amended]

29. 40 CFR 421.214(b) is amended by revising the entry for molybdenum to read as follows:

(b) Roaster SO_2 Scrubber.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§421.214 [Amended]

30. 40 CFR 421.214(c) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(c) Molybdic Oxide Leachate.

NSPS for the Primary Molybdenum and Rhenium Subcategory

Polluntant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§ 421.214 [Amended]

31. 40 CFR 421.214(d) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(d) Hydrogen Reduction Furnance Scrubber.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§ 421.214 [Amended]

32. 40 CFR 421.214(e) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(e) Depleted Rhenium Scrubbing Solution.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		

§ 421.216 [Amended]

33. 40 CFR 421.216(a) is amended by revising the entry for molybdenum to read as follows:

(a) Molybdenum Sulfide Leachate.

PSNS FOR THE PRIMARY MOLYBDENUM RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§ 421.216 [Amended]

34. 40 CFR 421.216(b) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(b) Roaster So_2 Scrubber.

PSNS FOR THE PRIMARY LOBYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§ 421.216 [Amended]

35. 40 CFR 421.216(c) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(c) Molybdic Oxide Leachate.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		

§ 421.216 [Amended]

36. 40 CFR 421.216(d) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(d) Hydrogen Reduction Furnace Scrubber.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§ 421.216 [Amended]

37. 40 CFR 421.216(e) is amended by revising the entry for molybdenum to read as follows:

* * * * *

(e) Depleted Rhenium Scrubbing.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Molybdenum	[Reserved]	[Reserved].
* * * * *		

§ 421.222 [Amended]

38. 40 CFR 421.222(a) is amended by revising all of the values for Arsenic, Chromium, Lead, Nickel, Iron, Molybdenum, Ammonia (as N), and Total Suspended Solids to read as follows:

* * * * *

(a) Leach Tailings.

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	40.778	18.145
Chromium	8.585	3.512
Lead	8.195	3.902
Nickel	37.460	24.779
Iron	23.410	11.902
Molybdenum	[Reserved]	[Reserved]
Ammonia (as N)	8078.000	3551.000
Total Suspended Solids	799.950	380.460
* * * * *		

* * * * *

§ 421.222 [Amended]

39. 40 CFR 421.222(b) is amended by revising all of the values for Arsenic, Chromium, Lead, Nickel, Iron, Molybdenum, Ammonia (as N), and Total Suspended Solids to read as follows:

* * * * *

(b) Molybdenum Filtrate Solvent Extraction Raffinate.

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	121.720	54.162
Chromium	25.625	10.483
Lead	24.460	11.648
Nickel	111.819	73.964
Iron	69.887	35.526
Molybdenum	[Reserved]	[Reserved]
Ammonia (as N)	24114.000	10600.000
Total Suspended Solids	2387.800	1135.660
* * * * *		

* * * * *

§ 421.222 [Amended]

40. 40 CFR 421.222 is amended by adding new paragraph (e) to read as follows:

* * * * *

(e) Pure Grade Molybdenum.

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure molybdenum produced	
Arsenic	48.655	21.650
Chromium	10.243	4.190
Lead	9.778	4.656
Nickel	44.698	29.566
Iron	27.936	14.201
Molybdenum	[Reserved]	[Reserved]
Ammonia (as N)	9636.000	4237.000
Total Suspended Solids	954.480	453.960
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.223 [Amended]

41. 40 CFR 421.223(a) is revised to read as follows:

* * * * *

(a) Leach Tailings.

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	27.120	12.097
Chromium	7.219	2.927
Lead	5.463	2.538
Nickel	10.731	7.219
Iron	23.413	11.902
Molybdenum	[Reserved]	[Reserved]
Ammonia (as N)	8078.000	3551.000

* * * * *

§ 421.223 [Amended]

42. 40 CFR 421.223(b) is revised to read as follows:

(b) Molybdenum Filtrate Solvent Extraction Raffinate.

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	80.952	36.108
Chromium	21.548	8.736
Lead	16.306	7.571
Nickel	32.031	21.548
Iron	69.887	35.526
Molybdenum	[Reserved]	[Reserved]
Ammonia (as N)	24114.000	10600.000

* * * * *

§ 421.223 [Amended]

43. 40 CFR 421.223 is amended by adding new paragraph (e) to read as follows:

* * * * *

(e) Pure Grade Molybdenum.

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure molybdenum produced	
Arsenic	32.359	14.434
Chromium	8.614	3.492
Lead	6.518	3.026
Nickel	12.804	8.614
Iron	27.936	14.201
Molybdenum	[Reserved]	[Reserved]
Ammonia (as N)	9638.000	4237.000

§ 421.224 [Amended]

44. 40 CFR 421.224(a) is amended by revising all of the values for Arsenic, Chromium, Lead, Nickel, Iron, Molybdenum, Ammonia (as N) and Total Suspended Solids to read as follows:

* * * * *

(a) Leach Tailings.

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	27.120	12.097
Chromium	7.219	2.927
Lead	5.463	2.536
Nickel	10.731	7.219
Iron	23.413	11.902
Molybdenum	[Reserved]	[Reserved]
Ammonia (as N)	8078.000	3551.000
Total Suspended Solids	292.665	234.132

* * * * * *

§ 421.224 [Amended]

45. 40 CFR 421.224(b) is amended by revising all of the values for Arsenic, Chromium, Lead, Nickel, Iron, Molybdenum, Ammonia (as N) and Total Suspended Solids to read as follows:

* * * * *

(b) Molybdenum Filtrate Solvent Extraction Raffinate.

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	80.952	36.108
Chromium	21.548	8.736
Lead	16.306	7.571
Nickel	32.031	21.548
Iron	69.887	35.526
Molybdenum	[Reserved]	[Reserved]
Ammonia (as N)	24114.000	10600.000
Total Suspended Solids	873.585	698.868

* * * * * *

§ 421.224 [Amended]

46. 40 CFR 421.224 is amended by adding new paragraph (e) to read as follows:

* * * * *

(e) Pure Grade Molybdenum.

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure molybdenum produced	
Arsenic	32.359	14.434
Chromium	8.614	3.492
Lead	6.518	3.026
Nickel	12.804	8.614
Iron	27.936	14.201
Molybdenum	[Reserved]	[Reserved]
Ammonia (as N)	9638.000	4237.000
Total Suspended Solids	349.200	279.360
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.226 [Amended]

47. 40 CFR 421.226(a) is revised to read as follows:

* * * * *

(a) Leach Tailings.

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	27.120	12.097
Chromium	7.219	2.927
Lead	5.463	2.536
Nickel	10.731	7.219
Iron	23.413	11.902
Molybdenum	[Reserved]	[Reserved]
Ammonia (as N)	8078.000	3551.000

* * * * *

§ 421.226 [Amended]

48. 40 CFR 421.226(b) is revised to read as follows:

* * * * *

(b) Molybdenum Filtrate Solvent Extraction Raffinate.

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of technical grade molybdenum plus vanadium plus pure grade molybdenum produced	
Arsenic	80.952	36.108
Chromium	21.548	8.736

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Lead	16.306	7.571
Nickel	32.031	21.548
Iron	69.887	35.526
Molybdenum	[Reserved]	[Reserved]
Ammonia (as N)	24114.000	10600.000

* * * * *

§ 421.226 [Amended]

49. 40 CFR 421.226 is amended by adding new paragraph (e) to read as follows:

* * * * *

(e) Pure Grade Molybdenum.

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure molybdenum produced	
Arsenic	32.359	14.434
Chromium	8.614	3.492
Lead	6.518	3.026
Nickel	12.804	6.614
Iron	27.936	14.201
Molybdenum	[Reserved]	[Reserved]
Ammonia (as N)	9638.000	4237.000

50. 40 CFR 421.261 is amended by adding paragraph (c) to read as follows:

§ 421.261 Specialized definitions.

* * * * *

(c) The term "Combined Metals" shall mean the total of gold, platinum and palladium.

§ 421.262 [Amended]

51. 40 CFR 421.262(a) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(a) Furnace Wet Air Pollution Control.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	21.54	
* * * * *		

* * * * *

§ 421.262 [Amended]

52. 40 CFR 421.262(b) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(b) Raw Material Granulation.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1,902	
* * * * *		

* * * * *

§ 421.262 [Amended]

53. 40 CFR 421.262(c) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(c) Spent Plating Solutions.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.300	
* * * * *		

* * * * *

§ 421.262 [Amended]

54. 40 CFR 421.262(d) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(d) Spent Cyanide Stripping Solutions.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.110	
* * * * *		

* * * * *

§ 421.262 [Amended]

55. 40 CFR 421.262(e) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals"; a footnote 2 is added to read as follows:

* * * * *

(e) Refinery Wet Air Pollution Control.[2]

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	6.300	
* * * * *		

§ 421.262 [Amended]

56. 40 CFR 421.262(f) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(f) Gold Solvent Extraction Raffinate and Wash Water.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.189	
* * * * *		

* * * * *

§ 421.262 [Amended]

57. 40 CFR 421.262(g) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(g) Gold Spent Electrolyte.

[2] This allowance applies to either acid or alkaline wet air pollution control scrubbers. If both acid and alkaline wet air pollution control scrubbers are present in a particular facility the same allowance applies to each.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.003	
* * * * *		

* * * * *

§ 421.262 [Amended]

58. 40 CFR 421.262(h) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(h) Gold Precipitation and Filtration.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.320	
* * * * *		

* * * * *

§ 421.262 [Amended]

59. 40 CFR 421.262(i) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(i) Platinum Precipitation and Filtration.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.560	
* * * * *		

* * * * *

§ 421.262 [Amended]

60. 40 CFR 421.262(j) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals"; the entries copper, cyanide (total), zinc, ammonia (as N) and total suspended solids are revised to read as follows:

* * * * *

(j) Palladium Precipitation and Filtration.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	11.400	6.000
Cyanide (Total)	1.740	0.720
Zinc	8.760	3.660
Ammonia (as N)	799.800	351.600
Combined Metals	1.800	
Total Suspended Solids	246.000	117.000
* * * * *		

* * * * *

§ 421.262 [Amended]

61. 40 CFR 421.262(k) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(k) Other Platinum Group Metals Precipitation and Filtration.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.560	
* * * * *		

* * * * *

§ 421.262 [Amended]

62. 40 CFR 421.262(l) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(l) Spent Solution From PGC Salt Production.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.270	
* * * * *		

* * * * *

§ 421.262 [Amended]

63. 40 CFR 421.262(m) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(m) Equipment and Floor Wash.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.000	0.000
* * * * *		

* * * * *

§ 421.262 [Amended]

64. 40 CFR 421.262 is amended by adding a new paragraph (n) to read as follows:

* * * * *

(n) Preliminary treatment.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of total precious metals produced through this operation	
Copper	95.000	50.000
Cyanide (Total)	14.500	6.000
Zinc	73.000	30.500
Ammonia (as N)	6665.000	2930.000
Combined Metals	15.000	
Total Suspended Solids	2050.000	975.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.263 [Amended]

65. 40 CFR 421.263(a) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(a) Furnace Wet Air Pollution Control.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.350	

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		

* * * * *

§ 421.263 [Amended]

66. 40 CFR 421.263(b) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "Combined metals" to read as follows:

* * * * *

(b) Raw Material Granulation.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.192	
* * * * *		

* * * * *

§ 421.263 [Amended]

67. 40 CFR 421.263(c) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(c) Spent Plating Solutions.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.300	
* * * * *		

* * * * *

§ 421.263 [Amended]

68. 40 CFR 421.263(d) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(d) Spent Cyanide Stripping Solutions.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.110	
* * * * *		

* * * * *

§ 421.263 [Amended]

69. 40 CFR 421.263(e) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals"; a footnote 2 is added to read as follows:

* * * * *

(e) Refinery Wet Air Pollution Control [2]

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.300	
* * * * *		

* * * * *

§ 421.263 [Amended]

70. 40 CFR 421.263(f) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(f) Gold Solvent Extraction Raffinate and Wash Water.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.189	
* * * * *		

* * * * *

§ 421.263 [Amended]

71. 40 CFR 421.263(g) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(g) Gold Spent Electrolyte.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.0030	
* * * * *		

* * * * *

§ 421.263 [Amended]

72. 40 CFR 421.263(h) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(h) Gold Precipitation and Filtration.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.320	
* * * * *		

* * * * *

§ 421.263 [Amended]

73. 40 CFR 421.263(i) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(i) Platinum Precipitation and Filtration.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.560	
* * * * *		

* * * * *

§ 421.263 [Amended]

74. 40 CFR 421.263 is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals"; the entries copper, cyanide

[2] This allowance applies to either acid or alkaline wet air pollution control scrubbers. If both acid and alkaline wet air pollution control scrubbers are present in a particular facility the same allowance applies to each.

(total), zinc and ammonia (as N) are revised to read as follows:

* * * * *

(j) Platinum Precipitation and Filtration.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	7.680	3.660
Cyanide (Total)	1.200	.480
Zinc	6.120	2.520
Combined Metals	1.800	
Ammonia (as N)	799.800	351.600

* * * * *

§ 421.263 [Amended]

75. 40 CFR 421.263(k) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(k) Other Platinum Group Metals Precipitation and Filtration.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.560	
* * * * *		

* * * * *

§ 421.263 [Amended]

76. 40 CFR 421.263(l) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(l) Spent Solutions From PGC Salt Production.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.270	
* * * * *		

* * * * *

§ 421.263 [Amended]

77. 40 CFR 421.263(m) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(m) Equipment and Floor Wash.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.000	
* * * * *		

* * * * *

§ 421.263 [Amended]

78. 40 CFR 421.263 is amended by adding a new paragraph (n) to read as follows:

* * * * *

(n) Preliminary Treatment.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/troy ounce of total precious metals produced through this operation	
Copper	64.000	30.500
Cyanide (Total)	10.000	4.000
Zinc	51.000	21.000
Combined Metals	15.000	
Ammonia (as N)	6665.000	2930.000

79. 40 CFR 421.264(a) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(a) Furnace Wet Air Pollution Control.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.350	
* * * * *		

* * * * *

§ 421.264 [Amended]

80. 40 CFR 421.264(b) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(b) Raw Material Granulation.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.192	
* * * * *		

* * * * *

§ 421.264 [Amended]

81. 40 CFR 421.264(c) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(c) Spent Plating Solutions.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.300	
* * * * *		

* * * * *

§ 421.264 [Amended]

82. 40 CFR 421.264(d) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(d) Spent Cyanide Stripping Solutions.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.11	
* * * * *		

* * * * *

§ 421.264 [Amended]

83. 40 CFR 421.264(e) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined

metals"; a footnote 2 is added to read as follows:

* * * * *

(e) Refinery Wet Air Pollution Control [2]

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.300	—
* * * * *		

* * * * *

§ 421.264 [Amended]

84. 40 CFR 421.264(f) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(f) Gold Solvent Extraction Raffinate and Wash Water.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.189	—
* * * * *		

* * * * *

§ 421.264 [Amended]

85. 40 CFR 421.264(g) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(g) Gold Spent Electrolyte.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.003	—
* * * * *		

* * * * *

[2] This allowance applies to either acid or alkaline wet air pollution control scrubbers. If both acid and alkaline wet air pollution control scrubbers are present in a particular facility the same allowance applies to each.

§ 421.264 [Amended]

86. 40 CFR 421.264(h) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(h) Gold Precipitation and Filtration.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.320	—
* * * * *		

* * * * *

§ 421.264 [Amended]

87. 40 CFR 421.264(i) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(i) Platinum Precipitation and Filtration.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

* * * * *

§ 421.264 [Amended]

88. 40 CFR 421.264(j) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals"; the entries copper, cyanide (total), zinc, ammonia (as N), and total suspended solids are revised to read as follows:

* * * * *

(j) Palladium Precipitation and Filtration.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	7.680	3.660
Cyanide (Total)	1.200	0.480

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Zinc	6.1200	2.520
Combined Metals	1.800	
Ammonia (as N)	799.800	351.600
Total Suspended Solids	90.000	72.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.00 at all times.

* * * * *

§ 421.264 [Amended]

89. 40 CFR 421.264(k) is amended by removing the entries for gold, platinum and palladium and adding the entry "combined metals" to read as follows:

* * * * *

(k) Other Platinum Group Metals Precipitation and Filtration.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.560	
* * * * *		

* * * * *

§ 421.264 [Amended]

90. 40 CFR 421.264(l) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(l) Spent Solutions from PGC Salt Production.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.270	
* * * * *		

* * * * *

§ 421.264 [Amended]

91. 40 CFR 421.264(m) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(m) Equipment and Floor Wash.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.000	
* * * * *		

* * * * *

§ 421.264 [Amended]

92. 40 CFR 421.264 is amended by adding a new paragraph (n) to read as follows:

* * * * *

(n) Preliminary Treatment.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of total precious metals produced through this operation	
Copper	64.000	30.500
Cyanide (Total)	10.000	4.000
Zinc	51.000	21.000
Combined Metals	15.000	
Ammonia (as N)	6665.000	2930.000
Total Suspended Solids	750.000	600.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.265 [Amended]

93. 40 CFR 421.265(a) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(a) Furnace Wet Air Pollution Control.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.350	
* * * * *		

* * * * *

§ 421.265 [Amended]

94. 40 CFR 421.265(b) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(b) Raw Material Granulation.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.192	
* * * * *		

* * * * *

§ 421.265 [Amended]

95. 40 CFR 421.265(c) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(c) Spent Plating Solutions.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.300	
* * * * *		

* * * * *

§ 421.265 [Amended]

96. 40 CFR 421.265(d) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(d) Spent Cyanide Stripping Solutions.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.110	
* * * * *		

* * * * *

§ 421.265 [Amended]

97. 40 CFR 421.265(e) is amended by removing the entries for gold, platinum and palladium and replacing these entries with "combined metals"; a footnote 1 is added to read as follows:

* * * * *

(e) Refinery Wet Air Pollution Control.[1]

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.300	
* * * * *		

* * * * *

§ 421.265 [Amended]

98. 40 CFR 421.265(f) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(f) Gold Solvent Extraction Raffinate and Wash Water.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.189	
* * * * *		

* * * * *

§ 421.265 [Amended]

99. 40 CFR 421.265(g) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(g) Gold Spend Electrolyte.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.003	
* * * * *		

* * * * *

[1] This allowance applies to either acid or alkaline wet air pollution control scrubbers. If both acid and alkaline wet air pollution control scrubbers are present in a particular facility the same allowance applies to each.

§ 421.265 [Amended]

100. 40 CFR 421.265(h) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(h) Gold Precipitation and Filtration.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.320	
* * * * *		

* * * * *

§ 421.265 [Amended]

101. 40 CFR 421.265(i) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(i) Platinum Precipitation and Filtration.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

* * * * *

§ 421.265 [Amended]

102. 40 CFR 421.265(j) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals"; the entries copper, cyanide (total), zinc and ammonia (as N) are revised to read as follows:

* * * * *

(j) Palladium Precipitation and Filtration.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	7.680	3.660

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Cyanide (Total)	1.200	0.480
Zinc	6.120	2.520
Combined Metals	1.800	
Ammonia (as N)	799.800	351.600

* * * * *

§ 421.265 [Amended]

103. 40 CFR 421.265(k) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(k) Other Platinum Group Metals Precipitation and Filtration.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	1.560	
* * * * *		

* * * * *

§ 421.265 [Amended]

104. 40 CFR 421.265(l) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(l) Spent Solution from PGC Salt Production.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.270	
* * * * *		

* * * * *

§ 421.265 [Amended]

105. 40 CFR 421.265(m) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(m) Equipment and Floor Wash.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined metals	0.000	
* * * * *		

* * * * *

§ 421.265 [Amended]

106. 40 CFR 421.265 is amended by adding a new paragraph (n) to read as follows:

* * * * *

(n) Preliminary Treatment.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/troy ounce of total precious metals produced through this operation	
Copper	64.000	30.500
Cyanide (Total)	10.000	4.000
Zinc	51.000	21.000
Combined Metals	15.000	
Ammonia (as N)	6665.000	2930.000

§ 421.266 [Amended]

107. 40 CFR 421.266(a) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(a) Furnace Wet Air Pollution Control.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.350	
* * * * *		

* * * * *

§ 421.266 [Amended]

108. 40 CFR 421.266(b) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(b) Raw Material Granulation.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.192	
* * * * *		

* * * * *

§ 421.266 [Amended]

109. 40 CFR 421.266(c) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals"; a footnote 1 is added to read as follows:

* * * * *

(c) Spent Plating Solutions.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.300	
* * * * *		

* * * * *

§ 421.266 [Amended]

110. 40 CFR 421.266(d) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.110	
* * * * *		

* * * * *

§ 421.266 [Amended]

111. 40 CFR 421.266(e) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals"; a footnote 1 is added to read as follows:

* * * * *

(e) Refinery Wet Air Pollution Control.[1]

[1] This allowance applies to either acid or alkaline wet air pollution control scrubbers. If both acid and alkaline wet air pollution control scrubbers are present in a particular facility the same allowance applies to each.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.300	
* * * * *		

* * * * *

§ 421.266 [Amended]

112. 40 CFR 421.266(f) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(f) Gold Solvent Extraction Raffinate and Wash Water.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.189	
* * * * *		

* * * * *

§ 421.266 [Amended]

113. 40 CFR 421.266(g) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(g) Gold Spent Electrolyte.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.003	
* * * * *		

* * * * *

§ 421.266 [Amended]

114. 40 CFR 421.266(h) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(h) Gold Precipitation and Filtration.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.320	
* * * * *		

* * * * *

§ 421.266 [Amended]

115. 40 CFR 421.266(i) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(i) Platinum Precipitation and Filtration.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.560	
* * * * *		

* * * * *

§ 421.266 [Amended]

116. 40 CFR 421.266 is amended by removing the entry for gold, platinum, and palladium and replacing these entries with the entry "combined metals"; the entries copper, cyanide (total), zinc, and ammonia (as N) are revised to read as follows:

* * * * *

(j) Palladium Precipitation and Filtration.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	7.680	3.660
Cyanide (Total)	1.200	0.480
Zinc	6.120	2.520
Combined Metals	1.800	
Ammonia (as N)	799.800	351.600

* * * * *

§ 421.266 [Amended]

117. 40 CFR 421.266(k) is amended by removing the entries for gold, platinum and palladium and replacing these

entries with the entry "combined metals" to read as follows:

* * * * *

(k) Other Platinum Group Metals Precipitation and Filtration.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	1.560	
* * * * *		

* * * * *

§ 421.266 [Amended]

118. 40 CFR 421.266(l) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals"; to read as follows:

* * * * *

(l) Spent solution from PGC Salt Production.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.270	
* * * * *		

§ 421.266 [Amended]

119. 40 CFR 421.266(m) is amended by removing the entries for gold, platinum and palladium and replacing these entries with the entry "combined metals" to read as follows:

* * * * *

(m) Equipment and Floor Wash.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Combined Metals	0.000	
* * * * *		

§ 421.266 [Amended]

120. 40 CFR 421.266 is amended by adding a new paragraph (n) to read as follows:

* * * * *

(n) Preliminary Treatment.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly averge
	mg/troy ounce of total precious metals produced through this operation	
Copper	64.000	30.500
Cyanide (Total)	10.000	4.000
Zinc	51.000	21.000
Combined Metals	15.000	
Ammonia (as N)	6665.000	2930.000

§ 421.312 [Amended]

121. 40 CFR 421.312(a) is amended by revising the entry for cobalt to read as follows:

* * * * *

(a) Tungsten Detergent Wash and Rinse.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	0.768	0.337
* * * * *		

§ 421.312 [Amended]

122. 40 CFR 421.312(b) is amended by revising the entry for cobalt to read as follows:

* * * * *

(b) Tungsten Leaching Acid.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * *		
Cobalt	10.130	4.448
* * * * *		

§ 421.312 [Amended]

123. 40 CFR 421.312(c) is amended by revising the entry for cobalt to read as follows:

* * * * *

(c) Tungsten Post-Leaching Wash and Rinse.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	20.263	8.897

* * * * *

§ 421.312 [Amended]

124. 40 CFR 421.312(d) is amended by revising the entry cobalt to read as follows:

* * * * *

(d) Synthetic Scheelite Filtrate.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	65.644	28.824
* * * * *		

* * * * *

§ 421.312 [Amended]

125. 40 CFR 421.312(e) is amended by revising the entry for cobalt to read as follows:

* * * * *

(e) Tungsten Carbide Leaching Wet Air Pollution Control.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	6.899	3.029
* * * * *		

* * * * *

§ 421.312 [Amended]

126. 40 CFR 421.312(f) is amended by revising the entry for cobalt to read as follows:

* * * * *

(f) Tungsten Carbide Wash Water.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	32.832	14.416

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		

* * * * *

§ 421.312 [Amended]

127. 40 CFR 421.312(g) is amended by revising the entry for cobalt to read as follows:

* * * * *

(g) Cobalt Sludge Leaching Wet Air Pollution Control.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	140.977	61.901
* * * * *		

* * * * *

§ 421.312 [Amended]

128. 40 CFR 421.312(h) is amended by revising the entry for cobalt to read as follows:

* * * * *

(h) Crystallization Decant.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	164.101	72.055
* * * * *		

* * * * *

§ 421.312 [Amended]

129. 40 CFR 421.312(i) is amended by revising the entry for cobalt to read as follows:

* * * * *

(i) Acid Wash Decant.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	75.104	32.977

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		

* * * * *

§ 421.312 [Amended]

130. 40 CFR 421.312(j) is amended by revising the entry for cobalt to read as follows:

* * * * *

(j) Cobalt Hydroxide Filtrate.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	223.189	97.999
* * * * *		

§ 421.312 [Amended]

* * * * *

131. 40 CFR 421.312(k) is amended by revising the entry for cobalt to read as follows:

* * * * *

(k) Cobalt Hydroxide Filter Cake Wash.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	429.598	188.631
* * * * *		

* * * * *

§ 421.313 [Amended]

132. 40 CFR 421.313(a) is amended by revising the entry for cobalt to read as follows:

* * * * *

(a) Tungsten Detergent Wash and Rinse.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	0.538	0.236
* * * * *		

* * * * *

§ 421.313 [Amended]

133. 40 CFR 421.313(b) is amended by revising the entry for cobalt to read as follows:

* * * * *

(b) Tungsten Leaching Acid.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	7.096	3.111
* * * * *		

* * * * *

§ 421.313 [Amended]

134. 40 CFR 421.313(c) is amended by revising the entry for cobalt to read as follows:

* * * * *

(c) Tungsten Post Leaching Wash and Rinse.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	14.194	6.223
* * * * *		

* * * * *

§ 421.313 [Amended]

135. 40 CFR 421.313(d) is amended by revising the entry for cobalt to read as follows:

* * * * *

(d) Synthetic Scheelite Filtrate.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	45.984	20.160
* * * * *		

* * * * *

§ 421.313 [Amended]

136. 40 CFR 421.313(e) is amended by revising the entry for cobalt to read as follows:

* * * * *

(e) Tungsten Carbide Leaching Wet Air Pollution Control.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	4.833	2.119
* * * * *		

* * * * *

§ 421.313 [Amended]

137. 40 CFR 421.313(f) is amended by revising the entry for cobalt to read as follows:

* * * * *

(f) Tungsten Carbide Wash Water.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	22.999	10.083
* * * * *		

* * * * *

§ 421.313 [Amended]

138. 40 CFR 421.313(g) is amended by revising the entry for cobalt to read as follows:

* * * * *

(g) Cobalt Sludge Leaching Wet Air Pollution Control.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	98.756	43.295
* * * * *		

* * * * *

§ 421.313 [Amended]

139. 40 CFR 421.313(h) is amended by revising the entry for cobalt to read as follows:

* * * * *

(h) Crystallization Decant.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	114.954	50.397
* * * * *		

* * * * *

§ 421.313 [Amended]

140. 40 CFR 421.313(i) is amended by revising the entry for cobalt to read as follows:

* * * * *

(i) Acid Wash Decant.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	52.611	23.065
* * * * *		

* * * * *

§ 421.313 [Amended]

141. 40 CFR 421.313(j) is amended by revising the entry for cobalt to read as follows:

* * * * *

(j) Cobalt Hydroxide Filtrate.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	156.346	68.543
* * * * *		

* * * * *

§ 421.313 [Amended]

142. 40 CFR 421.313(k) is amended by revising the entry for cobalt to read as follows:

* * * * *

(k) Cobalt Hydroxide Filter Cake Wash.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	300.094	131.932
* * * * *		

§ 421.314 [Amended]

143. 40 CFR 421.314(a) is amended by revising the entry for cobalt to read as follows:

* * * * *

(a) Tungsten Detergent Wash and Rinse.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	0.538	0.236
* * * * *		

* * * * *

§ 421.314 [Amended]

144. 40 CFR 421.314(b) is amended by revising the entry for cobalt to read as follows:

* * * * *

(a) Tungsten Leaching Acid.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	7.096	3.111

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		

* * * * *

§ 421.314 [Amended]

145. 40 CFR 421.314(c) is amended by revising the entry for cobalt to read as follows:

* * * * *

(c) Tungsten Post Leaching Wash and Rinse.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	14.194	6.223
* * * * *		

§ 421.314 [Amended]

146. 40 CFR 421.314(d) is amended by revising the entry for cobalt to read as follows:

* * * * *

(d) Synthetic Scheelite Filtrate.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	45.984	20.160
* * * * *		

147. 40 CFR 421.314(e) is amended by revising the entry for cobalt to read as follows:

* * * * *

(e) Tungsten Carbide Leaching Wet Air Pollution Control.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	4.833	2.119
* * * * *		

§ 421.314 [Amended]

148. 40 CFR 421.314(f) is amended by revising the entry for cobalt to read as follows:

* * * * *

(f) Tungsten Carbide Wash Water.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	22.999	10.083
* * * * *		

§ 421.314 [Amended]

149. 40 CFR 421.314(g) is amended by revising the entry for cobalt to read as follows:

* * * * *

(g) Cobalt Sludge Leaching Wet Air Pollution Control.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	98.756	43.295
* * * * *		

§ 421.314 [Amended]

150. 40 CFR 421.314(h) is amended by revising the entry for cobalt to read as follows:

* * * * *

(h) Crystallization Decant.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	114.954	50.397
* * * * *		

* * * * *

§ 421.314 [Amended]

151. 40 CFR 421.314(i) is amended by revising the entry for cobalt to read as follows:

* * * * *

(i) Acid Wash Decant.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	52.611	23.065
* * * * *		

* * * * *

§ 421.314 [Amended]

152. 40 CFR 421.314(j) is amended by revising the entry for cobalt to read as follows:

* * * * *

(j) Cobalt Hydroxide Filtrate.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	156.346	68.543
* * * * *		

* * * * *

§ 421.314 [Amended]

153. 40 CFR 421.314(k) is amended by revising the entry for cobalt to read as follows:

* * * * *

(k) Cobalt Hydroxide Filter Cake Wash.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	300.094	131.932
* * * * *		

* * * * *

§ 421.315 [Amended]

154. 40 CFR 421.315(a) is amended by revising the entry for cobalt to read as follows:

* * * * *

(a) Tungsten Detergent Wash and Rinse.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	0.538	0.236
* * * * *		

* * * * *

§ 421.315 [Amended]

156. 40 CFR 421.315(b) is amended by revising the entry for cobalt to read as follows:

* * * * *

(b) Tungsten Leaching Acid.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	7.096	3.111
* * * * *		

* * * * *

§ 421.315 [Amended]

156. 40 CFR 421.315(c) is amended by revising the entry for cobalt to read as follows:

* * * * *

(c) Tungsten Post-Leaching Wash and Rinse.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	14.194	6.223
* * * * *		

* * * * *

§ 421.315 [Amended]

157. 40 CFR 421.315(d) is amended by revising the entry for cobalt to read as follows:

* * * * *

(d) Synthetic Scheelite Filtrate.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	45.984	20.160
* * * * *		

* * * * *

§ 421.315 [Amended]

158. 40 CFR 421.315(e) is amended by revising the entry for cobalt to read as follows:

* * * * *

(e) Tungsten Carbide Leaching Wet Air Pollution Control.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	4.833	2.119
* * * * *		

* * * * *

§ 421.315 [Amended]

159. 40 CFR 421.315(f) is amended by revising the entry for cobalt to read as follows:

* * * * *

(f) Tungsten Carbide Wash Water.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	22.999	10.083
* * * * *		

* * * * *

§ 421.315 [Amended]

160. 40 CFR 421.315(g) is amended by revising the entry for cobalt to read as follows:

* * * * *

(g) Cobalt Sludge Leaching Wet Air Pollution Control.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	98.756	43.295
* * * * *		

* * * * *

§ 421.315 [Amended]

161. 40 CFR 421.315(h) is amended by revising the entry for cobalt to read as follows:

* * * * *

(h) Crystallization Decant.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	114.954	50.397
* * * * *		

* * * * *

§ 421.315 [Amended]

162. 40 CFR 421.315(i) is amended by revising the entry for cobalt to read as follows:

* * * * *

(i) Acid Wash Decant.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	52.611	23.065
* * * * *		

* * * * *

§ 421.315 [Amended]

163. 40 CFR 421.315(j) is amended by revising the entry for cobalt to read as follows:

* * * * *

(j) Cobalt Hydroxide Filtrate.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	156.346	68.543

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		

* * * * *

§ 421.315 [Amended]

164. 40 CFR 421.315(k) is amended by revising the entry for cobalt to read as follows:

* * * * *

(k) Cobalt Hydroxide Filter Cake Wash.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	300.094	131.932
* * * * *		

* * * * *

§ 421.316 [Amended]

165. 40 CFR 421.316(a) is amended by revising the entry for cobalt to read as follows:

* * * * *

(a) Tungsten Detergent Wash and Rinse.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	0.538	0.236
* * * * *		

* * * * *

§ 421.316 [Amended]

166. 40 CFR 421.316(b) is amended by revising the entry for cobalt to read as follows:

* * * * *

(b) Tungsten Leaching Acid.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	7.096	3.111

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		

* * * * *

§ 421.316 [Amended]

167. 40 CFR 421.316(c) is amended by revising the entry for cobalt to read as follows:

* * * * *

(c) Tungsten Post Leaching Wash and Rinse.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	14.194	6.223
* * * * *		

* * * * *

§ 421.316 [Amended]

168. 40 CFR 421.316(d) is amended by revising the entry for cobalt to read as follows:

* * * * *

(d) Synthetic Scheelite Filtrate.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	45.984	20.160
* * * * *		

* * * * *

§ 421.316 [Amended]

169. 40 CFR 421.316(e) is amended by revising the entry for cobalt to read as follows:

* * * * *

(e) Tungsten Carbide Leaching Wet Air Pollution Control.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	4.833	2.119

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		

* * * * *

§ 421.316 [Amended]

170. 40 CFR 421.316(f) is amended by revising the entry for cobalt to read as follows:

* * * * *

(f) Tungsten Carbide Wash Water.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	22.999	10.083
* * * * *		

* * * * *

§ 421.316 [Amended]

171. 40 CFR 421.316(g) is amended by revising the entry for cobalt to read as follows:

* * * * *

(g) Cobalt Sludge Leaching Wet Air Pollution Control.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	98.756	43.295
* * * * *		

* * * * *

§ 421.316 [Amended]

172. 40 CFR 421.316(h) is amended by revising the entry for cobalt to read as follows:

* * * * *

(h) Crystallization Decant.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	114.954	50.397

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		

* * * * *

§ 421.316 [Amended]

173.40 CFR 421.316(i) is amended by revising the entry for cobalt to read as follows:

* * * * *

(i) Acid Wash Decant.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	52.611	23.065
* * * * *		

* * * * *

§ 421.316 [Amended]

174. 40 CFR 421.316(j) is amended by revising the entry for cobalt to read as follows:

* * * * *

(j) Cobalt Hydroxide Filtrate.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	156.346	68.543
* * * * *		

* * * * *

§ 421.316 [Amended]

175. 40 CFR 421.316(k) is amended by revising the entry for cobalt to read as follows:

* * * * *

(k) Cobalt Hydroxide Filter Cake Wash.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Cobalt	300.094	131.932
* * * * *		

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federal register

Friday
August 3, 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 77

Objects Affecting Navigable Airspace; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. 26305; Notice No. 90-18]

RIN 2120-AA09

Objects Affecting Navigable Airspace

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to the standards, aeronautical studies, scope, and notice provisions concerning objects affecting navigable airspace. The proposed amendments consist primarily of changes required by recent legislation or recommended by a government-industry task group of the National Airspace Review (NAR) Advisory Committee. This document also incorporates language to cover electromagnetic interference (EMI) phenomena that could create a hazard to air navigation. Another amendment that reflects legislative requirements is a provision that the FAA consider the "cumulative impact" of proposed construction when combined with other existing and proposed construction. As an added basis for the requirement of notice, the agency is to receive notice when notice of the construction or alteration of any structure promotes the efficient use and preservation of airport traffic capacity at public-use airports. The remainder of the proposed amendments consists of NAR recommendations, the primary objective of which is to simplify and clarify existing regulations. This document also proposes the deletion of two entire subparts that pertain to the establishment of antenna farm areas and hearings.

DATES: Comments must be received on or before December 31, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26305, 800 Independence Avenue SW., Washington, DC 20591; or deliver comments to: Federal Aviation Administration, Rules Docket, room 915-G, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the rules docket weekdays, except Federal holidays between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Air Traffic Rules Branch, Airspace—Rules and Aeronautical Information Division, Office of the Associate Administrator for Air Traffic, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this proposal will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26305." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request from the above office a copy of Advisory Circular (AC) No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Airport and Airway Safety and Capacity Expansion Act of 1987

On December 30, 1987, the President signed the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223), hereinafter referred to as the "Act." The primary purpose of the Act was to amend the Airport and Airway Improvement Act of 1982 to allow extension of the authorization of appropriations for airport and airway improvements. The Act also contained amendments to the Federal Aviation Act (FA Act), 49 U.S.C. 1501. In particular, section 206 of the Act amended section 1101 of the FA Act. Section 1101 of the FA Act pertains to submission to the FAA of notice of construction or alteration of any structure that may affect use of the navigable airspace. The amended section 1101 is set forth in its entirety below.

Sec. 1101. Hazards to safe and efficient air commerce and the preservation of navigable airspace and airport traffic capacity.

(a) *Notice of construction.* The Secretary of Transportation (hereinafter in this section referred to as the "Secretary") shall, by rules and regulations, or by order where necessary, require all persons to give adequate public notice, in the form and manner prescribed by the Secretary, of the construction or alteration, or of the proposed construction or alteration, of any structure where notice will promote safety in air commerce as well as the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports.

(b) *Aeronautical studies.*

(1) *Requirement.*—Where the Secretary determines, according to rules and regulations, that the construction or alteration of any structure may constitute an obstruction of navigable airspace or an interference with air navigation facilities and equipment or navigable airspace, the Secretary shall conduct an aeronautical study to determine the extent of the adverse impact, if any, on the safe and efficient use of such airspace, facilities, or equipment.

(2) *Factors to consider.*—When conducting an aeronautical study under this subsection to determine the impact of the construction or alteration of a structure, the Secretary shall thoroughly consider, according to rules and regulations, all factors relevant to the efficient and effective use of the navigable airspace, and shall consider the following:

(A) The impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules.

(B) The impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules.

(C) The impact on all existing public-use airports and aeronautical facilities.

(D) The impact on all planned public-use airports and aeronautical facilities.

(E) The cumulative impact resulting from the proposed construction or alteration of a

structure when combined with the impact of other existing or proposed structures.

(3) *Report.*—Upon completion of an aeronautical study under this subsection, the Secretary shall issue a report fully disclosing the extent of the adverse impact on the safe and efficient use of the navigable airspace which the Secretary determines will result from the construction or alteration of a structure.

(c) *Coordination.*—In the administration of laws relating to broadcast applications and the conduct of aeronautical studies relating to broadcast towers, the Federal Communications Commission (FCC) and the FAA shall take such action as may be necessary to efficiently coordinate the receipt, consideration of, and action upon such applications and the completion of associated aeronautical studies.

The provisions of section 1101, as amended, are reflected in the proposed revision of part 77. The FAA solicits comments on the amendatory language proposed to implement the law.

FAA and NAR-Recommended Proposals

On June 16, 1977, the FAA published Notice No. 77–7 (42 FR 30643) inviting persons to submit proposals to amend part 77. On June 17, 1978, the FAA published Notice 78–9 (43 FR 26322) announcing that the FAA would be conducting a regulatory review of part 77 and invited persons to submit recommended amendments to part 77 as agenda to a forthcoming regulatory review conference. After evaluating the proposals submitted in response to those notices, the FAA prepared a compilation of proposals which was mailed to each person responding to Notice Nos. 77–7 and 78–9. A regulatory review conference was held during the period of December 4 through 8, 1978, and the compilation of proposals was made available to the public at that time.

The NAR was a comprehensive review of airspace use and the procedural aspects of the air traffic control (ATC) system. In part, the NAR was a joint FAA/aviation industry effort to improve ATC system efficiency and effectiveness. The review was intended to facilitate the implementation of appropriate changes to airspace use and procedures within the ATC system. The NAR included participation by representatives from the aviation industry, the Department of Defense, the FAA, aviation employee organizations, and State government aviation agencies. The specific function of NAR task group 2–3.2 was to review part 77. That review resulted in 20 recommendations. The NAR recommendations contained in this proposal were submitted to the Administrator of the FAA through the NAR Executive Steering Committee on December 4, 1984. Seven additional recommendations on which the majority of the NAR participants did not concur were also submitted to the Administrator at that time.

Effectively, most of the proposed amendments to part 77 which are not a direct result of the Act are a result of the recommendations made by NAR task group 2–3.2. In formulating its recommendations, the task group made use of:

(1) The compilation of proposals discussed above:

(2) Draft amendatory language to part 77 prepared by the FAA in response to the 1978 regulatory review conference; and

(3) Other FAA-developed recommendations for change in the current regulations.

Provisions of the Act

General

Section 1101 of the Federal Aviation Act, as amended, contains three major provisions, i.e., notice of construction, aeronautical studies, and coordination. The aeronautical studies and coordination requirements are new provisions.

Retitled Section 1101

Section 1101 of the Federal Aviation Act of 1958, as amended, is now entitled "Hazards to Safe and Efficient Air Commerce and the Preservation of Navigable Airspace and Airport Traffic Capacity."

Notice of Construction

Formerly, the general language of section 1101 required notice of construction or alteration where notice would promote safety in air commerce. The new law requires notice in situations where notice would not only promote safety in air commerce, but would also promote the efficient use and preservation of the navigable airspace and specifically "airport traffic capacity" at public-use airports. Although these effects have been major considerations in current FAA studies of the possible adverse effects of objects affecting navigable airspace, consideration of these effects is now required by statute.

Aeronautical Studies

The second major provision of section 1101, as amended, requires the Secretary to conduct aeronautical studies if a proposed structure may constitute "* * * an obstruction of navigable airspace or an interference with air navigation facilities and equipment or navigable airspace * * *." Although "interference" was not defined in the Act, the Conference Report (House of Representatives Report 100–484, December 15, 1987) states that "interference" includes both physical and electromagnetic effects. Although the EMI effects of objects affecting navigable airspace are currently studied by the FAA under the general air safety provisions of the FA Act, the Act now requires consideration of EMI effects on the safe and efficient use of airspace. Since the FAA must first determine whether EMI will be present, its responsibilities under the law will be met by expanding the notice requirement in part 77 to include constructions or alterations which might produce EMI. In accordance with the Act, the FAA proposes to incorporate this requirement in the revised regulation. The NAR task group specifically supported expansion of the notice requirement to EMI construction or alteration. The NAR EMI recommendation is discussed below in the "Discussion of the Proposals."

The provision directing the Secretary to conduct aeronautical studies requires the Secretary to issue a full report on the adverse impact to safe and efficient use of airspace including impacts on arrival and departure procedures for aircraft operating under either visual or instrument flight rules, impacts on public-use airports and aeronautical facilities, and cumulative impacts of a structure when combined with the impact of other existing or proposed structures. All impact areas, with the exception of cumulative impact, have been a continuing part of FAA policy, practice, and procedure in measuring the impacts of objects that may affect navigable airspace. In accordance with the Act, cumulative impact, as part of aeronautical study, will be included in the revised part 77.

Coordination

Section 1101 as amended also requires the FAA and the Federal Communications Commission (FCC) to "* * * efficiently coordinate the receipt, consideration of, and action upon, such applications and the completion of associated aeronautical studies * * *." Considerable coordination currently exists between the FAA and FCC. Further coordination procedures, if necessary, will be developed between the two agencies. However, no change or amendment to the user-oriented requirements of part 77 is considered appropriate or necessary as a result of this requirement.

Discussion of the Proposals

In addition to the provisions of the Act to be incorporated into part 77, this

notice also consists of proposals in 20 different areas which cover a substantial portion of part 77. The NAR proposals constitute the bulk of proposals in 18 of the areas. In several areas, proposals are generated by the FAA. The task group presented its recommendations in the framework of a reorganized part 77. Since the NAR-generated proposals form the bulk of the proposed amendments to this regulation, all proposals contained in this notice, including those implementing the Act and those generated by the FAA, are presented and discussed within the NAR-recommended format.

Of particular significance are the proposals requiring that the FAA be given notice of electromagnetic construction or alterations; that an aeronautical study examine the cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures; and that antenna farm provisions of subpart F be revoked.

Several of the FAA-originated proposals cover the same subject area as task group recommendations. To illustrate, an FAA-originated proposal is being substituted for one of the task group recommendations—NAR 2–3.2.7. This task group recommendation, if promulgated, would have deleted the exception from the notice requirement pertaining to antennae 20 feet or less in height. This recommendation has not been adopted by the FAA and is not being proposed in this notice for reasons stated in the paragraph entitled "Proposal 7." An alternative recommendation, which would exclude any antenna structure of 20 feet or less from the notice requirements, is being proposed in this notice. The proposed recommendation differs from the NAR recommendation in that antenna structures that would increase the height of another antenna structure or increase the height of any other structure which previously required notice would require notice even if less than 20 feet in height.

The following is a list of the proposals contained in this NPRM as identified by the appropriate NAR recommendation number and subject area. As stated above, since the NAR proposals constitute the bulk of proposals and proposed reorganization of the NPRM, the other Public Law 100–223 and FAA-generated proposals, when appropriate to a subject area, will be discussed within the framework of the NAR recommendation number.

Proposal	Recommendation	Subject area	Current	Proposed
1	NAR 2-3.2.1	Scope of subpart A	77.1	77.1
2	NAR 2-3.2.2	Definition of Terms	77.2	77.2
3	NAR 2-3.2.3	Standards	77.3	77.3
4	NAR 2-3.2.4	Kinds of Objects Affected	77.5	77.5
5	NAR 2-3.2.5	Scope of subpart B	77.11	77.11
6	NAR 2-3.2.6	Notice Criteria	77.13	77.15/21
7	NAR 2-3.2.7	Notice Not Required	77.15	77.17
8	NAR 2-3.2.8	Form/Time of Notice	77.17	77.13
9	NAR 2-3.2.9	Acknowledgment of Notice	77.19	77.19
10	NAR 2-3.2.10	Scope of subpart C	77.21	77.23
11	NAR 2-3.2.11	Obstruction Standards	77.23	77.25
12	NAR 2-3.2.12	Airport Imaginary Surfaces	77.25/28	77.27/28
13	NAR 2-3.2.13	Heliport Imaginary Surfaces	77.29	77.29
14	NAR 2-3.2.14	Scope of subpart D	77.31	77.31
15	NAR 2-3.2.15	Initiation of Studies	77.33	77.33
16	NAR 2-3.2.16	Aeronautical Studies	77.35	77.35/36
17	NAR 2-3.2.17	Discretionary Review	77.37	77.37
18	NAR 2-3.2.18	Effective Period	77.39	77.39
19	NAR 2-3.2.19	Parties to Hearings	77.51	77.51
20	NAR 2-3.2.20	Antenna Farm Areas	[1]	[2]

[1] Subpart F.
[2] Revoke.

Proposal Areas

Below are summary discussions of each proposal area.

Proposal 1—(NAR Recommendation 2–3.2.1), Scope

Current § 77.1 describes the overall scope of part 77. The NAR task group recommended that this section be amended to include a definite statement of the purpose of part 77. Furthermore, the task group believed that this section should emphasize the FAA's duty to ensure the integrity of the navigable airspace and navigational facilities to promote their safe and efficient utilization. In addition, the task group recommended that two clauses be added to describe activities deserving special mention: Petitions for discretionary review of determinations and marking and lighting of obstructions.

Finally, as a result of another recommendation of the task group, which is handled separately in this notice (see "Proposal 20"), the scope provision relating to antenna farms is proposed to be deleted.

This subject area would retain its current section number but would be entitled "Scope and Purpose."

Proposal 2—(NAR Recommendation 2–3.2.2), Definition of Terms

Current § 77.2 defines the relevant terms used in part 77. The task group was of the opinion that EMI could be hazardous to air navigation and recommended a definition of such phenomenon be included in this section.

The task group also noted that the definition for "visual runway" is technically too specific and excludes some runways from the scope of part 77. Accordingly, the task group recommended a simplified definition that would include within its scope any runway except those designated as "precision" or "nonprecision."

Finally, the task group recommended that the definitions for two commonly used and pertinent terms be incorporated into this section. These terms are: "Airport reference point" and "established airport elevation." The group was of the opinion that these terms and their definitions would provide useful information and guidance to users.

In addition to the NAR-recommended definitions, the FAA proposes to introduce a definition of "vertiport" in part 77 to define an area designated to be used for the takeoff and landing of

tiltrotor aircraft and rotorcraft. The term "vertiport" describes a facility that is intended to be capable of accommodating both the tiltrotor aircraft as well as all existing or proposed rotorcraft (helicopters).

Tiltrotor aircraft are able to provide airline type services between communities that are too close to justify jet airplane service and too far apart to be served by rotorcraft. The part 77 surfaces applied for tiltrotor aircraft are the same as those associated with rotorcraft. Institution of similar airspace areas provides communities planning tiltrotor services a basis for assuring that the necessary airspace will be protected from encroachment.

Since airspace requirements associated with vertiports are identical to those of heliports, all references in part 77 notice and obstruction standards to heliports will also apply to vertiports.

This subject area would retain its current section number and title.

Proposal 3—(NAR Recommendation 2–3.2.3), Standards

Current § 77.3 defines the uses to which obstruction standards are applied and notes that other standards, not defined in part 77, are also used in part 77 analyses. The task group recommended language that would make the section more generic and not tied to specific acts of Congress. Specifically, the language, "transferring property of the United States under section 16 of the Federal Airport Act" would be replaced with a more general statement "disposal of Federal surplus real property for public airport purposes."

This subject area would retain its current section number and title.

Proposal 4—(NAR Recommendation 2–3.2.4), Kinds of Objects Affected

Current § 77.5 identifies the types of objects affected by the provisions of part 77. The task group identified the absence of provisions to cover a mobile object on a traverse way. The definition of a "traverse way," as used in part 77, is any surface route used by vehicles or any other mobile objects. While the subject area of traverse ways is presently covered under Subpart C—Obstruction Standards, the task group recommended that it be included in § 77.5.

This subject area would retain its current section number and title.

Proposal 5—(NAR Recommendation 2–3.2.5), Scope of Subpart B

Currently, § 77.11 defines the scope of Subpart B which concerns notice of construction or alteration. The task group reviewed the comments made during the 1978 regulatory review, specifically, the proposed suggestion that supplemental notice should be handled in another section of this part. The task group agreed with this comment and recommended the transfer of the specifics associated with the supplemental notice provisions to a new section, § 77.21. The task group also recommended that § 77.11 be modified to emphasize that the FAA uses the notice provisions for aeronautical chart purposes and to notify potentially affected airmen.

Paragraph (b) of § 77.11 sets forth the bases for the receipt of notice, to include evaluation of the effects of construction, determination of hazardous effect on air navigation, need for marking and lighting, charting, and determination of appropriate safety measures. An added basis specifically included in the revised section 1101 of the Federal Aviation Act requires notice where such notice will promote the efficient use and preservation of airport traffic capacity at public use airports. This added basis has been included in the revised § 77.11.

This subject area would retain its current section number and title.

Proposal 6—(NAR Recommendation 2–3.2.6), Notice Criteria

Currently, § 77.13 describes the physical criteria for notifying the FAA of proposed construction or alteration. The task group recommended that since paragraphs (b) and (c) of the current § 77.13 deal with supplemental notice requirements, these paragraphs should be incorporated into a separate section dealing with that subject alone (See proposed § 77.21).

The Air Line Pilots Association (ALPA) suggested that the imaginary surfaces defined in paragraph (a) are inadequate to cover "engine-out" performance on large, multi-engine, turbine-powered aircraft and do not adequately cover the area within which potential obstructions to such aircraft may be created. For example, the construction of an obstacle that is less than 200 feet above the surface at its site, may have an adverse effect on departing aircraft with an inoperative engine even though notice to the FAA may not be required. This can occur if the construction site is higher than the elevation of the nearest runway of the nearest airport. To remedy this, ALPA suggested that a 34 to 1 slope be appended to both of the airport surfaces defined in this section. This slope would extend an additional 70,000 feet bringing the total distance beyond the runway to approximately 13 to 15 nautical miles (80,000 to 90,000 feet), the approximate point at which the obstacle clearance area reaches the en route structure. The task group determined that ALPA's information supplied a sufficient basis for this additional criterion. A representative of the Airport Operators Council International dissented, stating that the 70,000 foot extension would impose an undue reporting burden on the public.

The FAA analysis of the task group's recommendation revealed that the additional 70,000 feet in which the public would be required to give notice of construction or alteration to the FAA would levy a substantially increased reporting burden on the public. The FAA has no evidence to conclude that a significant safety problem exists which would warrant this additional burden. In addition, the proposed notice criteria would not provide an effective means to establish whether a significant volume of aircraft were affected. Therefore, this aspect of NAR 2–3.2.6 is not proposed. For further details of the additional burden, see the text under the caption "Regulatory Evaluation Summary" in this document.

The task group also recommended that notice be required when any, rather than all, of the following conditions exist: (1) When the FAA requests notice; (2) where the construction or alteration would be in an instrument approach or departure area; or (3) where the construction or alteration might exceed an obstruction standard of subpart C. The FAA proposes a modified form of this NAR recommendation. The NAR recommendation would require proponents to be familiar with terminal instrument procedures, part 77 obstruction standards, proposed airports on file with the FAA and EMI effects. The FAA believes this to be an unreasonable burden on the public. The modified NAR recommendation as proposed by the FAA would require notice when requested by the FAA, but only when the FAA, and not the proponent, determines such impacts may be present.

The task group recommended that a new notice requirement be added to require that each sponsor notify the FAA when that sponsor proposes construction or alteration of a structure that is higher than a surface that follows the contours of the terrain at ground level and which is longitudinally centered on the runway centerline extended at a distance and width greater than the existing runway clear zone dimensions. The task group was of the opinion that such a provision would alert the FAA of potential hazards when

such construction generates substantial adverse effect on air traffic operations.

The task group also recommended a new notice requirement for construction or alteration that could cause EMI. The National Association of Broadcasters (NAB), an observer to the NAR task group, filed a formal dissent to this recommendation. Subsequent to the task group adjournment, Public Law 100–223 was enacted on December 30, 1987. Section 206 of the Act required that the part 77 notice requirement cover construction or alteration which could cause interference with air navigation facilities or equipment. It is clear that Congress intended this provision to include EMI. H.R. 2310, which became Public Law 100–223, was amended in conference. Specifically, the conference substitute on Issue 54, Tall Towers, stated the following: "Senate provision, modified to clarify that requirements cover structures which create electromagnetic interference." Accordingly, the FAA is proposing to require notice of construction or alteration that would cause EMI in accordance with the Act and the task group recommendation.

The proposed EMI notice criteria would encompass construction or alteration of radio frequency transmitting stations whose antennae are located physically below airport imaginary surfaces and which have an operating frequency above 30 Megahertz and effective radiated power above 10,000 watts. This notice requirement, as related to areas below airport imaginary surfaces contained in part 77, would capture those proposed installations whose proposed heights would not penetrate physical obstruction standards, but whose location could likely present possible EMI problems. In addition, to protect air navigation and communication aids from interference effects that may otherwise not need to be reported, notice would be required for other introductions of possible EMI activity. Other reportable actions would include changes in the authorized frequency or effective radiated power of a transmitting station within 3,000 feet of an air navigation or communication aid, construction of new FM or VHF–TV stations on existing antenna towers (side-mounting), and any alteration of existing FM and VHF–TV stations including height, frequency, and power. This subject area, excluding the provisions for supplemental notice, would be renumbered § 77.15 and would retain its current title.

Proposal 7—(NAR Recommendation 2–3.2.7), Notice Not Required

Currently, § 77.15 describes the construction or alteration for which notice under part 77 is not required. The task group examined the consequences of the "20-foot antenna" provision which excludes from the notice requirement any antenna less than 20 feet in height unless that antenna is added to an existing antenna structure. The task group used the following example: When an antenna less than 20 feet in height is placed on an existing building that heretofore had not penetrated a "horizontal surface," notice is not required even if that "altered" structure now penetrates a surface.

The task group noted that when knowledge of the antenna is received, the FAA must make reactive procedural or operational adjustments in flight patterns, etc., to compensate for the antenna's existence. A frequent case, according to the task group, is one involving the minimum descent altitude (MDA) of an instrument approach procedure which must be raised when the FAA learns that the structure, as altered, penetrates an instrument approach slope at the MDA. The task group therefore, recommended that the "20-foot antenna" exception be deleted.

The FAA does not agree with this task group recommendation as it would create too great a reporting burden on the public, especially on those who currently have limited or no knowledge of part 77. Other members shared FAA's view. The FAA analysis of the task group's recommendation is that it would make all antennae, regardless of height, subject to the notice requirement.

Promulgation of this recommendation would significantly increase the number of required notices without providing an increased level of aviation safety. The economic and administrative impact on the public would be most severe due to the number of antenna applications from industrial and public safety radio services. Nearly all other applications would require analysis and review by the public to determine whether a notice to the FAA would be required. Moreover, in a large number of cases, the promulgation of this recommendation would result in homeowners being required to file notice with the FAA prior to the installation of a roof-mounted television antenna regardless of its height. Furthermore, a notice requirement similar to the obstruction criteria of subpart C of part 77 would be impracticable in application. The exclusion of certain structures, e.g., antenna structures of 20 feet or less in height, has been found advantageous to both the FAA and industry. Certain necessary structures, although they may be obstructions, are therefore excluded due to their utility or the relative absence of any associated hazard.

Accordingly, this proposed section would maintain the notice exception for any antenna structure of 20 feet or less. However, this proposed section would require notice to be given for any antenna structure of 20 feet or less which would increase the height of any existing antenna and any other structure for which notice to the Administrator was previously required. A structure, for which notice has been given previously and has been studied as to its aeronautical effect(s), is usually constructed at or near the maximum height at which it presents no substantial adverse aeronautical effect. The FAA believes that notice of any increase in height of a structure, which previously required notice to the FAA, must be provided so that any new or revised aeronautical effect may be determined. The FAA believes this proposed provision would be a more practical method of dealing with the problem raised by the NAR task group.

This subject area would be renumbered § 77.17, but would retain its current title.

Proposal 8—(NAR Recommendation 2–3.2.8), Form/Time of Notice

The current § 77.17 describes the form and time of notice that must be given to the FAA in the event that § 77.13 criteria are met. The task group sought to require notice of a proposed construction or alteration as early as possible so that corrective actions might be proposed at a time when the least cost would be incurred by the proponent. The task group determined that the best way to accomplish this objective would be to require that notice be given to the FAA in conjunction with the application to local zoning authorities for a construction permit. The task group also recommended certain minor technical corrections, including placing this section before the notice criteria section (See NAR 2–3.2.6).

Independent of the task group's recommendation in this subject area, the FAA is proposing that a 60-day advance notice period be required before any construction or alteration is initiated. The existing notice criteria requires that a proponent notify the FAA 30 days in advance of construction or alteration on any project. The FAA's experience in processing notices indicates that the current 30-day waiting period is too brief and should be extended. During

this period the FAA must first identify any adverse effects the proposal may have on the navigable airspace and then, with few exceptions, circulate the proposal, with the adverse effects identified, to the aviation community and State and local governments. This circularization process normally provides for a 30-day comment period. A problem arises due to the fact that proponents may proceed with construction 30 days after their original notice, while the FAA may not act on the aeronautical study until the comment period lapses. Consequently, the 30-day advance notice of construction period does not allow the FAA to respond adequately to comments received on the circularization or, generally, to the interests of aviation safety.

This subject area would be renumbered § 77.13 but would retain its current title.

Proposal 9—(NAR Recommendation 2–3.2.9), Acknowledgment of Notice

The current § 77.19 specifies the form of the FAA acknowledgments to notices of construction or alteration. The task group consensus was that most of the existing provisions of this section are acceptable. However, the task group was of the opinion that an additional acknowledgment provision would be desirable. Such an acknowledgment would apply, at the discretion of the FAA, where no obstruction standard was violated but further study was required to determine whether the proposed construction or alteration would constitute a hazard to air navigation. The recommendation was therefore made to amend the regulation to provide for such an acknowledgment. This would give aviation users notice of a proposed construction or alteration that might create undesirable results.

This subject area would retain its current section number and title.

Proposal 10—(NAR Recommendation 2–3.2.10), Obstruction Standards, Scope

The current § 77.21 defines the scope of subpart C. Subpart C contains the standards that identify obstructions to air navigation. While the task group found this section to be largely acceptable, it was of the opinion that the statement of scope was too general with regard to aviation-related facilities. The task group therefore recommended that language be inserted in this section to enumerate the types of aviation-related facilities covered by subpart C. Such enumeration, the task group believed, would provide a clearer indication to aviation users, the public, and obstruction evaluators of the coverage, procedures, and policy of this subpart. The task group also believed it particularly important to include language to the effect that standards other than those in subpart C may be used to study an object for any potential hazard to air navigation.

This subject area would be renumbered as § 77.23 but would retain its current title.

Proposal 11—(NAR Recommendation 2–3.2.11), Obstruction Standards

The current § 77.23 sets forth standards which enable the FAA to determine whether an aeronautical study under subpart D should be performed in relation to a proposed construction or alteration. The task group was of the opinion that this section, with few exceptions, is satisfactory. One exception concerned terminal obstacle clearance areas. The task group felt that the FAA must be able to define more specifically obstructions which would require the FAA to alter ceiling and visibility minimums or flight procedures.

In one other exception, the task group recommended that EMI be considered a potential obstruction to which the standards of this section would apply. The NAB objected to this recommendation stating that the task group was attempting to preclude or modify radio services' access to the allocated radio frequency spectrum. The NAB stated that the outcome of this recommendation would be that the FAA would assume the role of a spectrum manager and that such a role is not within the FAA's authority. Notwithstanding the NAB's objection, the task group recommended that EMI be considered as a potential obstruction. The FAA proposes this amendment to the obstruction standards because it is necessary to implement section 206 of Public Law 100–223.

This subject area would be renumbered as § 77.25 but would retain its current title.

Proposal 12—(NAR Recommendation 2–3.2.12), Airport Imaginary Surfaces

The current § 77.25 defines imaginary surfaces for areas surrounding civil airports and provides that any structure penetrating those surfaces is to be considered an obstruction. The task group examined this section with respect to its organization, coverage of departures, and treatment of displaced thresholds. The task group also reviewed recent changes to aviation statutes which make utility runways eligible for certain navigational equipment.

With regard to organization, the task group believed that the imaginary surface provisions should begin with the airport runway primary surface followed by the approach, transition, horizontal, conical, and departure surfaces.

With regard to the definition of surfaces for departures, the task group recommended the establishment of a 62.5 to 1 surface for the first 12,500 feet followed by a 38 to 1 surface out to 90,000 feet. These surfaces were proposed as a follow-on to the 34 to 1 notice criteria surface recommended in NAR 2–3.2.6. The task group rationale supporting the recommendation was that any proposed construction or alteration that might pose an obstruction to engine-out performance of large, two-engine jet aircraft should be identified.

A dissenting view noted that the current terminal instrument approach procedures (TERP) criteria do not exist to support the recommended surfaces; and, that the ultimate effect of any determination that would be based on these surfaces would be questionable, and perhaps unenforceable. The dissenting viewpoint maintained that such criteria would appropriately belong in TERP's and that including these slopes in part 77 would provide nothing except a surface below which a proponent could only be persuaded not to build the structure. However, the task group consensus supported the recommendation because of its potential to provide a basis for negotiating with proponents of construction or alteration.

Existing imaginary surfaces are designed to identify adverse effects to aeronautical operations. The identified adverse effects are then examined to determine whether they are substantial, due to their effects on a significant volume of aircraft. Only where substantial adverse effects are identified is a Determination of Hazard to Air Navigation warranted.

The FAA analysis revealed that the surfaces proposed by ALPA could not be utilized in the same manner as existing imaginary surfaces. Adverse effect would be difficult to conclude since there are no current TERPS criteria which could be used to support such a conclusion. In addition, there would never be a significant volume of aircraft affected since ALPA's concern involves a contingency plan to be used for certain aircraft only in the event of an engine failure during departure, an infrequent occurrence. Existing obstruction evaluation criteria are designed to identify obstacles that require aircraft to alter course or altitude to avoid colliding with the structure. The proposed surfaces merely

would aid the operator of a large, turbine-powered transport aircraft in the identification of a planned departure path to be used in the unlikely event of an engine failure or shutdown shortly after takeoff. Such a plan could be devised in many directions and, even then, would be utilized only on rare occasions. As a result, the proposed surfaces would have no practical value in the obstruction evaluation process.

The negotiation process is utilized in obstruction evaluation to resolve situations where a substantial adverse effect has been identified. The purpose of negotiation is to work with a proponent of construction or alteration to achieve a relocation and/or reduction in the height of a proposal that would eliminate substantial adverse effect. As explained above, however, the proposed criteria, if implemented, could not be utilized to reach a conclusion of substantial adverse effect. Therefore, the FAA does not concur with the adoption of these imaginary surfaces.

This subject area would be renumbered as § 77.27 but would retain its current title.

Proposal 13—(NAR Recommendation 2-3.2.13), Heliport Imaginary Surfaces

The current § 77.29 defines the imaginary surfaces to be used in judging whether a proposed construction or alteration in heliport environs constitutes an obstruction. The task group reviewed this section in conjunction with civilian and military heliport user input. The task group was of the opinion that changes were generally unnecessary. However, the group did recommend a change in the slope of the approach surface to make civilian standards consistent with military standards. The recommendation for the military standard would change the slope of the surface from 10:1 to 8:1.

In addition to the NAR proposal, the FAA proposes to change the title of § 77.29 to "Airport imaginary surfaces for heliports or vertiports." Vertiports are introduced into part 77 under § 77.2, Definition of Terms as identifiable ground or elevated areas to be used for the takeoff and landing of tiltrotor aircraft and rotorcraft. In the discussion of proposal area 2 dealing with definitions, it was stated that the airspace requirements associated with vertiports would be the same as those used for heliports and that notice and obstruction standards referenced throughout part 77 would be the same for both. The title and imaginary surfaces of proposed § 77.29 therefore refer to both heliports and vertiports.

This subject area would retain its current section number but would be retitled.

Proposal 14—(NAR Recommendation 2-3.2.14), Aeronautical Studies, Scope

The current § 77.31 describes the scope of subpart D, which details the performance and review of aeronautical studies. The task group was of the opinion that there is a need to clarify and emphasize that other standards, in addition to those specifically identified in subpart C, are used to evaluate proposed construction or alteration. The task group recommended that the language of § 77.31 be amended to reflect this. In addition to revising § 77.31, the FAA further proposes to add appendix A to this NPRM which would list the publications containing the relevant non-part 77 standards. The standards listed in appendix A comprise internal orders for the guidance of FAA employees and non-regulatory reference standards published as Advisory Circulars.

Also added to the scope of aeronautical studies recommended by the NAR is the requirement of Public Law 100-223 that aeronautical studies include consideration of the cumulative impact of proposed construction or alteration when combined with the impact of other existing or proposed structures. This subject area would retain its current section number and title.

Proposal 15—(NAR Recommendation 2-3.2.15), Initiation of Studies

The current § 77.33 identifies the circumstances under which an aeronautical study is to be undertaken. The task group made a technical correction to this section to reflect NAR 2-3.2.20, which would revoke subpart F, Establishment of Antenna Farm Areas.

This subject area would retain its current section number and title.

Proposal 16—(NAR Recommendation 2-3.2.16), Aeronautical Studies

Section 77.35 describes the purpose of and process by which aeronautical studies are conducted. The task group reviewed this section with regard to how thoroughly it describes the elements of a study and how consistent it is with current practices.

The task group recommended that the description of the elements of an aeronautical study be separated from the description of the determination. The task group also recommended that provisions be included to ensure comments would be solicited whenever a study is undertaken. The solicitation, in the task group's opinion, would provide users with notice of the proposal as well as the opportunity to identify and notify the FAA of any potential problems.

The task group also recommended that the current language concerning determinations be amended to provide more detail and to conform more closely to the current FAA practice in processing aeronautical studies.

Both the NAR recommendations and the specific requirements of Public Law 100-223 relating to necessary elements of study are included in proposed § 77.35. These elements include the specific requirements to consider aeronautical effects on airport capacity and the cumulative impact of proposed construction when combined with the effects of other existing or proposed structures.

This subject area would be divided into two sections, § 77.35, Evaluating aeronautical effect, and § 77.36, Determinations. Also, in these sections and in the section on discretionary review, references to "Regional Director" have been changed to "Manager, Air Traffic Division" in accordance with FAA organizational changes.

Proposal 17—(NAR Recommendation 2-3.2.17), Discretionary Review

The current § 77.37 describes the circumstances under which discretionary reviews of determinations may be granted and performed. The task group reviewed this section and was of the opinion that the basis for petitioning and granting discretionary reviews is not adequately delineated. The task group also felt that by including more detailed language, proponents would feel confident that arguments for discretionary review would be considered and not dismissed on purely technical grounds. Accordingly, more detailed language associated with the petitioning and granting of discretionary reviews was recommended by the task group to be included in § 77.37.

The effective period in which to file a petition for discretionary review would also be expanded from 30 to 45 days to enable petitioners sufficient time in which to file. This proposal is made by the FAA in recognition of the fact that 30 days allows petitioners insufficient time to receive the determination, prepare an aeronautical objection, and have it received by the agency within this limited time period. The petition for discretionary review would be effectively filed if it is received by the Administrator of the FAA within the 45-day period. In computing the 45-day period, the last day of the period shall

not include a Saturday, Sunday, or legal holiday, but shall be the next day which is not one of the aforementioned days.

This subject area would retain its current section number but would be retitled "Petitions for discretionary review."

Proposal 18—(NAR Recommendation 2-3.2.18), Effective Period

The current § 77.39 describes the time period during which a determination of no hazard to air navigation issued under subpart B, D, or E is effective.

The task group recommended that the subject material of § 77.39 be separated into two subject areas: Effective period of determination, and extensions. The task group was of the opinion that while an 18-month initial effective period for a no hazard determination is appropriate, extensions should be granted only under exceptional circumstances. Specifically, the task group recommended that automatic extensions should not be granted.

Although not inclined to treat FCC construction permit/license applicants differently from others with regard to extensions, the task group did note that confusion might arise if governmental decisions were not coordinated. As a result, the task group recommended that extensions to FCC applicants should be granted only where an application has in fact been filed with the FCC and the sponsor produces evidence that additional time is warranted due to FCC requirements. Further, the task group recommended that the regulation be amended so that an extension is required when the FCC has extended the initial construction date of a previously granted permit.

This subject area would be divided into two sections, § 77.39, Determination effective period, and § 77.40, Extension or reconsideration of determination of no hazard to air navigation. The effective date of a determination of no hazard to air navigation is extended from 40 to 55 days to allow for the increased time to submit a petition for discretionary review.

Proposal 19—(NAR Recommendation 2-3.2.19), Parties to Hearings

The current subpart E lists the rules of practice for a public hearing concerning a proposed construction or alteration of a structure. As distinct from the process under subpart E, the present petition for review procedures based on written materials (§ 77.37) permit petitioners (or proponents if they are not the petitioners) to submit written material and information supporting their positions.

The hearing procedures cited in subpart E have not been utilized in recent years due to the fact that petitioners are given ample opportunity to submit all the material they believe is necessary to support their positions. Further, the courts have upheld a review process exclusively based on the submission of written materials by the petitioner. In addition, the FAA is proposing to add a new § 77.37(e) to ensure that petitioners who wish to submit material in support of their positions will be given notice if the FAA plans to review additional issues not cited in petitioners' petitions for review. For all of the above reasons, the FAA is proposing to delete subpart E in its entirety.

Proposal 20—(NAR Recommendation 2-3.2.20), Antenna Farm Areas

The current subpart F describes the scope, policy, and general provisions for the establishment of antenna farms. The task group noted that the provisions of subpart F are consistent with the task group's views regarding efficient airspace utilization. However, the group was of the opinion that the interference and related complications generated from antennae in proximity to each other tend to make antenna farms infeasible. Also, no antenna farms have been designated under existing subpart F.

The task group, therefore, recommended that this subpart be revoked. However, certain basic tenets associated with this subject area would be retained in the proposed amendment to § 77.35 contained in this notice. Specifically, proposed construction of a limited number of antennae in proximity to other antennae would still be encouraged and would be considered in the aeronautical study process. Therefore, subpart F would be revoked in its entirety.

Paperwork Reduction Act

Information collection requirements for part 77 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0001. To the extent that new requirements would be added by this rule, if adopted, the information collection reporting requirements would be amended to reflect the change.

Regulatory Evaluation Summary

Introduction

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory change outweigh the potential costs. The order also requires the preparation of a draft Regulatory Analysis of all "major" proposals except those responding to emergency situations or other narrowly defined exigencies. A "major" proposal is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition or is highly controversial.

This proposed regulatory action is determined not to be "major" as defined in the executive order, so a full draft Regulatory Analysis identifying and evaluating alternative proposals has not been prepared. A more concise draft Regulatory Evaluation has been prepared, however, which is limited to only this proposal and does not identify any alternatives. This draft evaluation is included in the docket, and quantifies, to the extent practicable, estimated costs to the private sector, consumers, Federal, State, and local governments, as well as anticipated benefits and impacts.

A summary of the draft Regulatory Evaluation is contained in this section. For a more detailed analysis, the reader is referred to the full draft evaluation contained in the docket. This section also contains an initial Regulatory Flexibility notice criteria cited in § 77.15 (b)(1) through (b)(4) and the new notice requirements of the "20-foot antenna" provision specified in § 77.17(e), the balance of the proposals contained in this NPRM will have a negligible or no-cost impact.

The costs and benefits associated with this proposal are summarized below. Total costs associated with the amendments determined to have a cost impact are estimated to be between $239,000 and $402,000 over a ten-year period. Total benefits are estimated to be about $4 million over the same period. Those elements of the rule determined to have a negligible or no cost impact are identified and explained in appendix A of the full regulatory evaluation. The amendments contained in appendix A essentially restructure and clarify this part and are likely to produce cost savings as a result of improved understanding on the part of proponents, local officials, and the FAA. The savings associated with these improvements, however, are considered unquantifiable.

A copy of the Regulatory Evaluation prepared for this action is available for review in Docket No. 26305, and a copy may be obtained by contacting the

person identified under the caption, "FOR FURTHER INFORMATION CONTACT."

Cost and Benefit Summary

Section 77.15(a)(4) (i) through (iv)—Construction or alteration requiring notice. The proposal adds new notice surfaces whose areas follow ground contours that are Determination required by the Regulatory Flexibility Act of 1980 and an International Trade Impact Analysis.

The primary objective of these proposed amendments to part 77 is to substantially revise and reorganize the regulation to enable the public to better understand its requirements. A secondary objective is to eliminate loopholes identified by aviation users and the FAA which allow disruption of air navigation operations. Finally, the rule defines the standards for the electromagnetic effects of construction or alteration that would require notice under this part and proposes the revocation of the rules of practice for hearings of subpart E and the antenna farm provisions of subpart F. This NPRM is a result of the recommendations of task group 2–3.2 of the NAR Program, the FAA's experience in the administration of the rule since its adoption on December 12, 1962, and the mandates of Public Law 100–223. In developing its recommendations, task group 2–3.2 reviewed part 77 in its entirety, taking into account a 1978 regulatory review of the rule along with the comments received on a 1980 draft document. The task group formulated 20 major recommendations which proposed multiple changes to subparts A through F of part 77.

These amendments would potentially affect the private and public sectors in the vicinity of the 5,920 public-use airports currently subject to this part. The FAA has determined that, with the exception of the new construction or alteration requirements defined in § 77.15(a)(4) (i) through (iv), the EMI longitudinally centered on the runway centerline and which extend beyond the runway end no more than 3,000 feet and with widths no greater than 3,000 feet. Thus, any sponsor of a construction or alteration project located in the newly defined area that is of greater height than the elevation of the terrain at the proposed construction or alteration site must notify the FAA.

Costs: The proposal is likely to impose on proponents minimal discounted total costs ranging from $2,625 to $4,594 over the 10-year period following its enactment.

Benefits: The FAA has not been able to quantify the savings in time and resources to proponents, local officials, and to the FAA that would result from this proposal. However, if during the same 10-year period the proposal prevents the forced relocation of one navigational aid with a present value exceeding $4,577, the rule would be cost effective.

Section 77.15(b) (1), (2), (3), and (4)—Construction or alteration requiring notice. New § 77.15 (b)(1) through (b)(4) add electromagnetic construction or alteration notice criteria to part 77. Thus, sponsors of construction or alteration would be required to file notice with the FAA if their projects meet or exceed the following criteria—

(1) Any construction or alteration of a radio frequency transmitting station with an operating frequency above 30 Megahertz (Mhz) and an effective radiated power (ERP) above 10,000 watts that has its antenna physically located below the airport imaginary surfaces of § 77.25, § 77.28, or § 77.29 applicable to the airport concerned.

(2) Any initial or modified operation of a transmitting station, including a change in authorized frequency or effective radiated power, within 3,000 feet of an air navigation or communications aid.

(3) Any construction of a new FM or VHF–TV station utilizing an existing antenna tower.

(4) Any alteration, including changes in authorized frequency, effective radiated power, antenna height, and antenna type of existing FM and VHF–TV stations.

Costs: Compliance with proposed § 77.15 (b)(1) through (b)(4) is estimated to impose present value costs on proponents ranging from $237,000 to $397,000 over the 10-year period following enactment of the rule. These costs are based on the assumption that approximately 1500 proponents will be required to file notice annually under § 77.15 (b)(1) and (b)(3), and between 3000 and 6000 notifications will be required to be filed annually under § 77.15 (b)(2) and (b)(4).

Benefits: The prevention of disruptions of vital communications and navigational aids estimated to have a 10-year discounted value of approximately $4 million.

Section 77.17(e)—Construction or alteration requiring notice. Section 77.17(e) is amended to include notice requirements for antennae less than 20 feet in height that would increase the height of a structure for which a previous notice was required under this part.

Cost: The cost associated with compliance has not been quantified. The FAA believes however, that enactment of the proposal will result in relatively few new notices and, therefore, minimal costs.

Benefit: Benefits are not quantifiable. Undetermined benefits are expected to accrue to the aviation public from the prevention of disruption of the navigable airspace caused by low-height antennae in the vicinity of public-use airports. The FAA believes that the benefits of this proposal, although unquantifiable, will be greater than the minimal cost of compliance.

International Trade Impact Analysis

The FAA has determined that, because the proposed changes would only affect enterprises located in U.S. communities, the sale of foreign products domestically or the sale of U.S. products or services in foreign countries will not be influenced. Therefore, the FAA has determined that this rule will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the United States. The FAA has also determined that the rule will not eliminate existing or create additional barriers to the sale of U.S. aviation products and services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires agencies to specifically review proposed rulemaking actions to determine if they have a "significant economic impact on a substantial number of small entities." This proposal is likely to impact individual or business entities proposing to construct or modify a structure that meets the notice requirements of part 77 in the vicinity of the 5,850 public airports, heliports, vertiports, and seaplane bases considered in this analysis. This proposal will require only that proponents of construction or alteration projects give notice to the FAA in the manner and form prescribed by this part. The cost associated with completing and submitting a notice form (FAA–7469–I) is estimated to be $8.12. The minimum threshold used by the FAA to make determinations pursuant to the Regulatory Flexibility Act is $3,800 per year. A small entity would have to file 467 notices per year ($467 \times \$8.15 = \$3,806$) to exceed the minimum threshold established for significant economic impact. The FAA believes that the probability of this occurring is extremely remote. Thus, the FAA has concluded that this proposal will not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation and Regulatory Flexibility Determination, the FAA has determined that this proposed regulation is not major under Executive Order 12291 and is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 77

Administrative practice and procedure, Airports, Airspace, Aviation safety, Navigation (air), Reporting and recordkeeping requirements.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to revise part 77 of the Federal Aviation Regulations, (14 CFR part 77) as follows:

PART 77—OBJECTS AFFECTING NAVIGABLE AIRSPACE

Subpart A—General

Sec.

77.1 Scope and purpose.
77.2 Definition of terms.
77.3 Standards.
77.5 Kinds of objects affected.

Subpart B—Notice of Construction or Alteration

77.11 Scope.
77.13 Form and time of notice.
77.15 Construction or alteration requiring notice.
77.17 Construction or alteration not requiring notice.
77.19 Acknowledgment of notice.
77.21 Supplemental notice requirements.

Part C—Obstruction Standards

77.23 Scope.
77.25 Standards for determining obstructions.
77.27 Civil airport imaginary surfaces.
77.28 Military airport imaginary surfaces.
77.29 Airport imaginary surfaces for heliports or vertiports.

Subpart D—Aeronautical Studies of Effect of Proposed Construction on Navigable Airspace

77.31 Scope.
77.33 Initiation of studies.
77.35 Evaluating aeronautical effect.
77.36 Determinations.
77.37 Petitions for discretionary review.
77.39 Determination effective period.
77.40 Extension or reconsideration of determination of no hazard to air navigation.

Appendix A—FAA Documents Used in Aeronautical Studies

Authority: 49 U.S.C. 1348, 1354, 1421 through 1430, 1501; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983; revised Pub. L. 100-223, December 30, 1987).

Subpart A—General

§ 77.1 Scope and purpose.

The purpose of this part is to protect the navigable airspace and navigation facilities for their safe and efficient utilization by aircraft and to preserve airport traffic capacity. To accomplish these purposes, this part:

(a) Establishes standards for determining obstructions in navigable airspace;

(b) Sets forth the requirements for notice to the Administrator of certain proposed construction or alteration;

(c) Provides for aeronautical studies of obstructions to air navigation to determine the effect on the safe and efficient utilization of navigable airspace by aircraft and on air navigation or communication facilities;

(d) Establishes provisions for the marking and lighting of obstructions to air navigation as a condition for a determination of no hazard, when the Administrator finds it necessary;

(e) Provides procedures for petitioning the Administrator for a discretionary review of determinations, revisions, and extensions issued.

§ 77.2 Definition of terms.

For the purpose of this part:

A seaplane base is considered to be an airport only if its sea lanes are outlined by visual markers.

Airport available for public use means an airport that is open to the general public with or without a prior request to use the airport.

Airport reference point means the computed geometric airport center described in latitude and longitude, usually to the nearest second, having equal relationship to all existing and proposed landing and takeoff areas.

A seaplane base is considered to be an airport only if its sea lanes are outlined by visual markers.

Electromagnetic effect means any harmful effect on the availability or quality of navigation or communication signals to or from aircraft, meteorological equipment, navigation equipment, communications equipment, or air traffic control facilities caused by a power source, radio frequency transmitter, or an object or surface which emits, reflects, or re-radiates an electromagnetic signal or electrical pulse.

Established airport elevation means the highest point of an airport's usable runways measured in feet above mean sea level.

Nonprecision instrument runway means any runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance or area navigation type equipment, for which a nonprecision instrument approach procedure that meets straight-in alignment criteria has been approved or planned, and for which no precision approach facilities are planned or indicated on an FAA planning document or military airport planning document.

Planned or proposed airport for which notice is on file means any of the following documents received by the FAA—

(1) Airport proposals submitted pursuant to the provisions of part 157 of this chapter;

(2) Airport Improvement Program requests for aid;

(3) Notices of existing airports where prior notice of the airport construction or alteration was not provided as required by part 157 of this chapter;

(4) Airport layout plans, including consideration of the effect of structures which may restrict control tower line-of-sight capability and effects upon electronic and visual aids to air navigation;

(5) Military proposals for military airports used only by the armed forces;

(6) Military proposals on joint-use (civil-military) airports;

(7) Proposed designation of precision instrument landing runways; and

(8) Completed airport site selection feasibility studies and recommendations.

Precision instrument runway means—

(1) Any runway having an existing instrument approach procedure utilizing an Instrument Landing System, a Microwave Landing System, or a Precision Approach Radar; or

(2) A runway for which a precision approach procedure or system has been

designated or planned and is so indicated by an FAA-approved airport layout plan, a military service approved military airport layout plan, any other FAA planning document, or a military service airport planning document.

Utility runway means a runway that is to be used by aircraft of 12,500 pounds maximum gross weight or less.

Vertiport means an identifiable ground or elevated area, including any buildings or facilities thereon, that has been designated to be used for the takeoff and landing of tiltrotor aircraft and rotorcraft.

Visual runway means a runway, existing or planned, which is other than precision or nonprecision.

§ 77.3 Standards.

(a) The standards established in this part for determining obstructions to air navigation are used by the Administrator in—

(1) Administering the Federal-aid to Airports Program and the Surplus Airport Program;

(2) Disposal of Federal surplus real property for public airport purposes;

(3) Developing technical standards and guidance in the design and construction of airports; and

(4) Imposing requirements for public notice of the construction or alteration of any structure where notice will promote air safety and preservation of airport capacity.

(b) The standards used by the Administrator in the establishment of flight procedures and aircraft operational limitations are not set forth in this part but are contained in other publications of the Administrator (see appendix A of this part).

§ 77.5 Kinds of objects affected.

This part applies to—

(a) Any object of natural growth, terrain, or permanent or temporary construction or alteration, including equipment or materials used therein, and apparatus of a permanent or temporary character; and

(b) Alteration of any permanent or temporary existing structure by a change in its height (including appurtenances), or lateral dimensions, including equipment or materials used therein.

(c) Any mobile object on a traverse way.

Subpart B—Notice of Construction or Alteration

§ 77.11 Scope.

(a) This subpart requires each person proposing any kind of construction or alteration described in § 77.15 of this part to give adequate notice to the Administrator. This subpart also specifies the locations and dimensions of the construction or alteration for which notice is required and prescribes the form and manner of the notice. It also requires supplemental notices before the start and upon completion of certain construction or alteration that was the subject of a notice under § 77.15.

(b) Notices received under this subpart provide a basis for—

(1) Evaluating the effect of the construction or alteration on existing or planned operational procedures and on airport traffic capacity at public-use airports;

(2) Determinations of whether the effect of proposed construction or alteration would constitute a hazard to air navigation;

(3) Recommendations for identifying the construction or alteration in accordance with the current Federal Aviation Administration Advisory Circular AC 70/7460–1 entitled "Obstruction Marking and Lighting," which is available without charge from the U.S. Department of Transportation, Utilization and Storage Section, M443.2, Washington, DC 20590;

(4) Determining other appropriate measures to be applied for continued safety of air navigation; and

(5) Charting and other notification to airmen of the construction or alteration of objects that affect the navigable airspace.

§ 77.13 Form and time of notice.

(a) Each person who is required to submit a notice to the Administrator under § 77.15 shall send one executed set of FAA Form 7460–1, Notice of Proposed Construction or Alteration, to the Manager, Air Traffic Division, of the FAA regional office having jurisdiction over the area within which the construction or alteration will be located. Copies of FAA Form 7460–1 may be obtained from the headquarters of the FAA and from the regional offices.

(b) The notice required under § 77.15 must be submitted at least 60 days before the earlier of the following dates:

(1) The date the proposed construction or alteration is to begin.

(2) The date an application for any type of a State or local government construction permit is filed, including any application filed in compliance with State aeronautical and/or local zoning or land use authorities requirements. However, a notice relating to proposed construction or alteration that is subject to the licensing requirements of the Federal Communications Act must be submitted to the FAA on or before the date that the application is filed with the Federal Communications Commission (FCC).

(c) A proposed structure or a proposed alteration to an existing structure that exceeds 2,000 feet in height above the ground will be presumed to be a hazard to air navigation and to result in an inefficient utilization of airspace, and the applicant has the burden of overcoming that presumption. Each notice submitted under this part proposing a structure in excess of 2,000 feet above ground, or an alteration that will make an existing structure exceed that height, must contain a detailed explanation to demonstrate that the proposal would not constitute a hazard to air navigation or an inefficient utilization of airspace. Where the FAA does not conclude that a proposed construction or alteration would result in an inefficient utilization of the navigable airspace or be a hazard to air navigation, a determination of no hazard to air navigation would be issued.

(d) In the case of an emergency involving essential public services, public health, or public safety, that requires immediate construction or alteration, the advance notice requirement in paragraph (b) of this section will not apply and the notice may be sent to the FAA by telephone, telegraph, or other expeditious means. However, an executed FAA Form 7460–1 must be submitted within 5 days thereafter. Outside normal business hours, emergency notices by telephone or telegraph may be submitted to the nearest FAA flight service station.

§ 77.15 Construction or alteration requiring notice.

Except as provided in § 77.17, each sponsor who proposes any of the following types of construction or alteration shall notify the Administrator in the form and manner prescribed in § 77.13—

(a) Physical construction and/or alteration.

(1) Any construction or alteration of more than 200 feet in height above the ground level at its site.

(2) Any construction or alteration of greater height than an imaginary surface extending outward and upward at one of the following slopes—

(i) 100 to 1 for a horizontal distance of 20,000 feet from the nearest point of the nearest runway of each airport described in paragraph (a)(5) of this section with its longest runway more than 3,200 feet in actual length, excluding heliports or vertiports.

(ii) 50 to 1 for a horizontal distance of 10,000 feet from the nearest point of the nearest runway of each airport described in paragraph (a)(5) of this section with its longest runway no more than 3,200 feet in actual length, excluding heliports or vertiports.

(iii) 25 to 1 for a horizontal distance of 5,000 feet from the nearest point of the nearest landing and takeoff area of each heliport or vertiport described in paragraph (a)(5) of this section.

(3) Any highway, railroad, or other traverse way for mobile objects, of a height which would exceed a standard of paragraph (a) (1) or (2) of this section if the surface height of the way is increased by—

(i) 17 feet for an Interstate Highway that is a part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance;

(ii) 15 feet for any other public roadway;

(iii) 10 feet for a private road or the height of the highest mobile object, whichever is greater, that would normally traverse that road;

(iv) 23 feet for a railroad; or

(v) For a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

(4) Any construction or alteration of greater height than a surface that follows the contours of the terrain at ground level and which is longitudinally centered on the runway centerline extended at a distance of—

(i) 2,000 feet from runway end at a width of 1,500 feet for nonmilitary runways less than 5,000 feet in length;

(ii) 3,000 feet from runway end at a width of 2,000 feet for nonmilitary runways of 5,000 feet or greater in length;

(iii) 3,000 feet from runway end at a width of 1,000 feet for military runways less than 8,000 feet in length; or

(iv) 3,000 feet from runway end at a width of 3,000 feet for military runways 8,000 feet or greater in length.

(5) Any construction or alteration on any of the following airports (including heliports, vertiports, and seaplane bases):

(i) An airport that is available for public use and is listed in the Airport Facility Directory, Supplement Alaska, or Chart Supplement Pacific of the U.S. Government Flight Information Publications;

(ii) An airport under construction, that is the subject of a notice or proposal on file with the FAA, and—

(A) The airport is a military airport; or

(B) There is a clear indication that the airport will be available for public use;

(iii) An airport operated by a Federal agency or military department of the United States.

(6) When requested by the FAA, any structure meeting one of the following—

(i) When the structure would be in an instrument approach or departure area defined in the FAA standards governing instrument procedures;

(ii) When available information indicates the construction or alteration might exceed a standard of subpart C of this part for an airport available for public use that is the subject of a notice or proposal on file with the FAA; or,

(iii) When available information indicates the construction or alteration might affect an air navigation or communication aid.

(b) Construction or alteration having electromagnetic effect.

(1) Any construction or alteration of a radio frequency transmitting station with an operating frequency above 30 megahertz and an effective radiated power above 10,000 watts that has its antenna physically located below the airport imaginary surfaces of § 77.27, § 77.28, or § 77.29 applicable to the airport concerned.

(2) Any initial or modified operation, including a change in the authorized frequency or effective radiated power, of a transmitting station located within 3,000 feet of an air navigation or communications aid.

(3) Any construction of a new FM or VHF–TV station utilizing an existing antenna tower.

(4) Any alteration, including changes in authorized frequency, effective radiated power, antenna height, and antenna type of existing FM and VHF–TV stations.

§ 77.17 Construction or alteration not requiring notice.

No person is required to notify the Administrator for any of the following construction or alteration—

(a) Any object that would be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is clearly evident that the structure so shielded will not adversely affect safety in air navigation.

(b) Any existing or proposed air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting siting criteria approved by the Administrator or an appropriate military service on military airports, the location and height of which are fixed by its function.

(c) Any construction or alteration for which notice is required by any other FAA regulation.

(d) Any construction or alteration, which, pursuant to the conditions of a Federal grant, requires an approved current airport layout plan.

(e) Any antenna structure of 20 feet or less in height that would not increase the height of an existing antenna structure or other structure that previously required or would require notice under this part.

§ 77.19 Acknowledgment of notice.

(a) The FAA acknowledges in writing the receipt of each notice submitted under § 77.15.

(b) If the construction or alteration proposed in a notice is one for which lighting or marking standards are prescribed in the FAA Advisory Circular AC 70/7460–1 entitled "Obstruction Marking and Lighting," the acknowledgment contains a statement to that effect and a statement on how the structure should be marked and lighted in accordance with the advisory circular.

(c) The acknowledgment will state that an aeronautical study of the proposed construction or alteration has resulted in a determination that the construction or alteration:

(1) Is not identified as an obstruction under any standard of subpart C of this part and would not have an adverse effect on air navigation;

(2) Is identified as an obstruction under the standards of subpart C but would not have a substantial adverse effect on air navigation;

(3) Is identified as an obstruction under the standards of subpart C and further aeronautical study is necessary to determine whether it would be a hazard to air navigation, that the sponsor may request further study within 30 days, and that, pending completion of any further aeronautical study, it is presumed the construction or alteration would be a hazard to air navigation; or

(4) Is not identified, as an obstruction under any standard of subpart C of this part, but further aeronautical study is necessary to determine whether it would be a hazard to air navigation. Pending completion of any further aeronautical study it is presumed that the construction or alteration would be a hazard to air navigation.

§ 77.21 Supplemental notice requirements.

(a) Each sponsor who plans to initiate construction or alteration that was the

subject of a notice under this subpart and is advised by an FAA regional office that a supplemental advance notice of construction is required, shall submit such notice on FAA Form 7460–2 to be received within the time limits specified by the requesting FAA regional office. If no time limit has been specified, then the supplemental advance notice of construction shall be submitted in sufficient time so as to be received by the requesting FAA regional office at least 5 days before the start of construction.

(b) Each sponsor who undertakes construction or alteration requiring notice under this subpart shall, within 5 days after such construction or alteration reaches its greatest height, submit a supplemental notice on FAA Form 7460–2 to the FAA regional office having airspace jurisdiction over the area involved provided—

(1) The construction or alteration is more than 200 feet in height above the ground level at its site; or

(2) An FAA regional office advises that submission of the form is required.

(c) Each sponsor who abandons a construction or alteration project that was the subject of a notice under this subpart and for which a supplemental notice was required, shall notify the FAA regional office having airspace jurisdiction over the area involved, either in writing or on FAA Form 7460–2, within 5 days after the project is abandoned.

(d) Each sponsor who dismantles or suffers the destruction of a construction or alteration that was the subject of a notice under this subpart and for which a supplemental notice was required, shall notify the FAA regional office having airspace jurisdiction over the area involved within 5 days after the construction or alteration is dismantled or destroyed. This notice must be in writing and be submitted on FAA Form 7460–2.

Subpart C—Obstruction Standards

§ 77.23 Scope.

(a) This subpart establishes standards for determining obstructions to air navigation relative to the safe and efficient utilization of navigable airspace by aircraft along with the operation of planned or existing air navigation facilities to include air navigation aids, airports, Federal Airways, instrument approach or departure procedures, and approved off-airway routes. Objects that are identified as obstructions under the standards described in this subpart are presumed to be hazards to air navigation unless an aeronautical study, made in accordance with subpart D of this part, determines otherwise. Once an aeronautical study has been initiated, the standards listed in appendix A of this part, in addition to those listed in this subpart, shall be used to determine if the object being studied would constitute a hazard to air navigation. The standards in this subpart apply to existing and proposed manmade objects as well as to objects of natural growth and terrain. These standards will be applied with reference to an existing airport facility or use as well as to a planned facility or use, if a proposal for such a facility or use is on file with the FAA or with the appropriate military service on the date the § 77.15 notice is filed.

(b) At those airports having defined runways with specially prepared hard surfaces, the primary surface for each such runway extends 200 feet beyond each end of the runway. At those airports having defined strips or pathways that are used regularly for aircraft takeoffs and landings and have been designated by the appropriate authority as runways, but do not have specially prepared hard surfaces, each end of the primary surface for each such runway shall coincide with the corresponding end of the runway. At those airports, excluding seaplane bases, having a defined landing and takeoff area with no defined pathways for aircraft takeoffs and landings, a determination shall be made as to which portions of the landing and takeoff area are regularly used as landing and takeoff pathways. Those pathways so determined shall be considered runways and an appropriate primary surface as defined in § 77.27 will be considered as longitudinally centered on each such runway, and each end of that primary surface shall coincide with the corresponding end of that runway.

(c) The standards in this subpart apply to the effect of proposed construction or alteration upon an airport (including heliports, vertiports and seaplane bases), if, at the time of filing of the notice required by § 77.15, that airport is—

(1) Available for public use and is listed in the Airport/Facility Directory, Supplement Alaska, or Supplement Pacific of the U.S. Government Flight Information Publications; or

(2) A planned or proposed airport or an airport under construction that is the subject of a notice or proposal on file with the FAA, and with the exception of military airports, where there is a clear indication the airport will be available for public use; or,

(3) An airport that is operated by a Federal agency or an armed force of the United States.

§ 77.25 Standards for determining obstructions.

(a) An object, including a mobile object, is an obstruction to air navigation if it is of greater height than any of the following heights or surfaces—

(1) A height of 500 feet above ground level at the site of the object.

(2) A height that is 200 feet above ground level or above the established airport elevation, whichever is higher, within 3 nautical miles of the established reference point of an airport, excluding heliports or vertiports, with its longest runway more than 3,200 feet in actual length, and that height increases in the proportion of 100 feet for each additional nautical mile from the airport up to a maximum of 500 feet.

(3) A height within a terminal instrument flight procedures area, including an initial approach segment, a departure area, and a circling approach area, which would result in the vertical distance between any point on the object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance, or which would require additional or new ceiling and/or visibility restrictions or a change in flight procedures applicable to departures within that area;

(4) A height within an en route obstacle clearance area, including turn and termination areas, of a Federal Airway or approved off-airway route that would require an increase of an existing or planned minimum obstacle clearance altitude; or

(5) The surface of a takeoff and landing area of an airport or any imaginary surface established under § 77.27, § 77.28, or § 77.29. However, no part of the takeoff or landing area itself will be considered an obstruction.

(b) Except for traverse ways on or near an airport with an operative ground traffic control service furnished by an airport traffic control tower or by the airport management and coordinated with the ATC service, a traverse way used or to be used for the passage of mobile objects will be considered, for purposes of paragraph (a) of this section, to be an object of a height equal to the elevation of the traverse way increased by—

(1) Seventeen feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are

designed for a minimum of 17 feet vertical distance.

(2) Fifteen feet for any other public roadway.

(3) For a private road, ten feet or the height of the highest mobile object, whichever is greater, that would normally traverse the road.

(4) Twenty-three feet for a railroad.

(5) For a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

(c) An object is identified as an obstruction to air navigation if an engineering analysis discloses that it would cause electromagnetic interference with aeronautical communications or air navigation aids signals, transmissions, or reception, or if it would be in conflict with any air navigation or communication aid siting criteria limitation established by the FAA in other publications listed in appendix A of this part.

§ 77.27 Civil airport imaginary surfaces.

(a) *General.* The civil airport imaginary surfaces in this section are established in relation to the airport and each runway end to identify those objects that may affect airport planning and arrival or departure procedures. The imaginary surfaces are necessarily lower than required aircraft operational surfaces in order to identify obstructions which are potential hazards to air navigation. The size of each imaginary surface is based on the category of each runway according to the type of procedure available or planned for that runway. The slope and dimensions of the surface applied to each end of a runway are determined by the most precise departure or arrival procedure existing or planned for that runway end.

(b) *Primary surface.* A surface longitudinally centered on a runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. At those airports having defined runways with specially prepared hard surfaces or planned hard surfaces, the primary surface extends 200 feet beyond each end of the runway; but when the runway has no specially prepared hard surfaces or planned hard surface, or the sea lanes of a seaplane base are outlined by visual markers, the primary surface ends at each end of the defined runway. The width of the primary surface of a runway will be that width prescribed in this section for the most precise approach procedure existing or planned for either end of that runway as follows—

(1) 250 feet for visual utility runways;

(2) 500 feet for—

(i) Visual runways other than utility runways; or

(ii) Nonprecision instrument runways with visibility minimums greater than three-fourths of a statute mile;

(3) 1,000 feet for—

(i) Nonprecision instrument runways with visibility minimums of three-fourths of a statute mile or less; or

(ii) Precision-instrument runways.

(c) *Approach surface.* A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. This surface is applied to each end of the primary surface of a runway based upon the type of procedure available or planned for that runway end. The runway centerline elevation at the runway end is the elevation from which the surface begins.

(1) The inner edge of the surface is the same width as the primary surface and expands uniformly to a width of—

(i) 1,250 feet for a visual, utility runway;

(ii) 1,500 feet for a visual runway other than utility runway;

(iii) 2,000 feet for a nonprecision instrument utility runway with visibility minimums greater than three-fourths of a statute mile;

(iv) 3,500 feet for a nonprecision instrument runway, other than a utility runway, with visibility minimums greater than three-fourths of a statute mile;

(v) 4,000 feet for that end of each nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths of a statute mile;

(vi) 16,000 feet for a precision instrument runway.

(2) The surface extends for a horizontal distance of:

(i) 5,000 feet at a slope of 20 to 1 for all nonprecision instrument utility runways with visibility minimums greater than three-fourths statute mile and for all visual runways;

(ii) 10,000 feet at a slope of 34 to 1 for all nonprecision instrument runways, except for utility runways with visibility minimums greater than three-fourths of a statute mile;

(iii) 10,000 feet at a slope of 50 to 1 with an additional 40,000 feet at a slope of 40 to 1 for all precision instrument runways.

(3) The outer width of the surface to an end of a runway will be that width prescribed in this subsection for the most precise procedure existing or planned for that runway end.

(d) *Transitional surface.* These surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 7 to 1 from the sides of the primary surface and from the sides of the approach/departure surfaces. Transitional surfaces for those portions of a precision approach surface which project through and beyond the limits of the conical surface as defined in paragraph (f) of this section, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

(e) *Horizontal surface.* A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is—

(1) 5,000 feet for all runways designated as utility or visual;

(2) 10,000 feet for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest value determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded in constructing the perimeter of the horizontal surface.

(f) *Conical surface.* A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

§ 77.28 Military airport imaginary surfaces.

(a) *Related to airport reference points.* These surfaces apply to all military airports. For the purposes of this section, a military airport is any airport operated by an armed force of the United States.

(1) *Inner horizontal surface.* A plane that is oval in shape at a height of 150 feet above the established airfield elevation. The plane is constructed by scribing an arc with a radius of 7,500 feet about the centerline at the end of each runway and interconnecting these arcs with tangents.

(2) *Conical surface.* A surface extending from the periphery of the inner horizontal surface outward and upward at a slope of 20 to 1 for a horizontal distance of 7,000 feet to a height of 500 feet above the established airfield elevation.

(3) *Outer horizontal surface.* A plane located 500 feet above the established airfield elevation, extending outward from the outer periphery of the conical surface for a horizontal distance of 30,000 feet.

(b) *Related to runways.* These surfaces apply to all military airports.

(1) *Primary surface.* A surface located on the ground or water longitudinally centered on each runway with the same length as the runway. The width of the primary surface for runways is 2,000 feet. However, at established bases where substantial construction has taken place in accordance with a previous lateral clearance criteria, the 2,000-foot width may be reduced to the former criteria.

(2) *Clear zone surface.* A surface located on the ground or water at each end of the primary surface, with a length of 1,000 feet and the same width as the primary surface.

(3) *Approach clearance surface.* An inclined plane, symmetrical about the runway centerline extended, beginning 200 feet beyond each end of the primary surface at the centerline elevation of the runway end and extending for 50,000 feet. The slope of the approach clearance surface is 50 to 1 along the runway centerline extended until it reaches an elevation of 500 feet above the established airport elevation. It then continues horizontally at this elevation to a point 50,000 feet from the point of beginning. The width of this surface at the runway end is the same as the primary surface, it flares uniformly, and the width at 50,000 feet is 16,000 feet.

(4) *Transitional surfaces.* These surfaces connect the primary surfaces, the first 200 feet of the clear zone surfaces, and the approach clearance surfaces to the inner horizontal surface, conical surface, outer horizontal surface or other transitional surfaces. The slope or the transitional surface is 7 to 1 outward and upward at right angles to the runway centerline.

§ 77.29 Airport imaginary surfaces for heliports or vertiports.

(a) *Heliport/vertiport primary surface.* The area of the primary surface coincides in size and shape with the designated takeoff and landing area of a heliport or vertiport. This surface is a horizontal plane at the elevation of the established heliport/vertiport elevation.

(b) *Heliport/vertiport approach surface.* The approach surface begins at each end of a heliport/vertiport primary surface, has the same width as the primary surface, and extends outward and upward for a horizontal distance of 4,000 feet where its width is 500 feet. The slope of the approach surface is 8 to 1 for civil and military heliports/vertiports.

(c) *Heliport/vertiport transitional surfaces.* These surfaces extend outward and upward from the lateral boundaries of the heliport/vertiport primary surface and from the approach surfaces at a slope of 2 to 1 for a distance of 250 feet measured horizontally from the centerline of the primary and approach surfaces.

Subpart D—Aeronautical Studies of Effect of Proposed Construction on Navigable Airspace

§ 77.31 Scope.

(a) This subpart applies to aeronautical studies of each proposed construction or alteration for which notice to the Administrator is required under § 77.15 to determine whether the aeronautical effects of the specific proposal and, where appropriate, the cumulative effects resulting from the proposed construction or alteration when combined with the effects of other existing or proposed structures, would constitute a hazard to air navigation.

(b) The obstruction standards set forth in subpart C of this part are supplemented by other standards used in determining the effect on the navigable airspace of a proposed construction or alteration. The standards used to supplement subpart C obstruction standards are contained in FAA publications relating to the establishment of airports, aeronautical operations and procedures, aircraft operational limitations, air navigation aids, utilization of airports, controlled airspace, minimum flight altitudes, terminal instrument procedures, and weather factors. FAA documents containing these standards are listed in appendix A of this part.

§ 77.33 Initiation of studies.

An aeronautical study is conducted by the FAA—

(a) Upon the request of the sponsor of any construction or alteration for which a notice is submitted under Subpart B of this part; or,

(b) Whenever the FAA determines a study to be appropriate.

§ 77.35 Evaluating aeronautical effect.

(a) The Manager, Air Traffic Division, or his designee, of the FAA region in which the proposed construction or alteration would be located conducts aeronautical studies of proposals to which this subpart applies under agency procedures for nonrule actions. These studies reflect the impact on aeronautical operations, procedures, and safety of flight. The studies also include consideration of operational, procedural, and air navigation/communication facility requirements:

(1) Relating to visual and instrument flight rules operations, ATC, obstruction marking and lighting, airport traffic patterns, and other concentrations of air traffic;

(2) In reference to the airport capacity of existing public-use airports and public-use airport development plans on file with the Administrator;

(3) Regarding minimum obstacle clearance altitudes, minimum instrument flight rules altitudes, approved or planned instrument approach procedures, and departure procedures;

(4) Relating to the potential effect on ATC radar, direction finders, airport traffic control tower line-of-sight visibility and physical or EMI effects on air navigation and communication facilities; and

(5) In relation to the aeronautical effects resulting from the proposed construction or alteration of a structure when combined with the effects of other existing or proposed structures.

(b) During the factfinding phase of an aeronautical study, the Manager, Air Traffic Division, or his designee may—

(1) Solicit comments from all interested persons;

(2) Evaluate aeronautical comments received on the proposal in order to define and seek solutions to any problem areas;

(3) Negotiate with the construction sponsor to revise the proposal so that the proposed structure would no longer be identified as an obstruction to air navigation;

(4) Examine possible changes in the construction proposal that would preserve and protect the navigable airspace including the grouping of antennae and the single structure multiple antenna concept for radio and television towers whenever possible;

(5) Examine possible changes in aircraft operations and procedures that could accommodate the proposal without having a substantial adverse effect on those operations and procedures; and/or

(6) Conduct an informal airspace meeting with all interested persons to gather additional aeronautical facts relevant to the effect of the proposed construction or alteration on the safe and efficient use of the navigable airspace by aircraft.

(c) If the sponsor withdraws the proposed construction or alteration or revises it so that it is no longer identified as an obstruction or if no further aeronautical study is necessary, the Manager, Air Traffic Division, or his designee, shall terminate the study.

(d) The conclusion of a study made under this subpart is normally a determination as to whether the specific

proposal studied would be a hazard to air navigation.

§ 77.36 Determinations.

(a) The Manager, Air Traffic Division, or his designee shall issue a determination as to whether the proposed construction or alteration would be a hazard to air navigation and shall advise all known interested persons.

(b) Determinations will be based upon the aeronautical study findings and will—

(1) Identify the effects of the proposed structure on VFR/IFR aeronautical departure/arrival operations, procedures, minimum flight altitudes, and existing or proposed public-use airports for which a notice or plan is on file with the FAA, and the extent of the physical and/or EMI effect on the operation of existing or proposed air navigation facilities or communication aids, including an explanation of whether the effect is substantial. The cumulative adverse effects that would result from the proposed construction or alteration will be considered in determining whether a substantial adverse effect is created. A finding of substantial adverse effect will result in the issuance of a determination of hazard to air navigation;

(2) List any conditional provisions of a determination. Routinely, the conditions specified pertain to the obstruction marking and lighting of a structure. However, there can be other conditions necessary to ensure that the proposal would not be a hazard to air navigation;

(3) State any limitations in determinations of no hazard to air navigation when considered necessary to minimize potential problems, such as the use of temporary construction equipment; and

(4) Specify supplemental notice requirements.

(c) When it is determined that the proposed construction or alteration will require a change in departure and arrival routes or airport traffic patterns, a statement to that effect will be included in the determination.

§ 77.37 Petitions for discretionary review.

(a) The sponsor of any proposed construction or alteration, or any person who stated a substantive aeronautical comment on a proposal in an aeronautical study, or any person who has a substantive aeronautical comment on the proposal but was not given an opportunity to state it, may petition the Administrator for a discretionary review of a determination, revision, or extension of a determination issued by a Manager, Air Traffic Division, or his designee. This paragraph does not apply to an acknowledgment issued under § 77.19(c)(1).

(b) An original and three copies of each petition for a discretionary review submitted under this subpart must be filed with or mailed by certified mail to the Administrator within 45 days after the issuance of a determination under §§ 77.19, 77.36, or a revision or extension of the determination under § 77.40; and must—

(1) Contain a full statement of the aeronautical basis upon which the petition is made; and

(2) Present new information or facts not previously considered or discussed during the aeronautical study, including valid aeronautical reasons why the determination, revisions, or extension made by the Manager, Air Traffic Division, or his designee should be reviewed; and/or

(3) Identify and explain the basis of the petition, if the petition for a discretionary review is based upon an error in reasoning, interpretation of procedures, application of obstruction standards, or assumptions of fact.

(c) In the event that the last day of the 45-day filing period falls on a Saturday, Sunday, or Federal holiday, the last day of the filing period shall be the next day which is not one of the aforementioned days.

(d) The petitioner, or the sponsor, if other than the petitioner, and the FCC, where appropriate, will be informed of the filing of the petition and that a determination is not and will not become final pending disposition of the petition.

(e) The Administrator or his designee examines each petition submitted under this subpart and decides if a discretionary review based on written materials will be granted.

(f) If a discretionary review is granted, the Administrator or his designee shall inform the petitioner and the sponsor, if other than the petitioner, of the issues to be studied and reviewed if different than the issues presented in the petition or the determination.

(g) If it is determined that a discretionary review should be denied, then the petitioner, the sponsor, if other than the petitioner, and the FCC, where appropriate, shall be notified of the basis for the denial along with the fact that the determination is final.

§ 77.39 Determination effective period.

(a) The determination made under this subpart or subpart B is final 55 days after the date of issuance, unless a petition is filed with the Administrator within 45 days after issuance. Filing of the petition is effective upon receipt by the Administrator. If no petition is filed, the determination becomes final on the effective date. If a valid petition is filed, the determination will not become final pending disposition of the petition.

(b) Unless extended, revised, or terminated, each final determination of no hazard to air navigation made under this subpart or subpart B expires 18 months after the effective date of the determination, or on the date the proposed construction or alteration is abandoned, whichever is earlier.

(c) A final determination of hazard made under this subpart or subpart B of this part has no expiration date.

(d) In any case in which a final determination made under this subpart or subpart B of this part relates to proposed construction or alteration that may not be started unless the Federal Communications Commission issues an appropriate construction permit, the effective period of each final determination includes—

(1) The time required to apply to the Commission for a construction permit, but not more than 6 months after the effective date of the determination; and

(2) The time necessary for the Commission to process the application except in a case where the Administrator determines a shorter effective period is required by the circumstances.

(e) If the Commission issues a construction permit, the final determination is effective until the date prescribed for completion of the construction. If the Commission refuses to issue a construction permit, the final determination expires on the date of its refusal.

§ 77.40 Extension or reconsideration of determination of no hazard to air navigation.

(a) Any person may petition the Manager, Air Traffic Division, or his designee who issued the final determination of no hazard to air navigation under this subpart or Subpart B to revise or reconsider the determination based on new facts that change the basis upon which it was made or to extend the effective period of determination, if—

(1) The proposed construction or alteration has not started by actual structural work, such as the laying of a foundation, but not including excavation; and

(2) The petition is submitted at least 30 days before the expiration date of the final determination of no hazard to air navigation.

(b) The Manager, Air Traffic Division, or his designee who issued the final

determination of no hazard to air navigation examines each petition presented under this section and revises, extends, or affirms the original expiration date of the determination. A determination of no hazard to air navigation issued for those construction or alteration proposals not subject to FCC licensing may be extended by the Manager, Air Traffic Division, or his designee one time for a period not to exceed 6 months.

(c) Those determinations issued for proposals subject to FCC licensing, after further review, may be granted extensions for 12 months or less, provided that—

(1) A sponsor submits evidence that an application for a construction permit/license has been filed with the FCC for the associated site; and

(2) A sponsor submits evidence that additional time is warranted due to FCC requirements.

(d) Where the FCC issues a construction permit, a final determination is effective until the initial date prescribed for completion of the construction. If an extension of the completion date is needed, an extension of the determination is required.

Appendix A—FAA Documents Used in Aeronautical Studies

Document and Number

Spectrum Management Regulations and Procedures Manual—6050.32
Primary/Secondary Terminal Radar Siting Handbook—6310.6
Primary/Secondary Enroute Radar Siting Handbook—6340.15
VORTAC Siting Criteria—6700.11
Siting Criteria for Instrument Landing Systems—6750.16
Standard Instrument Departure (SID)—7100.8
Standard Terminal Arrival (STAR)—7100.9
Air Traffic Control—7110.65
Charted Visual Flight Procedures—7110.79
Holding Pattern Criteria—7130.3
Facility Operations & Administration—7210.3
Enroute Minimum IFR Altitude (MIA) Sector Charts—7210.37
Procedures for Handling Airspace Matters—7400.2
United States Standard Flight Inspection Manual—8200.1
United States Standard for Terminal Instrument Procedures (TERPS)—8260.3
Flight Procedures & Airspace—8260.19
Vertiport Design—Advisory Circular (AC) 150/53
Airport Design—AC 150/5300-13
Heliport Design—AC 150/5390-2
Obstruction Marking and Lighting—AC 70/7460-1
Proposed Construction or Alteration of Objects That May Affect the Navigable Airspace—AC 70-7470-2
General Operating & Flight Rules—Subpart B, Federal Aviation Regulations (FAR) Part 91
Certification and Operations; Land Airports Serving Certain Air Carriers—FAR Part 139

Issued in Washington, DC on July 25, 1990.

Jerry W. Ball,

Acting Director, Airspace Rules and Aeronautical Information Division.

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Friday
August 3, 1990

Part IV

Department of Education

Grants to Institutions To Encourage Minority Participation in Graduate Education Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.202]

Grants to Institutions to Encourage Minority Participation in Graduate Education Program

Notice inviting applications for new awards for fiscal year 1991.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program, and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide grants to enable institutions of higher education to make available fellowship aid to talented undergraduate students who demonstrate financial need and are from minority groups that are underrepresented in graduate education in order to provide those students with effective preparation for graduate study.

Deadline for Transmittal of Applications: September 14, 1990.

Deadline for Intergovernmental Review: November 14, 1990.

Available Funds: $6,100,000.

Estimated Range of Awards: $30,000–$150,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 61.

Project Period: 6 weeks to one-year. Activities must begin summer 1991.

Note:

The Department is not bound by any estimates in this notice.

Applicable Regulations:

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 82 (New Restrictions on Lobbying), part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

Description of Program:

The Grants to Institutions to Encourage Minority Participation in Graduate Education Program is authorized by part A of title IX of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (20 U.S.C. 1134–1134b). Grants under this program are designed to enable institutions of higher education to identify, recruit, and make available fellowship aid to talented undergraduate students who demonstrate financial need and are from minority groups which are underrepresented in graduate education in order to provide those students with an opportunity to participate in a program of research and scholarly activities designed to provide them with effective preparation for graduate study. The program of study must consist of summer research internships augmented by seminars and other educational experiences.

All funds received under this program must be used for direct fellowship aid. Fellowships should provide an opportunity for fellows to spend from six to ten weeks during the summer on a grantee's campus participating in research and scholarly activities in an environment that is encountered in graduate and professional programs.

Note

For guidance purposes only, the Secretary suggests that applicants consider "minority" to mean American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander, or other ethnic groups underrepresented in graduate education.

Eligibility

(a) An institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended (HEA), is eligible to apply for a grant to conduct a fellowship program.

Note

The Secretary encourages each institution of higher education to submit only one consolidated application rather than separate applications for different academic departments.

(b) An individual is eligible to apply for a fellowship if the individual—

(1) Is a talented undergraduate student;

(2) Demonstrates financial need;

(3) Is from a minority group that is underrepresented in graduate education; and

(4)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Republic of Palau or the Commonwealth of the Northern Mariana Islands.

(c) The institution of higher education is responsible for making accurate determinations concerning the criteria paragraph (b) of this section of the notice.

(d) Additional eligibility requirements may be established by the institution of higher education.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) The Criteria

(1) Meeting the Purposes of the Authorizing Statute (30 points)

The Secretary reviews each application to determine how well the project will meet the purpose of Part A of Title IX of the HEA, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of Part A of Title IX of the HEA.

(2) Extent of Need for the Project (20 points)

The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in Part A of Title IX of the HEA, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) Plan of Operation (28 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Note: Part A of Title IX of the HEA requires that fellowship awards be made to talented students from minority groups underrepresented in graduate education.

(4) Quality of Key Personnel (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) 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.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) Budget and Cost Effectiveness (5 points)

The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) Evaluation Plan (5 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—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) Adequacy of Resources (5 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Note: Part A of Title IX of the HEA provides that all funds received under this program be used for direct fellowship aid.

(c) *Additional considerations required by the statute.* (1) In making awards under this program, the Secretary shall consider the quality of an applicant's plan for recruiting students, and the quality of the program of study and of the research in which the students will be involved.

(2) The Secretary will ensure an equitable geographic distribution among public and private institutions of higher education.

Intergovernmental Review of Federal Program

This 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 September 15, 1989, pages 38342–38343.

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 #84.202A, 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 application (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 this address is not the same address as the one to which the applicant submits its completed application. Do not send application 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 #84.202A), 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 #84.202A), Room 3633, Regional Office Building, #3, 7th and D Street, 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) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the applications, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application 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 424b).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug Free Workplace requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009, Rev. 12/88) and instructions.

Note: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

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 the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Mr. Walter T. Lewis, Program Manager, U.S. Department of Education, Division of Higher Education Incentive Programs, Mail Stop 5251, 400 Maryland Avenue SW., room 3022, ROB–3, Washington, DC 20202–5251, Telephone: (202) 708–9393.

Authority: 20 U.S.C. 1134–1134b.

Dated: July 25, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

Appendix

BILLING CODE 4000–01–M

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 . 2 0 2

TITLE: Grants to Institutions to Encourage Minority Participation in Graduate Education

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

Authorized for Local Reproduction

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.

Item: Entry:

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.)

SF 424 (REV 4-88) Back

BILLING CODE 4000-01-C

Part II—Budget Information

Grants to Institutions To Encourage Minority Participation in Graduate Education Program

Awards made to institutions under this program must be used exclusively to provide direct fellowship aid. Include below the breakdown of Federal funds requested for student expenses:

	Total costs
Students cost:[1]	
A. Room and board	
B. Transportation	
C. Tuition	
D. Other applicable expenses	
Total Federal request	
Total number of fellowships requested	
Number of weeks of seminar/institute	
List academic area or areas:	
Beginning and end dates of students' fellowship activities:	
Start:	
End:	
Instruction:	

[1] Calculate each student's need-based stipend for applicable expenses, including room and board, transportation and tuition for courses for which credit is given, following the procedures used by the applicant's student financial aid office. The students' need should be calculated pursuant to part F of title IV of the higher Education Act of 1965, as amended.

Indicate within the total cost of the students cost the amounts charged for each of the specific categories listed above.

B. Transportation costs may include the cost of one round-trip from the student's residence to campus and return, if applicable, and other travel required as part of the program of study.

Non-allowable costs: Administrative cost nor indirect cost rate.

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)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

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

SF 424B (4-88) Back

BILLING CODE 4000-01-C

Appendix—Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the purpose of the program, description of the program and the selection criteria the Secretary uses to evaluate applications. Applicants should address the selection criteria in the order the criteria are listed in this application notice.

The narrative should encompass each function or activity for which funds are being requested and should—

(1) Begin with a one-page Abstract; that is, a summary of the proposed project;

(2) Include information regarding—(a) the program of study to take the form of summer research internships, seminars, and other educational experiences; (b) the institution's plan for identifying and recruiting talented minority undergraduates; (c) the participation of faculty in the program and a detailed description of the research in which the students will be involved; and (d) a plan for the evaluation of the effectiveness of the program.

(3) Include a description of the financial need analysis system or method to be used in determining the level of each fellow's financial need-based stipends, room and board costs, transportation costs, and tuition for courses for which credit is given;

(4) Include information regarding the number of students you propose to recruit to participate in the program from each minority group that is underrepresented in graduate education; and

(5) Include any other pertinent information that might assist the Secretary in reviewing the application. An institution may submit only one application except that those institutions with separate campuses or branches with self-contained faculty and administration may submit an application form for each campus.

Estimated Public Reporting Burden

Under 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 of information is estimated to average four 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 1840–0603, Washington, DC 20503.

(Information collection approved under OMB control number 1840–0603. Expiration date: (May 1991)

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 of 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 interst, 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 CFR 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 (Pub. 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 (Pub. 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) sections 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 non-discrimination 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 (Pub. 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.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to 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 (Pub. 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 (Clean Air) Implementation Plans under section 176(c) of the Clean 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, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. 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 Pub. 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 (Pub. 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 _____

BILLING CODE 4000—01—M

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies 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 application 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 had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to 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 an on-going 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 in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar 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, consistent with the requirements of the Rehabilitation Act of 1973, as amended; 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 may 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)

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

BILLING CODE 4000-01-C

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, § 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

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 representative 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.

BILLING CODE 4000-01-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

[FR Doc. 90-18128, Filed 8-2-90; 8:45 am]
BILLING CODE 4000-01-C

federal register

Friday
August 3, 1990

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 493

Clinical Laboratory Improvement Act Programs; Fee Collection; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 493

[HSQ-177-P]

RIN 0938-AE28

Clinical Laboratory Improvement Act Programs; Fee Collection

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement provisions of section 353 of the Public Health Service Act (as amended by the Clinical Laboratory Improvement Amendments of 1988) by requiring laboratories to pay fees on a biennial basis for issuance of provisional certificates, certificates of waiver, certificates of accreditation, or certificates and to fund activities to determine compliance with the requirements established by the Department of Health and Human Services (HHS) for laboratory testing and issuance of certificates and renewal of certificates. It would also establish the methodology used to determine the amount of the fees charged for certificates of waiver, provisional certificates, certificates of accreditation, or certificates and activities to establish application procedures and determine compliance with applicable certification requirements.

DATES: To ensure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5 p.m. on October 2, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-177-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitation, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code HSQ-177-P. Comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone 202-245-7890).

Please address comments on information collection requirements to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron, HCFA Desk Officer.

COPIES: To order a copy of this proposed rule, please cite HSQ-177-P, CLIA '88: Fee Collection (Stock No. 069-001-00021-1). The cost for each copy ordered is $1.50. To order by mail, enclose a check made out to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date and send it to the Superintendent of Documents, Washington, DC 20402-9325. Credit card orders can also be placed by calling (202) 783-3238 or by faxing to (202) 275-0019.

FOR FURTHER INFORMATION CONTACT:
Jeffrey A. Clark, (301) 966-6802 (regarding fee amounts).
Rhonda Whalen, (301) 966-6801 (regarding operational issues).

SUPPLEMENTARY INFORMATION:

I. Background

A. Federal Oversight

Before the establishment of HCFA in 1977 and the signing of an interagency agreement, the Public Health Service (PHS) was responsible for the Clinical Laboratories Improvement Act of 1967 (CLIA '67) program. Currently, under an interagency agreement and a memorandum of understanding (MOU) with the PHS, through the Centers for Disease Control (CDC), HCFA has inspection and administrative responsibility for both the Medicare and CLIA programs. In addition, HCFA has responsibility for the development of the Federal requirements for laboratories but relies heavily on the PHS, and specifically CDC, and the Food and Drug Administration for technical and scientific expertise in the establishment of regulations. The most recent MOU between HCFA and CDC further delineates responsibilities by specifying that HCFA is responsible for developing regulations that relate to Medicare and CLIA.

B. Legislative History

Currently, under Public Law 90-174 (CLIA '67) laboratories engaged in testing in interstate commerce must meet the requirements of section 353 of the Public Health Service Act (42 U.S.C. 263a) in order to be licensed or remain licensed for testing in interstate commerce. In October 1988, Public Law 100-578 (Clinical Laboratory Improvement Amendments of 1988 (CLIA '88)) amended section 353 of the Public Health Service Act (PHSA) to expand the authority for the regulation of laboratories with some provisions having varying effective dates depending on whether or not the laboratory was subject to CLIA '67 on December 31, 1988. The provisions that are the subject of this proposed rule have the following effective dates: The fee provisions (section 353(m) of PHSA) are effective for all laboratories January 1, 1989; the application provisions (section 353(d) of PHSA) are effective for all laboratories January 1, 1990; the provision in section 353(g)(2) relating to inspection and the provision in section 353(f)(1)(C) relating to personnel qualifications are effective January 1, 1990 for laboratories that were subject to CLIA '67 on December 31, 1988, and on July 1, 1991 for all other laboratories.

Prior to the 1988 amendments, only those laboratories performing interstate testing were subject to the provisions of CLIA '67. CLIA '67 included a provision that authorized the Secretary of HHS to collect fees from approved laboratories for the issuance and renewal of CLIA licenses. The fee was set at $25 for each test category with a $125 cap on the amount any laboratory would be required to pay. However, the fee was ultimately eliminated because the administrative costs required for collection exceeded the revenue derived from the fees.

The CLIA '88 amendments require that any entity performing laboratory testing have a certificate, certificate of accreditation, or certificate of waiver and comply with the standards for laboratory testing established by HHS. In addition, section 353(m) of the PHSA, as amended by CLIA '88, requires the HHS to impose fees for the issuance and renewal of certificates, certificates of waiver, and accreditation certificates and for determining program compliance. Although the fee required for issuance and renewal of a certificate of waiver is to be only a nominal fee, the overall fees for certificates and certificates of accreditation must be sufficient to cover the general costs of administration incurred by HHS in carrying out the provisions of section 353 of the PHSA, including evaluating and monitoring approved proficiency testing programs and accreditation bodies and implementing and monitoring compliance with the requirements of section 353 of the

PHSA. The fees imposed for determining compliance must also be sufficient to cover the costs incurred by HHS in inspecting laboratories that are not accredited and in performing proficiency testing of laboratories that do not participate in approved testing programs. Section 353(m) also requires that the fees imposed vary by group or classification of laboratory, based on such considerations as HHS determines are relevant.

HHS is also required, under section 353(n) of the Public Health Service Act, on April 1, 1990, and annually thereafter, to compile and make available to physicians and the general public information that HHS determines is useful in evaluating the performance of a laboratory. This information must include a listing of laboratories whose certificates have been revoked, suspended or limited and those laboratories that have been subjects of intermediate sanctions, exclusion from Medicare or Medicaid, injunctions or withdrawal of accreditation. Additionally, sections 353(e)(2)(D) and 353(e)(3) of the PHSA require HHS to evaluate annually the performance of each approved accreditation body and submit an annual report to Congress that describes the results of that evaluation.

Section 6141 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) requires that laboratories participating in the Medicare program comply with CLIA 88 requirements. Only laboratories that have a current unrevoked and unsuspended certificate of waiver, provisional certificate, certificate, or certificate of accreditation will be eligible for reimbursement in the Medicare or Medicaid programs or both.

C. Additional Background

HCFA issued a separate proposed rule on May 21, 1990 (55 FR 20896) that would establish three categories of laboratories based on testing performed. The categories proposed are: Certificate of Waiver, Level I, and Level II laboratories. The criteria we would use to determine a laboratory's classification are discussed in detail in that proposed rule. However, depending on the content of that final rule, we anticipate that large numbers of laboratories will qualify for certificates of waiver, thereby avoiding inspection fees. That proposed rule would also establish standards to assure consistent performance by laboratories of valid and reliable laboratory examinations and procedures.

In another proposed rule, HCFA will publish the criteria for the evaluation and approval of private and nonprofit organizations, accreditation programs, and State programs. Laboratories accredited or approved by these programs will pay separate fees set by the accrediting bodies or States. They will pay the Federal government only a fee for the certificate or certificate of waiver and a small share of the administrative costs of studies, validation surveys, etc. While this proposed rule discusses provisional certificates, certificates, certificates of waiver, and certificate of accreditation for accredited or State approved laboratories, only provisional certificates and certificates for existing CLIA '67 licensed laboratories will be issued initially when this rule is effective.

Also, although the proposed rule is written to reflect our plans for the final rule implementation with respect to the issuance of certificates, rather than provisional certificates, to those laboratories licensed under CLIA '67 as of December 31, 1988, we plan to initiate interim procedures for issuing CLIA '88 provisional certificates to those laboratories. We are instituting provisional certificates for laboratories licensed under CLIA '67 because, for the majority of these laboratories, their CLIA '67 licenses will expire June 30, 1990, and issuance of licenses under CLIA '67 is no longer valid. We are in the process of establishing the interim procedures and will be notifying CLIA '67 licensed laboratories shortly of the procedures to be followed to receive a provisional certificate. Provisional certificates issued to CLIA '67 licensed laboratories would be valid for a period of not more than 2 years and should allow HHS sufficient time to publish this rule in final, implementing the interim procedures for issuance of CLIA '88 certificates to those laboratories that as of December 31, 1988 were licensed under CLIA '67. Any laboratory that was issued a CLIA '67 license after December 31, 1988 would be issued a provisional certificate. However, after this rule becomes final, we would not propose to issue a certificate to those laboratories until the rule implementing the CLIA '88 standards becomes final.

For laboratories that were exempt from CLIA '67 based on low volume testing or accreditation by the College of American Pathologists (CAP) or licensed by New York State, we propose to issue provisional certificates. Issuance of provisional certificates to CLIA '67 low volume exempt laboratories will allow HHS sufficient time to establish the requirements for issuance of certificates of waiver that may be applicable to these laboratories. We propose to delay conducting inspections of these low volume exempt laboratories until we establish the health and safety standards, including the certificate of waiver provision, in a separate rule. Issuance of provisional certificates to those laboratories subject to CLIA '67 and issued an exemption based on licensure by New York State or accreditation by CAP will allow HHS sufficient time to establish the criteria for recognition of accreditation and State licensure programs. If (after the CLIA '88 standards are published in final and the criteria have been established for recognition of accreditation and State licensure programs) the New York State and CAP programs are recognized, those laboratories would be subject to the provisions for certificates of accreditation. If the New York State licensure program, CAP program, or any other accreditation program is not recognized, the laboratory would be subject to the certification requirements, unless it qualifies for a certificate of waiver. In any case, those laboratories issued CLIA '67 exemptions based on accreditation or licensure would not be subject to inspection under CLIA '88 until the final rules establishing the CLIA '88 standards and implementing the CLIA '88 provision for recognition of accreditation and State programs are published and effective. Certificates of waiver and certificates of accreditation will be issued after the other final rules are effective.

This document proposes interim steps for implementing the certification and fee collection requirements until categories of laboratories are established and the program for determination of compliance is fully operational. It also proposes requirements for certificates of waiver and certificates of accreditation when those regulations are effective.

II. Provisions of the Proposed Rule

This proposed rule would implement section 353(m) of the PHSA by establishing regulations at 42 CFR part 493, subpart F. As proposed at §493.602, it would set forth requirements all laboratories must meet in order to apply for and be issued a certificate under CLIA '88. It would also set forth the methodology for determining the amount of the fees for issuing provisional certificates, certificates, certificates of waiver, and certificates of accreditation, and for the proposed fee schedules for determining compliance with the standards.

This subpart would apply to all entities that perform laboratory testing. This rule would not apply to any

component or function of a laboratory that has been certified by the National Institute on Drug Abuse for the performance of forensic urine drug testing. While the regulation would not list them, "all entities that perform laboratory testing" includes but is not limited to the following—

(a) Laboratories located in physicians' offices (including group medical practices);
(b) Laboratories located in HMOs;
(c) Accredited, nonaccredited and Federal hospitals providing laboratory services;
(d) Laboratories located in skilled nursing facilities;
(e) Laboratories in intermediate care facilities (including intermediate care facilities for the mentally retarded);
(f) Laboratories located in rural health clinics;
(g) Laboratories located in ambulatory surgical centers;
(h) Laboratories located in end-stage renal disease facilities;
(i) Independent laboratories, as defined in § 488.52 of this chapter;
(j) Laboratories exempted from CLIA '67 based on accreditation by the College of American Pathologists, laboratories exempted from CLIA '67 based on New York State licensure, and low volume-exempt laboratories;
(k) Industrial laboratories;
(l) Insurance laboratories;
(m) City, State, and county laboratories;
(n) Federal clinics;
(o) Critical care units;
(p) Laboratories associated with tissue banks and tissue repositories; and
(q) All other laboratories such as Planned Parenthood Clinics, mobile laboratories, and any other facility or entity, including pharmacies and health fairs, that perform qualitative or screening laboratory test procedures or examinations of materials derived from the human body.

However, laboratories that perform research testing on human specimens, but do not report patient specific results for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, an individual patient are exempt from the CLIA '88 regulations.

Under CLIA '67 approximately 1,000 laboratories were exempt from Federal regulation because:

- The laboratories were accredited by the College of American Pathologists (CAP) or approved under the New York State program of laboratory standards enforcement; or
- The laboratories performed fewer than 100 tests in a given category.

CLIA '88 does not provide exemptions based on approval by CAP or New York State or on the volume of testing performed. Therefore, all laboratories are subject to the provisions of section 353 of the PHSA, including payment of fees. CLIA '88 does authorize the recognition of private accreditation programs and State licensure programs for clinical laboratories. Following recognition of accreditation or State licensure programs, laboratories participating in an approved accreditation program or licensed through a recognized State program will not be subject to payment of the individual laboratory inspection fee but will be subject to payment to cover the costs of monitoring a random sample of laboratories for the purpose of evaluating the accreditation program's standards and to a certificate of accreditation fee.

We would establish an exception for those components or functions of laboratories that are certified by the National Institute on Drug Abuse (NIDA) under Executive Order 12564 and section 503 of Public Law 100–71. Components or functions of laboratories that are not certified by NIDA would be subject to these proposed rules. If a laboratory conducts both NIDA certified forensic urine drug testing and other laboratory tests, the laboratory would be subject both to NIDA certification for the forensic urine drug testing and these proposed rules for all other tests, including other urine drug testing, performed by the laboratory. This is consistent with past requirements. Any laboratory not certified by NIDA that engaged in interstate commerce, whether or not it performed forensic testing, was required to have a CLIA '67 license.

In § 493.610, we would, based on section 353(b) of PHSA, prohibit solicitation or acceptance of materials derived from the human body for laboratory examination or other procedure unless the laboratory has an effective provisional certificate issued by HHS or a certificate, certificate of waiver, or certificate of accreditation issued by HHS applicable to the specialty or subspecialty of services offered by the laboratory. In addition, in accordance with section 6141 of Public Law 101–239, laboratories seeking payment in the Medicare program must meet the CLIA '88 requirements and must possess, therefore, a current unrevoked and unsuspended certificate of waiver, provisional certificate, certificate, or certificate of accreditation to be eligible for payment in the Medicare or Medicaid program or both.

In § 493.614, we would outline the procedure a laboratory must follow to obtain a provisional certificate, certificate, certificate of accreditation, or certificate of waiver. (While we discuss certificates of waiver and certificates of accreditation, they will not be issued until requirements for these certificates are established in regulations. In the meantime, we will issue only provisional certificates, and certificates for CLIA '67 licensed laboratories.) We propose to automatically send an application to all laboratories currently licensed and to those laboratories exempted (New York State approved, CAP-accredited and low-volume exempt laboratories) under CLIA '67 and to those laboratories that are Medicare/Medicaid approved. All other laboratories would be required to contact HHS or its designee (at an address to be provided in the final rule) for an application.

We would require that a separate application be made for each laboratory location using a form(s) prescribed by HHS and that the application be signed by the owner, operator or authorized representative of the laboratory.

Based on section 353(d)(1)(A) of the PHSA, the application would require information that describes the characteristics of the test procedures and examinations performed by the laboratory including—

(a) The names of the test procedures and examinations performed and the total number of test procedures and examinations performed annually;
(b) The methodologies for the test procedures and examinations performed; and
(c) The qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the test procedures and examinations.

For those laboratories that hold CLIA '67 licenses, we will evaluate the information contained in their applications for compliance with personnel requirements that have been set forth in the final rule published on March 14, 1990 (55 FR 9533).

Based on the information provided in the application, the certificate issued would be applicable to one or more specialty or subspecialty of services to include the tests performed by the laboratory.

These requirements would create a substantial reporting burden for laboratories, both in initial application and in updating certificates. HHS has little choice because the statute specifies these requirements in fine detail. We solicit suggestions on any ways that burden can be minimized while meeting the legislative requirements. For example, should laboratories be allowed to indicate on application forms that there are several methodologies that they potentially use to perform a particular test, without regard to the methodology most commonly used, in order to avoid the

need to update the certification if one of these methodologies is later added? Could or should the most common tests and methodologies within each specialty be listed on application forms to avoid the need to enter their names by hand? Could preprinted forms be used to summarize the education, training, and experience of each employee on one line rather than submitting a resume on each employee? HHS will carefully review all public comments. Then a standard application with definitions and instructions satisfying CLIA '88 intent will be developed by HHS and reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

In § 493.618, we would require, based on section 353(d)(1) (B) through (D) of PHSA, that in submitting an application for a provisional certificate, a certificate of waiver, certificate of accreditation, or a certificate, a laboratory must agree to the following:

(a) To make records available and submit reports to HHS as HHS may require.

(b) To permit routine inspections by HHS as specified in Subpart N of 42 CFR part 493, except that the effective date of this requirement for laboratories not subject to section 353 of the PHSA as in effect on December 31, 1988, is July 1, 1991. This requirement would not apply to laboratories issued certificates of waiver.

(c) Except for certificate of waiver laboratories, to treat proficiency testing samples in the same manner as it treats materials derived from the human body referred to it for laboratory examinations or other test procedures in the ordinary course of business.

(d) To provide HHS with satisfactory assurances, through an attestation statement signed by the laboratory owner, operator, or authorized representative, that the laboratory will be operated in accordance with the requirements established by the Secretary under section 353 of the PHSA.

The exception provided in (b) above reflects the exception provided in PHSA and means that laboratories not subject to CLIA '67 are not subject to inspections until July 1, 1991.

We propose, in § 493.622, that if HHS denies a laboratory's application for a provisional certificate, certificate, certificate of accreditation, or certificate of waiver or limits its applicable certificate, the laboratory would be given a statement of the grounds on which the denial or limitation is based and an opportunity for a hearing in accordance with procedures set forth in part 498.

If a laboratory that is seeking a certificate of any kind for the first time has its application denied or the applicable certificate limited, it would not be able to conduct business as a laboratory under the PHSA unless the denial or limitation is overturned at the conclusion of the administrative appeals process. We reach this conclusion because, while the statute generally requires a prior hearing in the case of certificate revocations or suspensions, this provision does not encompass the initial denial of a certificate. If a laboratory cannot satisfy the statute's minimal requirements for initial applications, it ought not have the same procedural protections offered by the statute to those laboratories that have not only satisfied those requirements, but that have at least once satisfactorily passed an on-site inspection as well.

As mentioned in section I.C., HHS is proposing to implement interim procedures and policy for the issuance of certificates and collection of fees until it is able to fully implement the requirements of CLIA '88. In § 493.626, we propose to issue a provisional certificate to each laboratory that was not licensed under section 353 of the PHSA as in effect on December 31, 1988, provided that the laboratory meets the application requirements detailed above and pays the applicable fee discussed later in this proposed rule. Following the full implementation of CLIA '88, a provisional certificate would be issued initially to any new laboratory not eligible for a certificate of waiver including a laboratory that is seeking accreditation. The provisional certificate would be issued prior to operation, upon payment of the provisional certificate fee, to permit new laboratories to test specimens and to allow time for HHS to determine compliance with the CLIA '88 standards. Prior to expiration of the provisional certificate, HHS would notify the laboratory of the applicable requirements to obtain a certificate of waiver, a certificate of accreditation, or a certificate and of the amounts of the fees for issuing these certificates and, if applicable, the amount of the fee for determination of compliance. After fee payment, HHS would, if necessary, evaluate the laboratory to determine compliance with the CLIA '88 requirements and, if compliance is confirmed, would issue a certificate. Thereafter, the laboratory would be billed a fee on a biennial basis for a certificate and, if applicable, a fee for the cost of determining compliance.

We also propose that a provisional certificate would be valid for a period of not more than 2 years. If necessary, a provisional certificate would be re-issued until such time as an inspection to determine program compliance can be conducted, or the laboratory demonstrates it qualifies to receive a certificate of waive or certificate of accreditation. We also propose that the provisional certificate would not be renewable. However, HHS would reissue a provisional certificate to any laboratory that HHS or its designee has not had an opportunity to evaluate for compliance with the requirements for certification.

If a laboratory fails to comply with the applicable requirements as specified in the notification by HHS, HHS would suspend or deny Medicare payments, if applicable, and initiate revocation or limitation of a laboratory's provisional certificate and would deny the application for a certificate, certificate of accreditation or certificate of waiver. In this case, HHS would provide the laboratory with a statement of the grounds on which the revocation and denial is based and with an opportunity for a hearing. If the laboratory requires a hearing, the expiration date of the provisional certificate would be extended until a hearing decision by an Administrative Law Judge (ALJ) is issued. The Medicare payments would be suspended or denied pending the hearing decision because the Act authorized termination of payments under Medicare for those laboratories that fail to meet the requirements, with the opportunity for a hearing to occur subsequent to payment suspension or denial. Under CLIA '88, laboratories that do not meet the requirements would be notified of the basis for noncompliance determination and offered an opportunity for a hearing prior to any adverse action, unless HHS determines that the laboratory's deficiencies are such that they constitute an imminent and serious threat to human health.

The statutes differ with respect to hearing procedures ostensibly because suspension or termination of Medicare payments would not affect the laboratory's ability to provide services to non-Medicare patients, whereas suspension or revocation of a CLIA certificate would preclude a laboratory from the performance and reporting of any tests on human specimens regardless of the source of payment.

In § 493.630, we propose to issue a certificate to each laboratory that was licensed under CLIA '67 as of December 31, 1988, provided the laboratory meets the application requirements detailed above and pays the applicable fees discussed later in this proposed rule.

In § 493.631, we have specified the requirements for certificates of waiver

and, in § 493.632, we have specified the requirements for certificates of accreditation, even though the criteria for waiver tests and for recognition of accreditation and State licensure programs will be published in separate rules. These sections are provided to illustrate the different types of certificates HHS plans to issue and the proposed requirements for issuances of a certificate of waiver and certificate of accreditation.

We propose that the certificate, certificate of waiver, or certificate of accreditation issued would be applicable to only those test procedures and examinations performed by the laboratory that were included on the laboratory's application. In accordance with section 353(b) of the PHSA, a laboratory may not perform any test procedure or examination within a specialty or subspecialty that is not included on the laboratory's certificate, certificate of waiver, or certificate of accreditation. Laboratories must notify HHS prior to the performance of any test not included as a waiver test for performance by certificate of waiver laboratories or any test not included on the laboratory's certificate. A laboratory may not perform any "new" test or examination until it has requested and been issued an appropriate revised certificate that covers the examination or procedure. Additionally, we would require that the laboratory must notify HHS or its designee within 6 months of any deletions and/or changes in methodologies for any test procedure or examination for which the laboratory has been issued a certificate, certificate of waiver, or certificate of accreditation. These requirements are specified in section 353(d)(1)(A)(ii) of PHSA. There are no limitations on the tests a laboratory issued a provisional certificate may perform.

We also propose that HHS will initiate revocation or limitation of a laboratory s certificate, certificate of waiver, or certificate of accreditation for failure to comply with applicable requirements. For those laboratories licensed under CLIA '67 on December 31, 1988, the applicable health and safety requirements are contained in part 493. The applicable health and safety requirements for laboratories not licensed under CLIA '67 as of December 31, 1988, will be published in a separate rulemaking. If a determination is made that the laboratory is not in compliance with applicable requirements, the laboratory would be given a statement of grounds on which the revocation or limitation action is based and an opportunity for a hearing. The effective date of the revocation or limitation would not be earlier than the date of decision by an ALJ, unless we find that conditions at the laboratory pose an imminent and serious risk to human health. In such cases, we would suspend or limit the laboratory's certificate before the hearing is held. Failure to meet the applicable requirements could also result in loss of Medicare approval or intermediate sanctions to be specified in a separate proposed rule.

In the interest of administrative efficiency, we are proposing in § 493.634 that a laboratory must notify HHS or its designee within 30 days if changes occur in the laboratory's ownership, name, location, or director.

In § 493.638, we propose that a laboratory must pay a fee for the issuance of a provisional certificate, certificate of waiver, certificate of accreditation, or a certificate, as applicable. We propose that the total fees collected must be sufficient to cover the general cost of administering the laboratory certification program, including evaluating and monitoring proficiency testing programs and accreditation bodies and implementing and monitoring compliance with section 353 of the PHSA. For a certificate of waiver, the fee includes the cost of issuing a certificate of waiver, collection of fees, and analyzing applications to determine if a laboratory should be issued a certificate of waiver. For a certificate of accreditation, the fee includes the cost of issuing a certificate of accreditation, collection of fees, and analyses of standards and administrative policies of programs of accrediting organizations. The fees for the issuance of a provisional certificate, certificate of waiver, certificate of accreditation, or certificate will be assessed biennially. (Our proposed methodology for determining the amounts of the fees is discussed later in this preamble.)

We also propose that the fee would be set annually on a calendar year basis and would be based on schedules, or ranges, of laboratory test volume and scope of specialties tested, with the amounts of inspection fees in each schedule a function of the average hourly rates for the required activities and the average length of time required for the activity. The amount of the fee applicable to the issuance of a provisional certificate or to the issuance or renewal of a certificate would be the fee amount in effect at the time the application is received. Upon receipt of an application for a provisional certificate or an application (or renewal request) for a certificate, certificate of waiver, or certificate of accreditation, we would send the laboratory a notice advising it of the amount of the fee. We also intend to inform the public of the fee amounts each year by publishing a notice containing that information in the Federal Register.

Laboratories would not be subject to the payment of fees until the effective date of the final rule. HCFA would assess fees prospectively after implementation of the final rule. Following implementation of the final rule, laboratories licensed under section 353 of the PHSA as of December 31, 1988 would be notified by mail of the appropriate fee for determination of compliance and issuance of a certificate, and all other laboratories would be notified of the provisional certificate fee.

No certificate (other than for existing laboratories licensed under section 353 of the PHSA as of December 31, 1988) or certificates of waiver will be issued (and therefore no inspection fees or certificate or certificate of waiver fees collected) until the final rule setting forth the criteria for certificates and certificates of waiver is published and effective. Likewise, no certificate of accreditation fees will be assessed until the accreditation rule is final and effective and accreditation and State licensure programs are approved.

In § 493.639, we propose that if after a certificate, certificate of accreditation, or a certificate of waiver is issued a laboratory adds services and requests that its certificate or certificate of accreditation be upgraded, or certificate of waiver be changed or eliminated, the laboratory must pay a fee to cover the cost of issuing an appropriate revised certificate. We propose to base this fee on the actual cost to issue the revision to the laboratory. (Note that an additional fee is also required under § 493.643(e) if it is necessary to fund activities to determine compliance with additional requirements.)

In § 493.643, we propose that a laboratory that was licensed under section 353 of the PHSA as of December 31, 1988 must pay a fee to cover the cost of determining program compliance. Again, we have included the reference to certificates of waiver and certificates of accreditation in this section so that it would continue to be applicable once we begin issuing those types of certificates. We also propose that effective July 1, 1991, the other laboratories would be subject to a fee to determine their compliance with Federal requirements. We would not begin collecting this fee from these laboratories, however, until applicable criteria and standards are established in

final regulations. Further, the laboratory would not be assessed this fee if it qualifies for a certificate of waiver or certificate of accreditation. We propose to include in this fee the cost of: conducting onsite surveys, evaluating qualifications of personnel, monitoring proficiency testing, documenting deficiencies, evaluating laboratories' plans to correct deficiencies, and State and Federal surveyor preparation for and attendance at ALJ hearings. Laboratories will not be required to pay the cost of investigating followup surveys and sanction activities if allegations are not substantiated. Although the amount of the fee will be determined annually, inspections will be conducted biennially. Therefore, the fee covers a 2-year period. The methodology used to determine the amount of the fee is discussed later in this preamble.

For purposes of determining the amount of the fee a laboratory that must be inspected must pay, we propose to initially establish ten fee schedules. Each laboratory, regardless of its type of testing (a classification of laboratory based on the complexity of testing that is the subject of a separate proposed rule), would be placed into one of the ten following schedules based on the laboratory's scope and volume of testing. The schedules have been established based on the experience of Federal laboratory surveyors and other experts in HCFA to estimate appropriate parameters for classifying laboratories. In addition, we analyzed data from the Federal government's national data base that captures facility-specific information on laboratories, in an attempt to establish parity among the ten schedules listed.

We analyzed the various sizes and workloads of laboratories that are currently participating in the Medicare/Medicaid program and concluded that the average costs to inspect laboratories of various sizes are represented by the benchmarks set forth. These are averages based on a relatively limited amount of experience since the universe of the total number of regulated laboratories will eventually be much greater. As we obtain experience in future years, we will analyze the data and develop new estimates. We are interested in receiving comments on the formal methodology, process, and schedule to be used in updating these estimates.

We intend to use these schedules for purposes of collecting fees from laboratories before inspections actually take place. This will enable us to make this part of the implementation of CLIA '88 financially self-supporting as the Congress has directed.

We plan eventually to modify these schedules after sufficient time has elapsed to establish the fee amount in each schedule based upon an hourly rate per surveyor in each State, which reflects better the actual time and resources necessary to determine the laboratory's compliance with the requirements. We propose consideration of scope and volume of testing since they influence the time and resources required to determine program compliance.

Schedule A—The laboratory performs tests in no more than 3 specialties of service with a total annual volume of not more than 10,000 laboratory tests.

Schedule B—The laboratory performs tests in at least 4 specialties of service with a total annual volume of not more than 10,000 laboratory tests.

Schedule C—The laboratory performs tests in no more than 3 specialties of service with a total annual volume of more than 10,000 but not more than 25,000 laboratory tests.

Schedule D—The laboratory performs tests in at least 4 specialties with a total annual volume of more than 10,000 but not more than 25,000 laboratory tests.

Schedule E—The laboratory performs tests in at least 1 specialty with a total annual volume of more than 25,000 but not more than 50,000 laboratory tests.

Schedule F—The laboratory performs tests in at least 1 specialty with a total annual volume of more than 50,000 but not more than 75,000 laboratory tests.

Schedule G—The laboratory performs tests in at least 1 specialty with a total annual volume of more than 75,000 but not more than 100,000 laboratory tests.

Schedule H—The laboratory performs tests in at least 1 specialty with a total annual volume of more than 100,000 but not more than 500,000 laboratory tests.

Schedule I—The laboratory performs tests in at least 1 specialty with a total annual volume of more than 500,000 but not more than 1,000,000 laboratory tests.

Schedule J—The laboratory performs tests in at least 1 specialty with a total annual volume of more than 1,000,000 laboratory tests.

We would define a test as a test procedure or examination for a single analyte. Each profile (that is, group of tests) would be counted as the number of separate procedures; for example, a chemistry profile consisting of 18 tests would be counted as 18 separate test procedures or examinations. We are counting each test procedure or examination separately, because inspection would include assessments of quality control activities by test procedure, and evaluation of proficiency testing is conducted on individual tests. Thus the determination of compliance is based on assessment of individual tests rather than groups of tests or profiles. We specifically invite comments on the appropriateness of the number of specialties and tests we propose to use as thresholds. We also invite comments on our definition of a test and its feasibility, particularly in the area of quantitative testing.

We also propose that initially for purposes of determining a laboratory's fee schedule classification, the specialties and subspecialties currently used for Medicare, Medicaid and CLIA '67 be used to describe a laboratory's services. These specialties and subspecialties are:

- The specialty of Microbiology, which includes one or more of the following subspecialties:
  - (a) Bacteriology.
  - (b) Mycobacteriology
  - (c) Mycology.
  - (d) Parasitology.
  - (e) Virology.
- The specialty of Serology, which includes one or more of the following subspecialties:
  - (a) Syphilis serology.
  - (b) General immunology.
- The specialty of Chemistry, which includes one or more of the following subspecialties:
  - (a) Routine chemistry.
  - (b) Endocrinology.
  - (c) Toxicology.
  - (d) Urinalysis.
- The specialty of Hematology.
- The specialty of Immunohematology, which includes one or more of the following subspecialties:
  - (a) ABO grouping and Rh typing.
  - (b) Unexpected antibody detection.
  - (c) Compatibility testing
  - (d) Unexpected antibody identification.
- The specialty of Pathology, which includes the following subspecialties:
  - (a) Cytology.
  - (b) Histopathology.
  - (c) Oral Pathology.
- The specialty of Radiobioassay.
- The specialty of Histocompatibility.
- The specialty of Cytogenetics.

In a separate proposed rule that addresses the Federal health and safety standards based on a complexity model of regulation to implement CLIA '88, we are offering an opportunity for comment on the appropriateness of the specialties and subspecialties of service. In that proposed rule, the requirements concerning proficiency testing, quality control, quality assurance and personnel that relate to specialties and subspecialties of service are defined.

We also propose that if after a certificate is issued a laboratory adds services and requests that its certificate

be upgraded, the laboratory must pay an additional fee if, in order to determine compliance with additional requirements, it is necessary to conduct an inspection, evaluate personnel, or monitor proficiency testing participation. We propose to base the additional fee on the actual resources and time necessary to perform the activities.

In § 493.645, we propose that in addition to the certificate fee, a laboratory that is issued a certificate of accreditation would also be assessed a fee to cover the cost of evaluating individual laboratories to determine overall whether an accreditation program's standards and inspection policies are equivalent to the Federal program. An annual random sample of 5 percent of all accredited laboratories would be inspected in order to compare inspection findings of HCFA or its agents with the findings of the accreditation organizations. All accredited laboratories will share in the cost of these inspections. These costs are the same as those that would be incurred when inspecting nonaccredited laboratories.

Additionally, we propose that, in the case of a laboratory that has been issued a certificate of accreditation, if it is necessary to conduct a complaint investigation, impose sanctions or conduct a hearing, the affected laboratory would be assessed a fee to cover the cost of these activities. Sanction activity costs for State surveyors and sanction activity costs for the Federal government (which include testimony of Federal experts and costs for ALJs and attorney representation) would be in addition to the certificate of accreditation fee. If a complaint investigation results in a complaint being unsubstantiated or if an HHS adverse action is overturned at the conclusion of the administrative appeals process, the cost of the inspection would not be imposed upon the laboratory. The inspection fee would not be assessed until after a laboratory concedes the existence of the deficiencies or an ALJ rules in favor of HHS.

In § 493.646, we propose to notify laboratories by mail of the appropriate fee(s) and instructions for submitting the fee(s), including the due date for payment and the United States Department of Treasury designated commercial bank to which payment must be made. These fees, when finally calculated, would be nonrefundable, and provisional certificates, certificates of waiver, certificates of accreditation, and certificates would not be issued until the applicable fees have been paid.

With respect to program financing, CLIA '88 requires the establishment of a fully self-supporting program through the assessment of fees. The activities mandated by CLIA '88 that would be considered in the determination of fees that laboratories will be required to pay include:

- Determining compliance with the requirements through onsite inspections, evaluating personnel qualifications and monitoring proficiency testing performance.
- Performing proficiency testing of laboratories that do not participate in approved proficiency testing programs.
- Issuing laboratories a certification of compliance or, after the final rule is published establishing the CLIA '88 standards, a certificate of compliance or a certification of waiver from Federal regulation;
- Providing proficiency testing results to the general public upon request;
- Developing and making available to physicians and the general public an annual report listing the laboratories whose certificates have been revoked, suspended or limited as well as those laboratories which have been subjects of intermediate sanctions, Medicare terminations, injunctions or withdrawal of accreditation, including the reasons for these actions;
- Conducting studies, research, and evaluations directed toward assessing and improving the regulatory process;
- Preparing annual reports to Congress on the monitoring and evaluation of proficiency testing and accreditation programs; and
- Performing enforcement activities to assure compliance with program requirements.

Various aspects of the above activities would be performed by three different entities: State survey agencies, Federal agencies, and HHS contractors. In § 493.649, we propose to establish fee amounts fixed to the schedule in which the laboratory falls, which is related to the average hourly rates established for these three entities and to the average number of hours required to perform the activities. As we gain experience using the schedules, with regard to actual hours and resources required to perform compliance determination activities for each laboratory, we will consider appropriate adjustments to the methodology for assessing fees to ensure that each laboratory is charged the fee amount related to the time and resources needed to determine the laboratory's compliance with the requirements. We may (or could) alter the use of schedules for minimum fees and use State by State schedules based on local hourly rates for all activities at that time. We propose to include the following costs in establishing the average hourly rate.

1. State Survey Agencies

The State survey agency would evaluate personnel qualifications, monitor each laboratory's participation in an approved proficiency testing program, conduct onsite surveys, evaluate plans to correct deficiencies cited as a result of onsite surveys, and conduct followup surveys, if appropriate. An hourly rate would be determined for each calendar year based on the most recent hourly rate negotiated between the Federal government and each State survey agency. The negotiated hourly rate would encompass salary costs (as determined by each State's civil service pay scales) and fringe benefit costs for the required number of State inspectors, management, and direct support staff. Necessary travel costs would be included that would comply with each State's administrative requirements. The hourly rate would include other direct costs, such as equipment, printing and supplies, that would be established based on actual historical State requirements. Also included in the hourly rate would be the indirect costs which would be negotiated by HHS's Division of Cost Allocation.

2. Federal Agencies

The cost of Federal administration of the CLIA '88 provisions would include the establishment and evaluation of Federal health and safety standards, including cytology requirements, to implement CLIA '88; conducting surveyor training; performance monitoring of State agencies, and other contractors; approving and monitoring accrediting organizations and State licensure programs; imposing intermediate sanctions; revoking, suspending, or limiting certificates; holding and attending ALJ hearings (including the costs of ALJs and attorney representation); and other program operation functions such as compilation of information for physicians and the general public to evaluate the performance of laboratories. Also included would be: the cost to develop proficiency testing standards to encompass tests not currently subject to proficiency testing standards; the cost to evaluate, for approval, and monitor, on a ongoing basis, State and private nonprofit professional organizations' proficiency testing programs; the cost to conduct full scale studies including those mandated by CLIA '88; the cost of

research and evaluation directed toward assessing and improving the regulatory program; and the cost of PHS technical and scientific support to resolve technical issues concerning tests for waiver, the complexity model, new technology, and the effectiveness of the CLIA '88 regulatory process. We propose that the average hourly rate for Federal administrative activities be the most current average hourly cost to HCFA to staff and support a full time equivalent employee. Included in this rate would be the salary and fringe benefit costs, necessary administrative costs such as printing, training, postage, express mail, supplies, equipment, ADP computer usage and building service charges associated with support services provided by organizational components such as a computer center and any other oversight activities necessary to support the program.

3. Contractors

We propose that the hourly rate for activities performed by HHS contractors would be the average hourly rate established for contractor assistance based on an independent government cost estimate for the required workload. This rate would include the cost of contractor support to provide proficiency testing programs to laboratories that do not participate in an approved proficiency testing program, provide specialized assistance in the evaluation of laboratories' performance in an approved proficiency testing program, bill and collect fees, issue certificates, provisional certificates, certificates of waiver, and accreditation certificates, establish accounting, monitoring and reporting systems, and assist with necessary surveyor training.

We propose that the number of hours used to determine the overall fee in each of the schedules initially would be HCFA's estimate of the average time needed by each entity to perform the activities for which it is responsible. For survey activities, HCFA's estimate is based on the historical data (time records for State surveyors for actual surveys). Administrative activities would be performed by both Federal contractors (for example, processing applications; billing; establishing accounting, monitoring, and reporting systems) and Federal agencies (for example, establishing standards, approving and monitoring accreditation organizations and State licensure programs, information collection). In arriving at our estimates of the amount of Federal contractor administrative time, we relied on the advice of independent contractors that have had experience performing these types of activities for other organizations. Since administering the CLIA '88 laboratory certification program is a new Federal agency function, we do not have directly applicable historical information. We based our estimate of the time necessary on our analysis of the processes involved in performing these administrative functions and our experience in performing similar activities. As additional experience is gained and/or new requirements are mandated, appropriate adjustments would be made to the required time to conduct activities.

We ask for comments from all laboratories on the methodology proposed for establishing the fee amounts for determination of compliance because we propose to use the same methodology to determine fees for laboratories that are not subject to CLIA '67 but will be subject to CLIA '88 determinations of compliance.

On the basis of this methodology, the fee assessed to issue a provisional certificate, or certificate of accreditation [1], or certificate to a laboratory in fiscal year 1991 would be as follows:

[1] Certificate of accreditation fee would not be assessed until criteria are published in a final rule for recognition of accreditation and State programs.

Functions or Tasks	Hours	Hourly Rate	User Fee
Federal administration	3	*$51	$153
Contractor administration	2	54	108
Total			261

*The hourly rate of $51 for Federal administration includes approximately $31 for salaries and fringe benefits, and the remaining $20 is for overhead costs, including the support of a nationwide satellite training network.

If a laboratory is issued a revised certificate, an additional certificate fee as specified above would be assessed.

A certificate of waiver fee [2] would be assessed as follows:

[2] Certificate of waiver fee would not be assessed until rulemaking is published in final establishing the standards for waivered laboratories.

Functions or tasks	Hours	Hourly rate	User fee
Federal administration	2	*$51	$102
Contractor administration	1	54	54
Total			156

*The hourly rate of $51 for Federal administration includes approximately $31 for salaries and fringe benefits, and the remaining $20 is for overhead costs, including the support of a nationwide satellite training network.

Under the proposed methodology, the time and cost required to determine compliance during fiscal year 199I would be as follows:

	Hours	Average Hourly Rate [1]	Biennial User Fee
Schedule A Laboratories:			
Biennial inspection [2]	24	$35	$840
Followup visit or complaint investigation	15	35	525
Sanctions/hearings	8	35	280
Schedule B Laboratories:			
Biennial inspection [2]	32	35	1,120
Followup visit or complaint investigation	17	35	595
Sanctions/hearings	9	35	315
Schedule C Laboratories:			
Biennial inspection [2]	40	35	1,400
Followup visit or complaint investigation	19	35	665
Sanctions/hearings	10	35	350
Schedule D Laboratories:			
Biennial inspection [2]	47	35	1,645
Followup visit or complaint investigation	21	35	735
Sanctions/hearings	11	35	385
Schedule E Laboratories:			
Biennial inspection [2]	54	35	1,890
Followup visit or complaint investigation	24	35	840
Sanctions/hearings	12	35	420
Schedule F Laboratories:			
Biennial inspection [2]	61	35	2,135
Followup visit or complaint investigation	26	35	910
Sanctions/hearings	13	35	455
Schedule G Laboratories:			
Biennial inspection [2]	68	35	2,380
Followup visit or complaint investigation	28	35	980
Sanctions/hearings	14	35	490
Schedule H Laboratories:			
Biennial inspection [2]	75	35	2,625
Followup visit or complaint investigation	30	35	1,050
Sanctions/hearings	15	35	525
Schedule I Laboratories:			
Biennial inspection [2]	82	35	2,870
Followup visit or complaint investigation	32	35	1,120
Sanctions/hearings	16	35	560
Schedule J Laboratories:			
Biennial inspection [2]: The sum of 82 hours plus 7 hours for each additional 500,000 tests or portion thereof multiplied by a $35 hourly rate. [3]			
Followup visit or complaint investigation: The sum of 32 plus 2 hours for each additional 500,000 tests or portion thereof multiplied by a $35 hourly rate.			
Sanctions/hearings: The sum of 16 hours plus 1 hour for each additional 500,000 tests or portion thereof multiplied by a $35 hourly rate.			

[1] Average hourly rates and user fees are shown since individual contracts are negotiated with 53 State survey agencies. The actual user fee for determining compliance would depend upon the State in which the laboratory is located. The $35 hourly rate is based on total surveyor time, which includes the time surveyors are not involved in activities directly related to determinations of compliance. The unit cost budget methodology is based on actual surveyor time to conduct compliance evaluations, which is about $27 per hour. We add an adjustment of $8 per hour to cover surveyor costs for holidays, vacation, sick leave, and attendance at training courses. Therefore, the cost of these other work-related activities has been included in the user fee methodology.

[2] Includes evaluating qualifications of personnel; monitoring proficiency testing; conducting onsite surveys; developing deficiency statements; and evaluating laboratories plans to correct deficiencies.

Under the proposed methodology, the fee that a laboratory issued a certificate of accreditation would pay [4] in fiscal year 1991 to share the cost of the 5 percent random inspections discussed earlier would be:

Schedule A Laboratories; $42.
Schedule B Laboratories; $56.
Schedule C Laboratories; $70.
Schedule D Laboratories; $82.
Schedule E Laboratories; $95.
Schedule F Laboratories; $107.
Schedule G Laboratories; $119.
Schedule H Laboratories; $131.
Schedule I Laboratories; $144.
Schedule J Laboratories; Schedule I base fee plus $12 for each additional 500,000 tests or portion thereof.

Under the proposed methodology, the fee that a laboratory issued a certificate of accreditation would pay, if it is necessary to perform the following activities in the case of that particular laboratory during fiscal year 1991, would be:

Follow-up visits or complaint investigations:

Schedule A Laboratories; $525.
Schedule B Laboratories; $595.
Schedule C Laboratories; $665.
Schedule D Laboratories; $735.
Schedule E Laboratories; $840.
Schedule F Laboratories; $910.
Schedule G Laboratories; $980.
Schedule H Laboratories; $1,050.
Schedule I Laboratories; $1,120.
Schedule J Laboratories; Schedule I base fee plus $70 for each additional 500,000 tests or portion thereof.

Sanctions/Hearing:

Schedule A Laboratories; $280.
Schedule B Laboratories; $315.
Schedule C Laboratories; $350.
Schedule D Laboratories; $385.
Schedule E Laboratories; $420.
Schedule F Laboratories; $455.
Schedule G Laboratories; $490.
Schedule H Laboratories; $525.
Schedule I Laboratories; $560.
Schedule J Laboratories; Schedule I base fee plus $35 for each additional 500,000 tests or portion thereof.

The minimum fee that a laboratory would be required to pay for determination of program compliance would be the amount representing the biennial inspection costs in the aforementioned schedules. If the laboratory requires additional survey time as a result of followup visit(s), certificate revisions, complaint investigation(s) that are substantiated, intermediate sanctions, appeals or hearings, an additional assessment will be made for such activities.

If a complaint investigation results in a complaint being unsubstantiated or if an HHS adverse action is overturned at

[4] Includes evaluating qualifications of personnel; monitoring proficiency testing; conducting onsite surveys; developing deficiency statements; and evaluating laboratories' plans to correct deficiencies.

the conclusion of the administrative appeals process, the costs of these activities would not be imposed upon the laboratory. The intermediate sanction provisions of CLIA '88 will be addressed in a separate rulemaking. These provisions include separate payments for onsite monitoring and civil monetary penalties which would be imposed on those laboratories failing to comply with CLIA '88 requirements.

We plan that future certificate and program compliance fees be based on our actual experience with regard to hours required to conduct the workload, and we may modify the schedules described here. Separate rulemaking to change the methodology will be initiated when appropriate. The Federal data on laboratories that are currently regulated were used to provide us with the average time to perform the various tasks.

In order to assess laboratory performance in proficiency testing, HCFA will initially conduct sample onsite proficiency testing to evaluate laboratory performance. As more information becomes available on these costs, it may become necessary to update these fees to accommodate the requirements for proficiency testing.

Based on our actual survey experience with CLIA '67 laboratories, we divided laboratories into the ten schedules previously discussed. In setting up these groups, we looked in depth at the experience of one State to determine if there were a way to coalesce laboratories into broad categories of size that would correlate directly with the amount of time (and, therefore, cost) that would be necessary to determine compliance. We looked at the State's workload information to determine the amount of time and resources needed to determine laboratory compliance and arrayed all of the laboratories by listing the number of individuals and resources that were applied to compliance determinations. While certainly many choices might be made, we would opt for a system that groups laboratories into the ten categories that, on the average, reflect a reasonably uniform use of resources for a range of scope and volume of laboratory services and which are more sensitive to cost variations as a function of scope and volume, thereby distributing the costs more equitably between large and small laboratories. We are interested in comments presenting information on existing inspection experience that would be useful in assessing this question, or otherwise suggesting improvements in this aspect of the methodology.

The following are examples of how we set three of the schedules. We are proposing to base all of the schedules on a similar analysis.

A Schedule A laboratory requires one surveyor approximately 4 hours to travel to and from the laboratory with an additional 14 hours for the following activities: evaluate the laboratory's history file prior to on site inspection; assess proficiency testing performance four times per year for each specialty and subspecialty of services performed; evaluate qualifications, including education and experience of laboratory employees; develop statements of deficiencies; and evaluate the laboratory's plan to correct the deficiencies cited. Supervisory review/administration and clerical support require approximately 6 additional hours.

A Schedule D laboratory requires one surveyor approximately 4 hours of round trip travel time, with an additional 43 hours for the following activities: evaluate the laboratory's history file prior to onsite inspection; assess proficiency testing performance four times per year for each specialty and subspecialty of services performed; evaluate qualifications and experience of laboratory employees; develop statements of deficiencies; and evaluate the laboratory's plan to correct the deficiencies cited. In this size laboratory we would hope to employ two surveyors to conduct the compliance determination. In such a case, the total hours expended per person would be reduced but the resources employed would be doubled. Therefore, the estimates are based on one surveyor. Supervisory review/administration and clerical support require approximately 9 additional hours.

A Schedule I laboratory requires one surveyor approximately 4 hours of round trip travel time, with an additional 78 hours for the following activities: evaluate the laboratory's history file prior to onsite inspection; assess proficiency testing performance four times per year for each specialty and subspecialty of services performed; evaluate qualifications and experience of laboratory employees; develop statements of deficiencies; and evaluate the laboratory's plan to correct the deficiencies cited. As stated above, in this size laboratory we would hope to employ at least two surveyors to determine compliance. Even though having a larger survey team would reduce the number of hours per person per inspection, the amount of resources increases. Thus, these figures are based on the total hours for one surveyor.

IV. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E. O. 12291) requires us to prepare and publish regulatory impact analysis for any proposed regulation that meets one of the E. O. 12291 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.

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 regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all laboratories as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that 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 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a metropolitan statistical area and has fewer than 50 beds.

This rule, in combination with the proposed rule "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988" (55 FR 20896) would constitute a major rule as defined by E.O. 12291. While the law authorizes inspections and specifies that inspections be conducted on a biennial basis or a frequency established by HHS, it does not otherwise mandate any particular frequency or intensity of inspections. Nor does the law specify the specific details of the requirements that inspections examine, or the depth with which compliance is probed. Thus, subject to the statutory requirement that fees charged cover the total cost of administering the program and to the unavoidable reality that any inspection

system would be costly, HHS has latitude to implement cost-effective alternatives. We request comments on the option discussed in this preamble, on any other options that are likely to be less costly and equally effective. We also call attention to the opportunity to comment on any standards significantly affecting inspection costs included in the proposed "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988".

B. Anticipated Impact

1. Affected Entities

There are approximately 12,000 Federally regulated laboratories located in hospitals and independent settings according to HCFA. These facilities range from large medical centers and corporate-operated independent laboratories to small, independent laboratories and physicians' office laboratories. However, CLIA '88 requires all laboratories to pay fees to cover the costs of implementing the provisions of the statute. We estimate that there may be anywhere from 300,000–600,000 laboratories altogether that could potentially come under these provisions.

We expect that the fees we have proposed to conduct inspections would not have a significant economic effect on many physician office laboratories. We believe most of these laboratories probably will qualify for a certificate of waiver and would not be required to meet Federal inspection standards and would thus avoid compliance fees. They would pay only a nominal fee as required by the law. However, we believe that most remaining laboratories will fall into 1 of the 10 schedules that would require compliance fees.

Although not small entities, we expect some States may experience some additional administrative burden because they may have to adapt or establish a methodology for assessing inspection requirements and for ensuring compliance with these proposed requirements. States may have to make more recommendations for termination of Medicare approval if these inspection requirements are not met.

We expect that several accrediting bodies, some of which currently provide compliance reviews, will continue and expand their roles in the monitoring of laboratories for their various organizations. Other accrediting bodies are expected to seek approval under CLIA.

2. Costs/Savings

We do not expect certification and inspection fees to cause any undue hardship on the majority of laboratories although some laboratories may have to incur costs to meet the required standards for certification and inspections. These costs will be examined in the regulatory impact analysis of the final rule "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988."

Currently we are unable to determine with any high degree of accuracy, due to the lack of data, the universe of laboratories that would be compelled to meet the requirements of these provisions. This observation is further complicated by the number of laboratories that would qualify for each type of certificate and its average fee. A facility's certification category is dependent on final decisions both on the standards regulation (for example, waiver criteria) and on where the boundaries between the schedules are set. Average fees would be determined by the level of enforcement and costs as a result of these provisions. In light of these uncertainties we have projected a potential range of costs at various fee levels as indicated in the table below:

POTENTIAL RANGE OF GROSS COSTS AT VARIOUS FEE LEVELS AND ESTIMATES OF NUMBER OF LABORATORIES REGULATED

Type	Fee	Number by type		Biennial cost (in thousands)	
		Lower	Higher	Lower	Higher
Assuming Relatively Few Waivers					
Waiver	$156	10000	30000	$1,560	$4,680
Schedule A	840	60000	180000	50,400	151,200
Schedule D (B through F)	1,645	50000	80000	82,250	131,600
Schedule I (G through J)	2,870	20000	30000	57,400	86,100
Total		140000	320000	191,610	373,580
Assuming Many Waivers					
Waiver	156	40000	100000	6,240	15,600
Schedule A	840	60000	150000	50,400	126,200
Schedule D (B through F)	1,645	20000	40000	32,900	65,800
Schedule I (G through J)	2,870	20000	30000	57,400	86,100
Total		140000	320000	146,940	293,700

Note: Lower estimate is based on an Office of Inspector General Study of physician office laboratories, plus interstate and hospital laboratories, plus 20,000 others. Higher estimate assumes that total number of laboratories is over 300,000, based on HCFA projections. None of these data include a deduction for costs currently incurred. Because the lack of data makes an accurate breakdown of the number of laboratories that would fall into the individual schedules difficult, we have based our estimates on the number of laboratories within a range of schedules (B through F and G through J). We then used representative fee amounts (the amounts for laboratories in schedules D and I) for the range of schedules to calculate total biennial costs.

3. Effect on Patients

Although laboratories conducting only waiver tests would not be subject routinely to determination of compliance, we do not believe this would affect patients since waiver tests are simple laboratory examinations and procedures that have an insignificant risk of an erroneous result. We intend to evaluate whether improved quality of care results from inspection of laboratories under these schedules. We believe that these inspections would encourage more responsible testing, that heretofore has been questionable by some sources.

The number of false negatives may be reduced, resulting in more detection of illness in the primary stages. Because later stages generally require more costly treatments, savings could result. Also, more false positives may be eliminated thus saving the costs of unnecessary treatments. Further, the House Committee on Energy and

Commerce, which authorized CLIA '88, noted in committee language that although "consumers bear the ultimate costs of regulation," the proper performance of laboratory tests "not only protects patients from undergoing unnecessary and dangerous treatment, but ultimately saves money."

4. Alternatives

We believe we have proposed the most effective methodology for reaching the desired patient outcomes at a minimal cost to laboratories. For example, we believe that by proposing inspections on a biennial basis as opposed to an annual basis we have limited laboratory costs without minimizing the quality of care.

Another approach could be to develop inspection criteria so that a basic inspection could be conducted to determine if a laboratory meets critical compliance requirements. If they do, then they would be certified as in compliance. If they do not meet the minimum requirements, a more intensive inspection would be required. This approach would benefit those laboratories that are generally in compliance with the inspection requirements by reducing inspection costs and penalize those facilities not in compliance by increasing their costs.

We believe this methodology would have the potential to encourage laboratories to achieve compliance and, thus, decrease costs. However, there is the possibility of overlooking some unqualified laboratories, which could result in adverse effects on beneficiaries in terms of cost and quality of care. This approach may require a change in the law, since the statute makes no reference to an inspection scheme that would involve less than a full inspection of compliance with all requirements concerning the issuance of certificates. Regardless, throughout this preamble and in the standards analyzed in the proposed "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988" (55 FR 20896), we have identified a number of alternatives that have varying ability to reduce costs to laboratories. For example, our proposed approach to handling waivers, together with the far lower fee charged for waivered laboratories, would greatly reduce, if not totally eliminate, the number of small physician office laboratories exposed to more substantial fees.

5. Conclusion

Initially, the only laboratories that would have to pay a fee for determination of compliance would be those laboratories licensed under section 353 of the PHSA on December 31, 1988. Also we expect many laboratories to choose an approved accreditation program and thereby not be subject to Federal compliance fees and only be subject to a certificate fee and a small portion of the cost to validate the accreditation program standards.

After establishment of the CLIA '88 standards, laboratories that were not formerly regulated under CLIA '67 would be subject to determination of compliance fees if they do not qualify for a certificate of waiver or accreditation certificate. Our determination of compliance fees reflected in the schedules is based on our estimate of time to conduct the activities related to evaluation of compliance. These fee schedules for determination of compliance may be adjusted periodically as we gain experience in determining the true costs for evaluating individual laboratories' compliance with the requirements.

However, since our analysis is not conclusive, we encourage comments and submission of any applicable data concerning these provisions, particularly if there is a perception that they may result in significant increased costs.

In combination with the proposed rule "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988," this proposed rule would constitute a major rule and would have a significant impact on some laboratories, including laboratories in small rural hospitals. Consequently, we are soliciting comments on the benefits and costs of these rules, and we will conduct the analysis prior to issuing a final rule. To the extent that the analysis in this proposed rule does not constitute a complete preliminary Regulatory Impact Analysis, the Office of Management and Budget has waived the requirement, under section 6(a)(4) of E.O. 12291.

V. Collection of Information Requirements

Proposed regulations at §§ 493.614, 493.618, 493.633(a)(1), and 493.634 contain information collection requirement that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). A notice will be published in the **Federal Register** after approval is obtained. The information collection requirements concern information that must be provided on a laboratory's application for a provisional certificate, certificate of waiver, certification of accreditation, or certificate and subsequent notification of any changes in the information provided on the application. All laboratories would be required to provide the information.

Public reporting burden for this collection of information is estimated to be approximately 3 hours per application. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to HCFA and the OMB official whose name appears in the **ADDRESSES** section of this preamble.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on proposed rules, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "**DATES**" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 493

Laboratories, Medicare, Medicaid, Health facilities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR part 493 would be amended as follows:

PART 493—[AMENDED]

1. The authority citation for part 493 should be revised to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following sec. 1861(s)(11), 1861(s) (12) and (13) of the Social Security Act (42 U.S.C. 263a, 1302, the sentence following sec. 1395x(s)(11), and sec. 1395x(s) (12) and (13).)

2. A new subpart F is added to part 493 to read as follows:

PART 493—LABORATORY REQUIREMENTS

Subpart F—General Administration

Sec.

493.602 Scope of subpart.
493.606 Applicability of subpart.
493.610 Provisional certificate or certificate required for laboratories.
493.614 Application procedures.
493.618 Additional application requirements.
493.622 Opportunity for hearing.
493.626 Provisional certificate.
493.630 Certificate.
493.631 Certificate of waiver.
493.632 Certificate of accreditation.
493.633 Applicability of certificate, certificate of waiver, and certificate of accreditation.
493.634 Notification of changes.

Sec.
493.636 Provisional certificate and certificate fees.
493.639 Fee for revised certificate.
493.643 Fee for determination of program compliance.
493.645 Additional fee(s) for accredited laboratories.
493.646 Payment of fees.
493.649 Methodology for determining fee amount.

Subpart F—General Administration

§ 493.602 Scope of subpart.

This subpart sets forth requirements all laboratories must meet in order to apply for and be issued a provisional certificate, certificate of waiver, certificate of accreditation, or certificate under section 353 of the Public Health Service Act (42 U.S.C. 263a). It also sets forth the methodology for determining the amount of the fees for issuing provisional certificates, certificates of waiver, certificates of accreditation, or certificates and for determining compliance with the applicable standards of the Public Health Service Act (the PHSA).

§ 493.606 Applicability of subpart.

This subpart applies to all entities that perform laboratory testing as defined in section 353(a) of the PHSA. These rules do not apply to any component or function of a laboratory that has been certified by the National Institute on Drug Abuse (NIDA) for the purpose of performing forensic urine drug testing under the Mandatory Guidelines for Federal Workplace Drug Testing Programs published on April 11, 1988 (53 FR 11970) or research laboratories that test human specimens but do not report patient specific results for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of, the health of individual patient(s). This includes any component or function of any laboratory whose forensic functions have been certified by NIDA under authority of Executive Order 12564 and section 503 of Public Law 100–71, regulations adopted by the Nuclear Regulatory Commission (10 CFR part 26) and the Department of Transportation (49 CFR part 40, effective January 2, 1990), and other Federal law requiring performance of forensic urine drug testing under NIDA certification. Any laboratory, or any component or function of a laboratory, that performs clinical urine drug testing or forensic urine drug testing without NIDA certification remains subject to these rules.

§ 493.610 Provisional certificate or certificate required for laboratories.

No person may solicit or accept materials derived from the human body for laboratory examination or other procedure unless there is in effect for the laboratory a provisional certificate issued by HHS or a certificate, a certificate of waiver, or a certificate of accreditation issued by HHS that is applicable to the specialty or subspecialties of services offered by the laboratory.

§ 493.614 Application procedures.

(a) Laboratories not licensed under the Clinical Laboratories Improvement Act of 1967 (CLIA '67) or Medicare/Medicaid approved must contact HHS or its designee to receive initial application forms. HHS or its designee automatically sends applications to laboratories licensed under CLIA '67 and to those laboratories that were exempt under CLIA '67 (New York State-approved, College of American Pathologists-accredited and low-volume exempt laboratories) and Medicare/Medicaid approved laboratories.

(b) A separate application must be filed for each laboratory location.

(c) An application for the issuance of a provisional certificate or a certificate of waiver or for a certificate of accreditation or certificate applicable to one or more laboratory test procedures or examinations included in the specialties or subspecialties listed in § 493.643(d)(3) must be made to HHS or its designee on a form or forms prescribed by HHS and must be signed by the owner, operator or authorized representative of the laboratory.

(d) The application must include information that describes the characteristics of the laboratory operation and the examinations and other test procedures performed by the laboratory including—

(1) The names of the test procedures and examinations performed and the total number of test procedures and examinations performed annually;

(2) The methodologies for test procedures and examinations performed; and

(3) The qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory test procedures and examinations.

§ 493.618 Additional application requirements.

In submitting an application for a provisional certificate, a certificate of waiver, certificate of accreditation, or a certificate, a laboratory must agree to the following:

(a) To make records available and submit reports to HHS as HHS may require.

(b) To permit inspections by HHS as specified in subpart N of this part, except that the effective date of this requirement for laboratories not licensed under section 353 of the PHSA as of December 31, 1988 is July 1, 1991. (Certificate of waiver laboratories are not subject to routine inspections.)

(c) To treat proficiency testing samples in the same manner as it treats materials derived from the human body referred to it for laboratory examinations or other procedures in the ordinary course of business. (This requirement does not apply to certificate of waiver laboratories.)

(d) To provide HHS with satisfactory assurances, through an attestation statement, signed by the laboratory owner, operator, or authorized representative that the laboratory will be operated in accordance with the requirements established by the Secretary under section 353 of the PHSA.

§ 493.622 Opportunity for hearing.

(a) If HHS denies a laboratory's application for a provisional certificate, certificate of waiver, certificate of accreditation, or certificate or limits the laboratory's applicable certificate, HHS gives the laboratory a statement of the grounds on which the denial or limitation is based and an opportunity for a hearing, in accordance with the procedures set forth in Part 498 of this chapter.

(b) If a laboratory that is seeking an initial certificate of any form has its application denied or its certificate limited, it cannot operate as a laboratory under the PHSA (or, in the case of a limitation, in the areas covered by the limitation) unless the denial or limitation is overturned at the conclusion of the administrative appeals process provided by Part 498 of this chapter. (In addition, the laboratory is not eligible for payment under the Medicare or Medicaid programs.)

§ 493.626 Provisional certificate.

(a) HHS or its designee initially issues a provisional certificate or, if the laboratory meets the requirements, a certificate of waiver to each laboratory that was not licensed under section 353 of the PHSA as of December 31, 1988, provided that the laboratory meets the application requirements of § 493.614 and § 493.618 and pays the applicable fee as specified in § 493.636. A

provisional certificate issued under this section is not renewable and is valid for a period of not more than 2 years or until such time as an inspection to determine program compliance can be conducted or the laboratory demonstrates that it qualifies to receive a certificate of waiver or a certificate of accreditation, whichever is shorter. HHS reissues a provisional certificate to any laboratory for which HHS or its designee has not had an opportunity to determine compliance.

(b) Prior to expiration of the provisional certificate, HHS notifies the laboratory of the applicable requirements to obtain a certificate of waiver, a certificate of accreditation, or a certificate and of the amounts of the fees for issuing these certificates and, if applicable, the amount of the fee for determination of compliance. HHS initiates revocation or limitation of a laboratory's provisional certificate for failure to comply with the applicable requirements as set forth in the notification by HHS and denies the laboratory's application for the applicable certificate. In such an event, HHS provides the laboratory with a statement of the grounds on which the revocation or limitation and denial is based and with an opportunity for a hearing. If the laboratory requests a hearing, the expiration date of the provisional certificate is extended until a hearing decision by an Administrative Law Judge (ALJ) is issued, unless HHS finds that conditions at the laboratory pose an imminent and serious risk to human health.

(c) In the event of a non-compliance determination resulting in denial of a laboratory's application for a certificate of waiver, certificate of accreditation, or certificate, HHS also initiates revocation or limitation of the laboratory's provisional certificate. HHS provides the laboratory with a statement of the grounds on which the revocation or limitation of the provisional certificate and application denial are based and with an opportunity for a hearing. If the laboratory requests a hearing, the expiration date of the provisional certificate is extended until a hearing decision is issued by an ALJ, unless HHS finds that conditions at the laboratory pose an imminent and serious risk to human health. (In addition, for laboratories participating in Medicare, payments are suspended or denied on the effective date specified in the notice to the laboratory of the denial of the application for the applicable certificate, even if there has been no hearing decision issued.)

§ 493.630 Certificate.

(a) HHS or its designee issues a certificate to each laboratory that was licensed under section 353 of the PHSA as of December 31, 1988, provided the laboratory meets the application requirements of § 493.614 and § 493.618, pays the applicable fee as specified in § 493.638, and meets all other applicable requirements of this part.

(b) HHS or its designee issues a certificate to each laboratory that was not licensed under section 353 of the PHSA as of December 31, 1988, provided the laboratory has a provisional certificate and meets the application requirements of § 493.614 and § 493.618, pays the applicable fee as specified in § 493.638, and meets all other applicable requirements of this part.

§ 493.631 Certificate of waiver.

HHS or its designee issues a certificate of waiver to a laboratory if it performs only waiver tests, provided the laboratory meets the application requirements of § 493.614 and § 493.618, pays the applicable fee as specified in § 493.638, and meets all other applicable requirements of this part.

§ 493.632 Certificate of accreditation.

HHS or its designee issues a certificate to a laboratory accredited by an HHS approved accreditation program or licensed in an HHS approved State program, provided the laboratory has a provisional certificate and meets the application requirements of § 493.614 and § 493.618, pays the applicable fee as specified in § 493.638, and meets all other applicable requirements of this part.

§ 493.633 Applicability of the certificate, certificate of waiver, and certificate of accreditation.

(a) The certificate, certificate of waiver, or certificate of accreditation issued under this part is applicable to those specialties and subspecialties of service that include the test procedures and examinations that the laboratory has indicated on its application that it performs.

(1) The laboratory may not perform any examination or procedure within a specialty or subspecialty that is not included on the laboratory's certificate, certificate of waiver, or certificate of accreditation until it has requested and been issued a revised certificate that covers the examination or procedure.

(2) The laboratory must notify HHS or its designee within 6 months of any deletions and/or changes in methodologies for any test procedure or examination for which the laboratory has been issued a certificate, certificate of waiver, or certificate of accreditation.

(b) HHS initiates revocation of a laboratory's certificate, certificate of waiver, or certificate of accreditation, in whole or in part for failure to comply with the applicable requirements of this part. In such an event, HHS provides the laboratory with a statement of grounds on which the revocation is based and an opportunity for a hearing, in accordance with the procedures set forth in part 498 of this chapter. (In addition, for laboratories participating in Medicare or Medicaid, payments are suspended or denied for failure to comply with the requirements of this part.)

§ 493.634 Notification of changes.

A laboratory must notify HHS or its designee within 30 days if changes occur in—

(a) Ownership;
(b) Name;
(c) Location;
(d) Director (not applicable for provisional certificates); or
(e) Supervisor (not applicable for provisional certificates).

§ 493.638 Provisional certificate and certificate fees.

(a) *Basic rule.* Laboratories must pay a fee for the issuance of a provisional certificate, certificate of waiver, certificate of accreditation, or a certificate, as applicable. Laboratories must also pay a fee for the renewal of a certificate of waiver, certificate of accreditation, or a certificate. The total of fees collected by HHS under the laboratory program must be sufficient to cover the general costs of administering the laboratory certification program under section 353 of the PHSA. For provisional certificates and certificates, this includes evaluating and monitoring proficiency testing programs and accreditation bodies and implementing, monitoring, and enforcing compliance with section 353 of the PHSA and collection of fees and issuing provisional certificates and certificates. For a certificate of waiver, this includes the cost of issuing the certificate of waiver, collection of fees and the administrative costs associated with evaluating tests to determine if a certificate of waiver should be issued. For a certificate of accreditation this includes the cost of issuing the certificate of accreditation, collection of fees and the administrative costs associated with evaluating programs of accrediting organizations and the costs to conduct sample validation surveys of accredited laboratories.

(b) *Fee amount.* The fee amount is set annually by HHS on a calendar year

basis and is based on schedules, or ranges, of laboratory test volume and scope of specialties tested, with the amounts of the inspection fees in each schedule a function of the average hourly rates for the required activities and the average length of time required for the activity. This fee is assessed and payable biennially. The methodology used to determine the amount of the fee is found in § 493.649. The amount of the fee applicable to the issuance of the provisional certificate or the issuance or renewal of the certificate of waiver, certificate of accreditation, or certificate is the amount in effect at the time the application is received. Upon receipt of an application for a provisional certificate, certificate of waiver, certificate of accreditation, or certificate, HHS or its designee notifies the laboratory of the amount of the required fee.

§ 493.639 Fee for revised certificate.

If after a certificate, certificate of accreditation, or certificate of waiver is issued a laboratory wishes to add services and requests that its certificate or certificate of accreditation be upgraded or that its certificate of waiver be changed or eliminated, the laboratory must pay a fee to cover the cost of issuing a revised certificate. (An additional fee is also required under § 493.643(e) if it is necessary to determine compliance with additional requirements.) The fee for issuing an appropriate revised certificate is based on the actual cost to issue the revised certificate to the laboratory.

§ 493.643 Fee for determination of program compliance.

(a) *Laboratories licensed under section 353 of the PHSA on December 31, 1988.* In addition to the fee required under § 493.638, a laboratory whose license under section 353 of the PHSA was in effect on December 31, 1988 must pay a fee to cover the cost of determining program compliance, unless it is issued a certificate of waiver or a certificate of accreditation.

(b) *Other laboratories.* Effective July 1, 1991, laboratories not licensed under section 353 of the PHSA as of December 31, 1988 and that do not meet the requirements for a certificate of waiver or certificate of accreditation must pay a fee to cover the cost of determining program compliance.

(c) *Costs included in fee.* Included in the fee for determining program compliance is the cost of evaluating qualifications of personnel; monitoring proficiency testing; conducting onsite surveys; documenting deficiencies; and evaluating laboratories' plans to correct deficiencies. If additional expenses are incurred to conduct followup visits to verify correction of deficiencies, to impose sanctions, and/or for surveyor preparation for and attendance at ALJ hearings, HHS assesses an additional fee to include these costs. HHS sets the fee amounts annually on a calendar year basis. Laboratories are inspected biennially; therefore, fees are assessed and payable biennially.

(d) *Classification of laboratories that require inspection for purpose of determining amount of fee.* (1) There are ten classifications of laboratories for the purpose of determining the fee amount a laboratory is assessed. Each laboratory is placed into one of the ten following schedules based on the laboratory's scope and volume of testing.

(i) *Schedule A.* The laboratory performs tests in no more than 3 specialties of service with a total annual volume of not more than 10,000 laboratory tests.

(ii) *Schedule B.* The laboratory performs tests in at least 4 specialties of service with a total annual volume of not more than 10,000 laboratory tests.

(iii) *Schedule C.* The laboratory performs tests in no more than 3 specialties of service with a total annual volume of more than 10,000 but not more than 25,000 laboratory tests.

(iv) *Schedule D.* The laboratory performs tests in at least 4 specialties with a total annual volume of more than 10,000 but not more than 25,000 laboratory tests.

(v) *Schedule E.* The laboratory performs tests in at least 1 specialty with a total annual volume of more than 25,000 but not more than 50,000 laboratory tests.

(vi) *Schedule F.* The laboratory performs tests in at least 1 specialty with a total annual volume of more than 50,000 but not more than 75,000 laboratory tests.

(vii) *Schedule G.* The laboratory performs tests in at least 1 specialty with a total annual volume of more than 75,000 but not more than 100,000 laboratory tests.

(viii) *Schedule H.* The laboratory performs tests in at least 1 specialty with a total annual volume of more than 100,000 but not more than 500,000 laboratory tests.

(ix) *Schedule I.* The laboratory performs tests in at least 1 specialty with a total annual volume of more than 500,000 but not more than 1,000,000 laboratory tests.

(x) *Schedule J.* The laboratory performs tests in at least 1 specialty with a total annual volume of more than 1,000,000 laboratory tests.

(2) For purposes of determining a laboratory's classification under this section, a test is a procedure or examination for a single analyte. Each profile (that is, group of tests) is counted as the number of separate procedures or examinations; for example, a chemistry profile consisting of 18 tests is counted as 18 separate procedures or tests.

(3) For purposes of determining a laboratory's classification under this section, the specialties and subspecialties of service for inclusion are:

(i) The specialty of Microbiology, which includes one or more of the following subspecialties:

(A) Bacteriology.
(B) Mycobacteriology.
(C) Mycology.
(D) Parasitology.
(E) Virology.

(ii) The specialty of Serology, which includes one or more of the following subspecialties:

(A) Syphilis serology.
(B) General immunology.

(iii) The specialty of Chemistry, which includes one or more of the following subspecialties:

(A) Routine chemistry.
(B) Endocrinology.
(C) Toxicology.
(D) Urinalysis.

(iv) The specialty of Hematology.

(v) The specialty of Immunohematology, which includes one or more of the following subspecialties:

(A) ABO grouping and Rh typing.
(B) Unexpected antibody detection.
(C) Compatibility testing.
(D) Unexpected antibody identification.

(vi) The specialty of Pathology, which includes the following subspecialties:

(A) Cytology.
(B) Histopathology.
(C) Oral Pathology.

(vii) The specialty of Radiobioassay.

(viii) The specialty of Histocompatibility.

(ix) The specialty of Cytogenetics.

(e) *Additional fee.* If after a certificate, certificate of waiver, or certificate of accreditation is issued a laboratory adds services and requests that its certificate be upgraded, the laboratory must pay an additional fee if, in order to determine compliance with additional requirements, it is necessary to conduct an inspection, evaluate personnel, or monitor proficiency testing performance. The additional fee is based on the actual resources and time necessary to perform the activities.

§ 493.645 Additional fee(s) for accredited laboratories.

(a) In addition to the certificate fee, a laboratory that is issued a certificate of accreditation is also assessed a fee to cover the cost of evaluating individual laboratories to determine overall whether an accreditation program's standards and inspection policies are equivalent to the Federal program. An annual random sample of 5 percent of all accredited laboratories is inspected in order to compare inspection findings of HCFA or its agents with the findings of the accreditation organizations. All accredited laboratories share in the cost of these inspections. These costs are the same as those that are incurred when inspecting nonaccredited laboratories.

(b) If, in the case of a laboratory that has been issued a certificate of accreditation, it is necessary to conduct a complaint investigation, impose sanctions or conduct a hearing, HHS assesses that laboratory a fee to cover the cost of these activities. If a complaint investigation results in a complaint being unsubstantiated, or if an HHS adverse action is overturned at the conclusion of the administrative appeals process, the cost of these activities are not imposed upon the laboratory. Costs for these activities are not assessed until after a laboratory concedes the existence of deficiencies or an ALJ rules in favor of HHS. If, in the case of a laboratory subject to an inspection under paragraph (a) of this section, followup visits are necessary because of identified deficiencies, HHS assesses the laboratory a fee to cover the cost of these visits.

§ 493.646 Payment of fees.

HHS or its designee notifies laboratories by mail of the appropriate fee(s) and instructions for submitting the fee(s), including the due date for payment and the United States Department of Treasury designated commercial bank to which payment must be made. Provisional certificates, certificates of waiver, certificates of accreditation, or certificates are not issued until the applicable fees have been paid.

§ 493.649 Methodology for determining fee amount.

(a) *General rule.* The amount of the fee in each schedule is based on the average hourly rate to perform the required activities multiplied by the average number of hours required, or if activities are performed by more than one of the entities listed in paragraph (b) of this section, the sum of the products of the applicable hourly rates multiplied by the average number of hours required by the entity to perform the activity.

(b) *Determining average hourly rates used in fee schedules.* Three different entities perform activities related to the issuance or renewal of certificates of waiver, certificates of accreditation, or certificates and determining program compliance. HHS determines the average hourly rates for the activities of each of these entities.

(1) *State survey agencies.* The following costs are included in determining an average hourly rate for the activities performed by State survey agencies:

(i) The costs incurred by the State survey agencies in evaluating personnel qualifications and monitoring each laboratory's participation in an approved proficiency testing program. The cost of onsite inspections and monitoring activities is the hourly rate derived as a result of an annual budget negotiation process with each State. The hourly rate encompasses salary costs (as determined by each State's civil service pay scale) and fringe benefit costs to support the required number of State inspectors, management and direct support staff.

(ii) Travel costs necessary to comply with each State's administrative requirements and other direct costs such as equipment, printing and supplies. These costs are established based on historical State requirements.

(iii) Indirect costs as negotiated by HHS.

(2) *Federal agencies.* The hourly rate for activities performed by Federal agencies is the most recent average hourly cost to HCFA to staff and support a full time equivalent employee. Included in this cost are salary and fringe benefit costs, necessary administrative costs, such as printing, training, postage, express mail, supplies, equipment, ADP computer usage and building service charges associated with support services provided by organizational components such as a computer center and any other oversight activities necessary to support the program.

(3) *HHS contractors.* The hourly rate for activities performed by HHS contractors is the average hourly rate established for contractor assistance based on an independent government cost estimate for the required workload. This rate includes the cost of contractor support to provide proficiency testing programs to laboratories that do not participate in an approved proficiency testing program, provide specialized assistance in the evaluation of laboratory performance in an approved proficiency testing program, perform assessments of cytology testing laboratories, conduct special studies, bill and collect fees, issue certificates, establish accounting, monitoring and reporting systems, and assist with necessary surveyor training.

(c) *Determining number of hours.* The average number of hours used to determine the overall fee in each schedule is HCFA's estimate, based on historical experience, of the average time needed by each entity to perform the activities for which it is responsible.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: April 13, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administrator.

Approved: July 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-17865 Filed 8-2-90; 8:45 am]

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Friday
August 3, 1990

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 310, 346, and 369

Anorectal Drug Products for Over-the-Counter Human Use; Final Monograph; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 346, and 369

[Docket No. 80N-0050]

RIN 0905-AA06

Anorectal Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) anorectal drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on anorectal drug products that have come to the agency's attention. This final monograph is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: August 5, 1991.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 27, 1980 (45 FR 35576), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC anorectal drug products, together with the recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by August 25, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by September 24, 1980.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC anorectal drug products was published in the Federal Register of August 15, 1988 (53 FR 30756). Interested persons were invited to file by December 13, 1988, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by December 13, 1988. New data could have been submitted until August 15, 1989, and comments on the new data until October 15, 1989.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but is using instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

As discussed in the proposed regulation for OTC anorectal drug products (53 FR 30756 at 30757), the agency advises that the conditions under which the drug products that are subject to this monograph will be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the Federal Register. Therefore, on or after August 5, 1991, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In response to the proposed rule on OTC anorectal drug products, three manufacturers submitted comments. A request for an oral hearing before the Commissioner was also received. Copies of the comments and the hearing request received are on public display in the Dockets Management Branch (address above). Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

One comment, which was submitted at the very end of the period for the submission of new data, contained the results of two new clinical studies conducted to demonstrate the effectiveness of live yeast cell derivative in the relief of hemorrhoidal symptoms. These studies are currently being evaluated by the agency. The status of this ingredient does not directly relate to the other portions of the final monograph. Accordingly, in order to complete the publication of the final monograph for OTC anorectal drug products without undue delay, the agency is not addressing the data submitted on live yeast cell derivative in this document. The data will be addressed as soon as the agency's review is completed. If the data establish the effectiveness of live yeast cell derivative, the monograph will be amended accordingly. In the interim, products containing live yeast cell derivative may remain in the marketplace and are not subject to this final monograph.

The hearing request concerned the ingredient hydrocortisone. The requester asked that: (1) the definition section (§ 346.3) of the monograph be amended to provide for a drug that has anti-inflammatory properties, such as hydrocortisone; (2) hydrocortisone be allowed to be combined with other appropriate OTC ingredients at OTC strengths, including a typical anesthetic such as pramoxine; and (3) a combination of hydrocortisone and pramoxine, which is presently a prescription drug at 0.5 percent hydrocortisone and 1 percent pramoxine, be switched to OTC use and be generally recognized as safe and effective. The comment stated that general recognition of the safety and effectiveness of hydrocortisone-pramoxine combination OTC drug products exists in the published literature and cited a number of supporting references (Ref. 1). The requester also noted that the issues it raised directly relate to, and are virtually identical to, the issues in

another FDA proceeding, "In the matter of Pramoxine Hydrochloride and Hydrocortisone Acetate Drug Products," Docket No. 88N–0242, published in the **Federal Register** of July 1, 1988 (53 FR 25013).

The agency is currently reviewing the cited references and considering the request for a hearing. The agency did not include hydrocortisone in the tentative final monograph for OTC anorectal drug products (53 FR 30756 at 30766) because a claim for hydrocortisone and hydrocortisone acetate for the temporary relief of anal itching is already included in the OTC external analgesic tentative final monograph. The external analgesic tentative final monograph (48 FR 5852; February 8, 1983) includes both hydrocortisone and hydrocortisone acetate 0.25 to 0.5 percent and pramoxine hydrochloride 0.5 to 1 percent as proposed monograph ingredients. However, neither that monograph nor any other OTC drug monograph currently provides for any OTC combination drug products containing hydrocortisone and any other ingredient. Accordingly, such combination drug products are not currently legally marketed as OTC drug products. Resolution of the above issues related to hydrocortisone does not directly relate to the other conditions proposed in the tentative final monograph for OTC anorectal drug products. Accordingly, in order to complete this rulemaking with regard to the other conditions proposed in the tentative final monograph for OTC anorectal drug products without undue delay, the agency is not addressing the hearing request at this time. Resolution of the related issues in the other FDA proceeding (Docket No. 88N–0242—see above), which is currently pending the completion of studies by the interested parties, may have a bearing on the hearing request. If, after reviewing the information presented, the agency determines that a hearing should be held, it will issue a notice to that effect in a subsequent issue of the **Federal Register**.

The agency will publish its final decision on the issues related to hydrocortisone and live yeast cell derivative in OTC anorectal drug products in a future issue of the **Federal Register**. Final agency action on the remainder of the OTC anorectal drug products rulemaking occurs with the publication of this final monograph, which is a final rule establishing a monograph for OTC anorectal drug products.

Reference

(1) Comment No. HER00001, pages 61 to 65, Docket No. 80N–0050, Dockets Management Branch.

I. The Agency's Conclusions on the Comments

1. One comment suggested that § 346.14(a)(3) be revised to read: "Glycerin in solution (provided that the minimum absolute amount of glycerin is not less than 10%)." The comment contended that the language in that section as now worded (i.e., "The following active ingredients may be used as the sole protectant active ingredient in a product if the ingredient as identified constitutes 50 percent or more by weight of the final product * * *. Glycerin in a 20- to 45-percent (weight/weight) aqueous solution.") is unclear as to what is the acceptable minimum absolute amount of glycerin needed to qualify as a protectant active ingredient. The comment maintained that the intent of the section is to indicate that 50 percent of a 20-percent aqueous solution of glycerin is needed to qualify as a protectant active ingredient and, that in absolute terms, this translates to 10 percent glycerin.

The agency agrees that the comment is correct about the minimum amount of glycerin needed to qualify as a sole protectant ingredient. However, the comment's suggested change in § 346.14(a)(3) does not consider the maximum amount of glycerin that may be present in a product. If the final product consisted entirely (100 percent) of a 45-percent (weight/weight) aqueous solution of glycerin, then the product could contain 45 percent glycerin (weight/weight).

The comment's proposed revision to § 346.14(c)(3) states "glycerin in solution," but does not specify an aqueous solution. Any product containing glycerin for use as an OTC anorectal protectant in accord with the monograph cannot be formulated by including only 10 to 45 percent glycerin. Water must be present in the finished product. In discussing the importance of aqueous dilutions of glycerin (45 FR 35576 at 35631), the Panel noted that undiluted glycerin absorbs water and is somewhat dehydrating and irritating to mucous membranes and particularly to inflamed skin. The Panel determined that a lower concentration of glycerin is necessary for safe use in OTC anorectal preparations, and that there are no reports of reactions with 45 percent concentrations. The Panel also noted that undiluted glycerin is not effective as a protectant, whereas a dilution of 20 to 45 percent glycerin in water when applied to skin will lose water to epidermal tissue and acts to soften the skin (45 FR 35631). The Panel also stated at 45 FR 35627 and the agency proposed in the tentative final monograph at 45 FR 30767 that any single protectant active ingredient in a product must constitute 50 percent or more by weight of the final product. Thus, if glycerin were used as the sole protectant in a 20-percent weight/weight aqueous solution, and the glycerin in aqueous solution constituted 50 percent of the weight of the final product, the product would contain 10 percent glycerin by weight. If glycerin were used as the sole protectant in a 45-percent weight/weight aqueous solution and the glycerin in aqueous solution constituted 100 percent of the weight of the final product, the product would contain 45-percent glycerin. Therefore, the minimum concentration of glycerin in a final product would be 10 percent and the maximum concentration would be 45 percent. Accordingly, to clarify this usage, the agency is revising § 346.14(a)(3) to read as follows: "Glycerin in a 20- to 45-percent (weight/weight) aqueous solution so that the final product contains not less than 10 and not more than 45 percent glycerin (weight/weight)." The agency is adding an additional statement to § 346.14(a)(3) to make it clear that any combination product containing glycerin must contain at least this minimum amount of glycerin.

2. One comment requested final authorization regarding the anorectal use of 19 grades of Witepsol (cocoa butter substitutes, hydrogenated coco-glycerides, and hydrogenated palm kernal glycerides). The comment referred to its original citizen petition and its submissions of additional data.

The citizen petition and most of the additional submissions were fully discussed in paragraph 19 of the tentative final monograph (53 FR 30756 at 30763). The remaining information was designated in the tentative final monograph as being under review and is discussed below.

Since the petition was submitted, an official monograph for "hard fat" has been included in "The National Formulary" (NF) (Ref. 2). The agency has determined that all of the 19 grades of Witepsol ingredients meet the requirements for melting range, acid value, iodine value, saponification value, hydroxyl value, and unsaponifiable matter listed in the official NF monograph for hard fat. Accordingly, the agency is including the Witepsol ingredients in the OTC final monograph under the official NF compendial designation of "hard fat." This name replaces the descriptions

previously used or proposed by the comment, i.e, cocoa butter substitutes, hydrogenated coco-glycerides, and hydrogenated palm kernel glycerides.

The agency has the following specific comments on an effectiveness study that was conducted on one hundred subjects (Ref. 1). The volar surfaces of the arms were used as test sites, with sites of 3 square centimeters randomly assigned to each test product. Control sites were also used. Twenty materials were tested: 19 grades of Witepsol and cocoa butter. Thickness of application varied from 0.007 to 0.07 millimeters on a random basis.

Trans-epidermal water loss (an acceptable means of estimating the effectiveness of anorectal protectants) was determined by a method in which the vapor pressure above the chosen area of skin is measured without use of carrier gas currents or gravimetric analysis of the contents of an unventilated chamber (Ref. 3). The results are based on the estimation of the vapor-pressure gradient immediately above the skin and are presented in the following table:

Product (Witepsol grade)	Number of subjects	Mean percent reduction in trans-epidermal water loss	Number of subjects showing no effect
E075	94	41.5	20
E076	94	43.3	18
E085	94	50.6	14
H005	91	44.3	19
H012	91	38.5	24
H015	92	38.7	15
H019	94	45.4	18
H032	93	44.8	16
H035	95	43.2	19
H037	88	51.2	16
H039	91	46.2	19
H042	94	52.5	9
HI75	93	43.1	19
HI85	94	45.5	22
W025	90	41.3	17
W031	88	40.8	19
W032	92	38.4	22
W035	83	38.3	21
W045	90	35.7	22
Cocoa butter	93	30.6	28

The data demonstrate that the Witepsol-type ingredients perform in similar fashion to cocoa butter and may be considered effective as skin protectants.

Based on the above discussion, the agency has determined that the Witepsol ingredients may be included as monograph ingredients under the designation of "hard fat" in this OTC anorectal drug products final monograph. The ingredient "hard fat" is being listed in paragraph (a) of § 346.14 of the monograph under the heading "Protectant active ingredients" and should be considered in the same manner as any other protectant active ingredient listed in that paragraph.

The agency's detailed comments and evaluations of the above data are on file in the Dockets Management Branch (Ref. 4).

References

(1) Letter from B. Pagliocca, Kay-Fries, Inc., to FDA, coded LET015, Docket No. 80N-0050, Dockets Management Branch.

(2) "The United States Pharmacopoeia XXII and The National Formulary XVII," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 1931, 1989.

(3) Nilsson, G.E., "Medical and Biological Engineering and Computing," 1977.

(4) Letter from W.E. Gilbertson, FDA, to T.E. Maggio, Dynamit Nobel of America, Inc., coded LET 022, Docket No. 80N-0050, Dockets Management Branch.

II. Agency Initiated Change

In the advance notice of proposed rulemaking for OTC anorectal drug products, the Panel recommended the following warning for products containing aluminum hydroxide gel (45 FR 35576 at 35629) or kaolin (45 FR 35632): "Remove petrolatum or greasy ointment before using this product because they interfere with the ability of this product to adhere properly to the skin area." That warning was included in the Panel's recommended monograph in § 346.56(c)(1) and in the tentative final monograph in § 346.50(c)(8).

Despite the above warning, § 346.22 of the Panel's recommended monograph and § 346.22(a) of the tentative final monograph provided that any of the protectant ingredients could be combined. The agency did not receive any comments on this issue following publication of the Panel's report and the tentative final monograph. The agency has determined that aluminum hydroxide gel and kaolin should not be combined with any "greasy" ingredient. The following monograph ingredients are "greasy" in nature and therefore should not be combined with aluminum hydroxide gel or kaolin: Cocoa butter, cod liver oil, hard fat, lanolin, mineral oil, petrolatum, shark liver oil, and white petrolatum. Accordingly, the agency is stating in § 346.22(a) of this final monograph that "Any two, three, or four protectants identified in § 346.14 may be combined, except aluminum hydroxide gel in § 346.14(a)(1) and kaolin in § 346.14(a)(5) may not be combined with any ingredient in § 346.14(a) (2), (4), (6), (7), (8) and (10), and (b)(2) and (3), provided that the combined percentage by weight of all protectants in the combination is at least 50 percent of the final product (e.g., 1 gram of a 2 gram dosage unit). Any protectant ingredient included in the combination must be present at a level that contributes at least 12.5 percent by weight (e.g., 0.25 gram of a 2-gram dosage unit), except cod liver oil and shark liver oil. If an ingredient in § 346.14(b) is included in the combination, it must not exceed the concentration limit specified in § 346.14(b)."

III. Summary of Changes From the Proposed Rule

1. The agency is revising the designation of the concentrations for glycerin in § 346.14(a)(3) for clarity. (See comment 1 above.)

2. The agency is adding hard fat to § 346.14(a) of the final monograph. (See comment 2 above.)

3. The agency is revising the permitted combinations of protectants in § 346.22(a) to be consistent with the warning in § 346.50(c)(8). (See Part II. "Agency Initiated Change" above.)

IV. The Agency's Final Conclusions on OTC Anorectal Drug Products

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC anorectal drug products are generally recognized as safe and effective and not misbranded. The agency has determined that the following active ingredients are a monograph condition for their respective drug class: Local anesthetics—benzocaine, benzyl alcohol, dibucaine, dibucaine hydrochloride, dyclonine hydrochloride, lidocaine, pramoxine hydrochloride, tetracaine, and tetracaine hydrochloride; vasconstrictors—ephedrine sulfate, epinephrine, epinephrine hydrochloride, and phenylephrine hydrochloride; protectants—aluminum hydroxide gel, calamine, cocoa butter, cod liver oil, glycerin, hard fat, kaolin, lanolin, mineral oil, petrolatum, shark liver oil, topical starch, white petrolatum, and zinc oxide; analgesics, anesthetics, and antipruritics—camphor, juniper tar, and menthol; astringents—calamine, hamamelis water, and zinc oxide; and keratolytics—alcloxa and resorcinol. With the exception of hydrocortisone and live yeast cell derivative, all other ingredients for anorectal use whether or not considered in this rulemaking are considered nonmonograph ingredients. Ingredients considered in this rulemaking were: local anesthetics—diperodon and phenacaine hydrochloride; vasconstrictor—epinephrine undecylenate; protectants—bismuth oxide, bismuth subcarbonate, bismuth subgallate, bismuth subnitrate,

and lanolin alcohols; counterirritants—camphor (greater than 3 to 11 percent), hydrastis, menthol (1.25 to 16 percent), and turpentine oil (rectified) (6 to 50 percent); astringents—tannic acid; wound healing agents—cholecalciferol, cod liver oil, peruvian balsam, shark liver oil, and vitamin A; antiseptics—boric acid, boroglycerin, hydrastis, phenol, resorcinol, and sodium salicylic acid phenolate; keratolytics—precipitated sulfur and sublimed sulfur; anticholinergics—atropine and belladonna extract; and miscellaneous ingredients—collinsonia extract, *Echerichia coli* vaccines, lappa extract, leptandra extract, and mullein. Any drug product marketed for use as an OTC anorectal drug product that is not in conformance with the monograph (21 CFR part 346) may be considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352) and may not be marketed for this use unless it is the subject of an approved application. An appropriate citizen petition to amend the monograph may also be submitted under 21 CFR 10.30.

In the Federal Register of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under 21 CFR 330.1(c)(2), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) The specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All other OTC drug labeling required by a monograph or other regulation (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under the OTC drug monograph or other regulation where exact language has been established and identified by quotation marks, e.g., 21 CFR 201.63 or 330.1(g). The final rule in this document is subject to the labeling provisions in § 330.1(c)(2).

The agency is removing the existing labeling requirements of § 310.201(a)(23)(v)(*b*) (21 CFR 310.201(a)(23)(v)(*b*)) relating to dyclonine hydrochloride upon the effective date of the final monograph for OTC anorectal drug products. In addition, the agency is revising § 369.20 (21 CFR 369.20) by removing the reference to rectal preparations from the entry for "BELLADONNA PREPARATIONS * * *" and by removing the entry for "RECTAL PREPARATIONS FOR EXTERNAL USE." These regulations are being revised because the above entries are superseded by this final monograph for OTC anorectal drug products.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (53 FR 30756 at 30780). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC anorectal drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC anorectal drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR part 25).

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 346

Anorectal drug products, Labeling, Over-the-counter drugs.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, subchapter D of chapter I of title 21 of the Code of Federal Regulations is amended in parts 310, 346, and 369 as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

§ 310.201 [Amended]

2. Section 310.201 Exemption for certain drugs limited by new-drug applications to prescription sale is amended by removing paragraph (a)(23)(v)(*b*) and reserving it.

3. Part 346, consisting of §§ 346.1 to 346.52 is added to read as follows:

PART 346—ANORECTAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
346.1 Scope.
346.3 Definitions.

Subpart B—Active Ingredients

346.10 Local anesthetic active ingredients.
346.12 Vasoconstrictor active ingredients.
346.14 Protectant active ingredients.
346.16 Analgesic, anesthetic, and antipruritic active ingredients.
346.18 Astringent active ingredients.
346.20 Keratolytic active ingredients.

346.22 Permitted combinations of anorectal active ingredients.

Subpart C—Labeling

346.50 Labeling of anorectal drug products.
346.52 Labeling of permitted combinations of anorectal active ingredients.

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

Subpart A—General Provisions

§ 346.1 Scope.

(a) An over-the-counter anorectal drug product in a form suitable for external (topical) or intrarectal (rectal) administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 212 unless otherwise noted.

§ 346.3 Definitions.

As used in this part:

(a) *Analgesic, anesthetic drug.* A topically (externally) applied drug that relieves pain by depressing cutaneous sensory receptors.

(b) *Anorectal drug.* A drug that is used to relieve symptoms caused by anorectal disorders in the anal canal, perianal area, and/or the lower rectal areas.

(c) *Antipruritic drug.* A topically (externally) applied drug that relieves itching by depressing cutaneous sensory receptors.

(d) *Astringent drug.* A drug that is applied topically (externally) to the skin or mucous membranes for a local and limited protein coagulant effect.

(e) *External use.* Topical application of an anorectal drug product to the skin of the perianal area and/or the skin of the anal canal.

(f) *Intrarectal use.* Topical application of an anorectal drug product to the mucous membrane of the rectum.

(g) *Keratolytic drug.* A drug that causes desquamation (loosening) and debridement or sloughing of the surface cells of the epidermis.

(h) *Local anesthetic drug.* A drug that produces local disappearance of pain, burning, itching, irritation, and/or discomfort by reversibly blocking nerve conduction when applied to nerve tissue in appropriate concentrations.

(i) *Protectant drug.* A drug that provides a physical barrier, forming a protective coating over skin or mucous membranes.

(j) *Vasoconstrictor.* A drug that causes temporary constriction of blood vessels.

Subpart B—Active Ingredients

§ 346.10 Local anesthetic active ingredients.

The active ingredient of the product consists of any of the following when used in the concentration or within the concentration range established for each ingredient:

(a) Benzocaine 5 to 20 percent.
(b) Benzyl alcohol 1 to 4 percent.
(c) Dibucaine 0.25 to 1 percent.
(d) Dibucaine hydrochloride 0.25 to 1 percent.
(e) Dyclonine hydrochloride 0.5 to 1 percent.
(f) Lidocaine 2 to 5 percent.
(g) Pramoxine hydrochloride 1 percent.
(h) Tetracaine 0.5 to 1 percent.
(i) Tetracaine hydrochloride 0.5 to 1 percent.

§ 346.12 Vasoconstrictor active ingredients.

The active ingredient of the product consists of any of the following when used in the concentration or within the concentration range established for each ingredient.

(a) Ephedrine sulfate 0.1 to 1.25 percent.
(b) Epinephrine 0.005 to 0.01 percent.
(c) Epinephrine hydrochloride 0.005 to 0.01 percent.
(d) Phenylephrine hydrochloride 0.25 percent.

§ 346.14 Protectant active ingredients.

(a) The following active ingredients may be used as the sole protectant active ingredient in a product if the ingredient as identified constitutes 50 percent or more by weight of the final product. In addition, the following active ingredients may be used in concentrations of less than 50 percent by weight only when used in combinations in accordance with § 346.22 (a), (b), or (n).

(1) Aluminum hydroxide gel.
(2) Cocoa butter.
(3) Glycerin in a 20- to 45-percent (weight/weight) aqueous solution so that the final product contains not less than 10 and not more than 45 percent glycerin (weight/weight). Any combination product containing glycerin must contain at least this minimum amount of glycerin.
(4) Hard fat.
(5) Kaolin.
(6) Lanolin.
(7) Mineral oil.
(8) Petrolatum.
(9) Topical starch.
(10) White petrolatum.

(b) The following active ingredients may not be used as a sole protectant ingredient but may be used in combination with one, two, or three other protectant active ingredients in accordance with § 346.22 (a), (b), (n), and (o) and with the following limitations:

(1) Calamine not to exceed 25 percent by weight per dosage unit (based on the zinc oxide content of calamine).

(2) Cod liver oil, provided that the product is labeled so that the amount of the product that is used in a 24-hour period represents a quantity that provides 10,000 U.S.P. units of vitamin A and 400 U.S.P. units of cholecalciferol.

(3) Shark liver oil, provided that the product is labeled so that the amount of the product that is used in a 24-hour period represents a quantity that provides 10,000 U.S.P. units of vitamin A and 400 U.S.P. units of cholecalciferol.

(4) Zinc oxide not to exceed 25 percent by weight per dosage unit.

§ 346.16 Analgesic, anesthetic, and antipruritic active ingredients.

The active ingredient of the product consists of any of the following when used within the concentration range established for each ingredient:

(a) Camphor 0.1 to 3 percent.
(b) Juniper tar 1 to 5 percent.
(c) Menthol 0.1 to 1 percent.

§ 346.18 Astringent active ingredients.

The active ingredient of the product consists of any of the following when used within the concentration range established for each ingredient:

(a) Calamine, within a concentration range of 5 to 25 percent by weight per dosage unit (based on the zinc oxide content of calamine).

(b) Hamamelis water, "The National Formulary XI," 10 to 50 percent.

(c) Zinc oxide, within a concentration range of 5 to 25 percent by weight per dosage unit.

§ 346.20 Keratolytic active ingredients.

The active ingredient of the product consists of any of the following when used within the concentration range established for each ingredient:

(a) Alcloxa 0.2 to 2 percent.
(b) Resorcinol 1 to 3 percent.

§ 346.22 Permitted combinations of anorectal active ingredients.

(a) Any two, three, or four protectants identified in (a) § 346.14 may be combined, except aluminum hydroxide gel in § 346.14(a)(1) and kaolin in § 346.14(a)(5) may not be combined with any ingredient in § 346.14(a) (2), (4), (6), (7), (8) and (10), and (b) (2) and (3), provided that the combined percentage by weight of all protectants in the combination is at least 50 percent of the

final product (*e.g.*, 1 gram of a 2-gram dosage unit). Any protectant ingredient included in the combination must be present at a level that contributes at least 12.5 percent by weight (*e.g.*, 0.25 gram of a 2-gram dosage unit), except cod liver oil and shark liver oil. If an ingredient in § 346.14(b) is included in the combination, it must not exceed the concentration limit specified in § 346.14(b).

(b) Any single anorectal ingredient identified in § 346.10, 346.12, 346.16, 346.18, or 346.20 may be combined with up to four protectants in accordance with paragraph (a) of this section.

(c) Any single local anesthetic identified in § 346.10 may be combined with any single vasoconstrictor identified in § 346.12.

(d) Any single local anesthetic identified in § 346.10 may be combined with any single astringent identified in § 346.18.

(e) Any single local anesthetic identified in § 346.10 may be combined with any single keratolytic identified in § 346.20.

(f) Any single vasoconstrictor identified in § 346.12 may be combined with any single astringent identified in § 346.18.

(g) Any single analgesic, anesthetic, and antipruritic identified in § 346.16 may be combined with any single astringent identified in § 346.18.

(h) Any single analgesic, anesthetic, and antipruritic identified in § 346.16 may be combined with any single keratolytic identified in § 346.20.

(i) Any single astringent identified in § 346.18 may be combined with any single keratolytic identified in § 346.20.

(j) Any single local anesthetic identified in § 346.10 may be combined with any single vasoconstrictor identified in § 346.12 and with any single astringent identified in § 346.18.

(k) Any single local anesthetic identified in § 346.10 may be combined with any single astringent identified in § 346.18 and with any single keratolytic identified in § 346.20.

(l) Any single vasoconstrictor identified in § 346.12 may be combined with any single analgesic, anesthetic, and antipruritic identified in § 346.16 and with any single astringent identified in § 346.18.

(m) Any single analgesic, anesthetic, and antipruritic identified in § 346.16 may be combined with any single astringent identified in § 346.18 and with any single keratolytic identified in § 346.20.

(n) Any combination of ingredients listed in paragraphs (c) through (m) of this section may be combined with up to four protectants in accordance with paragraph (a) of this section.

(o) Any product containing calamine for use as a protectant and/or as an astringent and/or containing zinc oxide for use as a protectant and/or as an astringent may not have a total weight of zinc oxide exceeding 25 percent by weight per dosage unit.

Subpart C—Labeling

§ 346.50 Labeling of anorectal drug products.

The labeling of the product contains the following information for anorectal ingredients identified in §§ 346.10, 346.12, 346.14, 346.16, 346.18, and 346.20, and for combinations of anorectal ingredients identified in § 346.22. Unless otherwise specified, the labeling in this subpart is applicable to anorectal drug products for both external and intrarectal use.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as "anorectal (hemorrhoidal)," "hemorrhoidal," "hemorrhoidal (anorectal) (insert dosage form, e.g., cream, lotion, or ointment)."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in paragraph (b) of this section, as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) ("For the temporary relief of," "Gives temporary relief of," or "Helps relieve the") (As an option, select one or both of the following: "local" or "anorectal") [select one or more of the following: "discomfort," "itching," or "itching and discomfort," followed by: "in the perianal area" or "associated with" (select one or more of the following: "hemorrhoids," "anorectal disorders," "inflamed hemorrhoidal tissues," "anorectal inflammation," "hemorrhoidal tissues," or "piles (hemorrhoids).")]

(2) *Additional indications.* Indications applicable to each active ingredient of the product may be combined to eliminate duplicative words or phrases so that the resulting indication is clear and understandable. In addition to the indication identified in paragraph (b)(1) of this section, the labeling of the product intended for external or intrarectal use may also contain the following indications, as appropriate.

(i) *For products for external use only containing any ingredient identified in § 346.10.* "For the temporary relief of" (select one or more of the following: "pain," "soreness," or "burning").

(ii) *For products containing epinephrine or epinephrine hydrochloride identified in § 346.12 (b) and (c) for external use only, and for products containing ephedrine sulfate or phenylephrine hydrochloride identified in § 346.12 (a) and (d).*

(A) "Temporarily reduces the swelling associated with" (select one of the following: "irritated hemorrhoidal tissue and other anorectal disorders" or "irritation in hemorrhoids and other anorectal disorders").

(B) "Temporarily shrinks hemorrhoidal tissue."

(iii) *For products for external use only containing glycerin identified in § 346.14(a)(3) and for products for external and/or intrarectal use containing any protectant identified in § 346.14(a) (2), (4), (6) through (10), and (b) (1) through (4).*

(A) "Temporarily forms a protective coating over inflamed tissues to help prevent drying of tissues."

(B) "Temporarily protects irritated areas."

(C) "Temporarily relieves burning."

(D) "Provides temporary relief from skin irritations."

(E) "Temporarily provides a coating for relief of anorectal discomforts."

(F) "Temporarily protects the inflamed, irritated anorectal surface" (select one of the following: "to help make bowel movements less painful" or "from irritation and abrasion during bowel movement").

(G) "Temporarily protects inflamed perianal skin."

(H) "Temporarily relieves the symptoms of perianal skin irritation."

(iv) *For products containing aluminum hydroxide gel identified in § 346.14(a)(1) and for products containing kaolin identified in § 346.14(a)(5).* "For the temporary relief of itching associated with moist anorectal conditions."

(v) *For products for external use only containing any analgesic, anesthetic, and antipruritic identified in § 346.16.*

(A) "For the temporary relief of" (select one or both of the following: "pain" or "burning").

(B) "Can help distract from pain."

(C) "May provide a cooling sensation."

(vi) *For products for external use only containing hamamelis water identified in § 346.18(b), and for products for external use and/or intrarectal use containing calamine or zinc oxide identified in § 346.18 (a) and (c).*

(A) "Aids in protecting irritated anorectal areas."

(B) "Temporary relief of" (select one or both of the following: "irritation" or "burning").

(vii) *For products for external use only containing any ingredient identified in § 346.20.* The indication in paragraph (b)(1) of this section applies.

(c) *Warnings.* Warnings applicable to each active ingredient of the product may be combined to eliminate duplicative words or phrases so that the resulting warning is clear and understandable. The labeling of the product contains the following warnings under the heading "Warnings":

(1) "If condition worsens or does not improve within 7 days, consult a doctor."

(2) "Do not exceed the recommended daily dosage unless directed by a doctor."

(3) "In case of bleeding, consult a doctor promptly."

(4) *For products for external use only.* "Do not put this product into the rectum by using fingers or any mechanical device or applicator."

(5) *For products for intrarectal use to be used with a special applicator such as a pile pipe or other mechanical device.* "Do not use this product with an applicator if the introduction of the applicator into the rectum causes additional pain. Consult a doctor promptly."

(6) *For products for external use only containing any local anesthetic identified in § 346.10, menthol identified in § 346.16(c), or resorcinol identified in § 346.20(b).* "Certain persons can develop allergic reactions to ingredients in this product. If the symptom being treated does not subside or if redness, irritation, swelling, pain, or other symptoms develop or increase, discontinue use and consult a doctor."

(7) *For products containing any vasoconstrictor identified in § 346.12.* (i) "Do not use this product if you have heart disease, high blood pressure, thyroid disease, diabetes, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor."

(ii) "*Drug interaction precaution.* Do not use this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting your doctor."

(iii) *For products containing ephedrine sulfate identified in § 346.12(a).* "Some users of this product may experience nervousness, tremor, sleeplessness, nausea, and loss of appetite. If these symptoms persist or become worse, consult your doctor."

(8) *For products containing aluminum hydroxide gel identified in § 346.14(a)(1) and for products containing kaolin identified in § 346.14(a)(5).* "Remove petrolatum or greasy ointment before using this product because they interfere with the ability of this product to adhere properly to the skin area."

(9) *For products for external use only containing resorcinol identified in § 346.20(b).* "Do not use on open wounds near the anus."

(d) *Directions.* Directions applicable to each active ingredient of the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable. The labeling of the product contains the following information under the heading "Directions":

(1) "*Adults:* When practical, cleanse the affected area" (select one or both of the following: "with mild soap and warm water and rinse thoroughly" or "by patting or blotting with an appropriate cleansing pad"). "Gently dry by patting or blotting with toilet tissue or a soft cloth before application of this product." [Other appropriate directions in this section may be inserted here.] "Children under 12 years of age: consult a doctor."

(2) *For products for external use only.* "Apply externally to the affected area" (insert appropriate time interval of administration as identified in paragraphs (d)(6), (7), (8), or (9) of this section).

(3) *For products for external use that are pads containing anorectal ingredients.* "Gently apply to the affected area by patting and then discard."

(4) *For products for intrarectal use that are wrapped suppositories.* "Remove wrapper before inserting into the rectum."

(5) *For products for intrarectal use that are to be used with a special applicator such as a pile pipe or other mechanical device.* "FOR INTRARECTAL USE: Attach applicator to tube. Lubricate applicator well, then gently insert applicator into the rectum."

(6) *For products for external use only containing any of the local anesthetics identified in § 346.10; analgesics, anesthetics, and antipruritics identified in § 346.16; or alcloxa or resorcinol identified in § 346.20.* Apply to the affected area up to 6 times daily.

(i) *For products for external use only containing dibucaine or dibucaine hydrochloride identified in § 346.10 (c) and (d).* Apply to the affected area up to 3 or 4 times daily.

(ii) *For products for external use only containing pramoxine hydrochloride identified in § 346.10(g).* Apply to the affected area up to 5 times daily.

(7) *For products containing vasoconstrictors identified in § 346.12.* Apply to the affected area up to 4 times daily.

(8) *For products for external use only containing glycerin identified in § 346.14(a)(3) or hamamelis water identified in § 346.18(b), and for products for external and/or intrarectal use containing any protectant identified in § 346.14(a)(1), (2), (4), (5), (6), (7), and (9), and (b)(1), (2), (3), and (4), or any astringent identified in § 346.18(a) and (c).* Apply to the affected area up to 6 times daily or after each bowel movement.

(9) *For products containing petrolatum or white petrolatum identified in § 346.14(a)(8) and (10).* Apply liberally to the affected area as often as necessary.

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

§ 346.52 Labeling of permitted combinations of anorectal active ingredients.

Indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity established in § 346.50(a). For a combination drug product that does not have an established name, the labeling of the product states the statement of identity established in § 346.50(a).

(b) *Indications.* The labeling of the product states, under the heading "Indications," the indication(s) for each ingredient in the combination, as established in the indications sections of this subpart.

(c) *Warnings.* The labeling of the product states, under the heading

"Warnings," the warning(s) for each ingredient in the combination, as established in the warnings sections of this subpart.

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of this subpart. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

4. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371).

§ 369.20 [Amended]

5. Section 369.20 Drugs; recommended warning and caution statements is amended by removing the statement, "See also Rectal Preparations for additional warnings," from the entry for "BELLADONNA PREPARATIONS AND PREPARATIONS OF ITS ALKALOIDS (ATROPINE, HYOSCYAMINE, AND SCOPOLAMINE (HYOSCINE)); HYOSCYAMUS, STRAMONIUM, THEIR DERIVATIVES, AND RELATED DRUG PREPARATIONS" and by removing the entry "RECTAL PREPARATIONS FOR EXTERNAL USE."

Dated: May 15, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-18140 Filed 8-2-90; 8:45 am]
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federal register

Friday
August 3, 1990

Part VII

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 944

Monterey Bay National Marine Sanctuary; Regulations and Public Hearings on the Draft Environmental Impact Statement/ Management Plan; Proposed Rule and Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 944

[Docket No. 900122-0022]

RIN 0648-AC63

Monterey Bay National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; notice of proposed designation; summary of draft management plan; and notice of public availability of draft management plan and draft environmental impact statement.

SUMMARY: By this notice, NOAA, as required by section 205(a)(3) of Public Law No. 100-627, is proposing to designate an approximately 2,200 square nautical mile area of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay off the coast of central California as a National Marine Sanctuary. This notice publishes the proposed Designation Document for the proposed Sanctuary and summarizes the draft management plan for it. The draft management plan details the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the proposed Sanctuary. By this notice, NOAA proposes regulations to implement the proposed designation and regulate activities consistent with the provisions of the proposed Designation Document. Finally, this notice announces the public availability of the Draft Environmental Impact Statement/Management Plan (DEIS/MP) prepared for the proposed designation. The intended effect of this proposed rule is to protect the conservation, recreational, ecological, historical, research, educational, or esthetic qualities of the Monterey Bay area.

DATES: Comments will be considered if received by October 2, 1990.

ADDRESSES: Comments may be submitted to Joseph A. Uravitch, Chief, or Franklin Christhilf, Regional Manager, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., suite 714, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Franklin Christhilf, Pacific Regional Manager, or Mark Murray-Brown, Program Specialist 202/673-5126.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* ("Act"), authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries to protect their conservation, recreational, ecological, historical, research, educational or esthetic qualities.

Comments are solicited from all interested persons. Holders of, owners of, or future applicants for leases, permits, licenses, approvals, other authorizations, or rights are specifically invited to comment on how they may be affected by the proposed designation of the Sanctuary and particularly §§ 944.8-944.11 of the proposed regulations. Comments are also in particular invited on the adequacy of the regulatory regime to protect Sanctuary resources and Sanctuary qualities including the exclusion of fishing activities from the scope of regulations.

After the comments received during the comment period have been considered, a final environmental impact statement and management plan will be prepared, and a notice of designation together with final regulations implementing the designation will be published in the **Federal Register**. The designation and regulations shall take effect and become final after the close of a 45-day Congressional review period unless a joint resolution disapproving the designation or any of its terms is enacted or the Governor of the State of California certifies to the Secretary of Commerce that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable terms shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State. A notice will be published in the **Federal Register** announcing the effective date.

The State of California nominated the Monterey Bay area in 1977, along with nine other offshore marine areas, for consideration for designation as National Marine Sanctuaries. In response to these nominations, NOAA selected the Channel Islands, the Point Reyes-Farallon Islands, and the Monterey Bay areas for further consideration. In December 1978, NOAA released an issue paper on these three sites, presenting several boundary and regulatory options for each site. Public hearings were held and, based on the responses, NOAA, on August 10, 1979, declared all three sites as active candidates for designation as National Marine Sanctuaries.

On September 21, 1980, the Channel Islands National Marine Sanctuary was designated and on January 16, 1981, the Point Reyes-Farallon Islands National Marine Sanctuary (later renamed the Gulf of the Farallones National Marine Sanctuary) was designated.

On December 14, 1983 (see 48 FR 56253), NOAA removed the Monterey Bay area from the list of active candidates for three reasons: (1) The existence of the Channel Islands and Gulf of the Farallones National Marine Sanctuaries, which protect similar marine resources, and the policy established in 1980 for the National Marine Sanctuary Program to consider a diverse array of sites and resources; (2) the area's relatively large size and the surveillance and enforcement burdens this would impose; and (3) the wealth of existing marine conservation programs already in place in the Monterey Bay area.

On November 7, 1988, Public Law No. 100-627, which amends and authorizes appropriations for title III of the Act, was signed into law. Section 205(a)(3) of Public Law No. 100-627 directs that the Secretary of Commerce designate the Monterey Bay National Marine Sanctuary no later than December 31, 1989. This directive automatically advances Monterey Bay to active candidate status.

Before an area may be designated as a National Marine Sanctuary, section 303 (16 U.S.C. 1433) of the Act requires the Secretary to find:

(1) The area is of special national significance due to its resource or human-use values;

(2) Existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(3) Designation of the area as a National Marine Sanctuary will facilitate coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; and

(4) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

Section 304 (16 U.S.C. 1434) requires the Secretary to issue in the Federal Register a notice of the proposal, proposed regulations, and a summary of the draft management plan.

The authority of the Secretary to designate National Marine Sanctuaries has been delegated to the Under Secretary of Commerce for Oceans and Atmosphere by DOC Organization Order 10-15, Section 3.01(z) (Jan. 11, 1988). The authority to administer the other provisions of the Act has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 05-50 (Sept. 21, 1983, as amended).

On January 6, 1989, NOAA announced (54 FR 448) that the Monterey Bay area had again become an active candidate for designation as a National Marine Sanctuary. On January 25 and 26, 1989, NOAA sponsored two public scoping meetings in Monterey and Santa Cruz to solicit public comment on the scope and significance of issues involved in designating the Sanctuary. The public response was extremely favorable to proceeding with the evaluation.

II. Summary of Draft Environmental Impact Statement/Management Plan

The DEIS/MP for the proposed Monterey Bay National Marine Sanctuary sets forth the Sanctuary's location and provides details on the most important resources and uses of the Sanctuary. The DEIS/MP describes the resource protection, research, education and interpretive programs, and details the specific activities to be taken in each program. The DEIS/MP includes a detailed discussion, by program area, of agency roles and responsibilities. The goals and objectives for the proposed Sanctuary are:

Resource Protection

The highest priority management goal is to protect the marine environment, resources and qualities of the proposed Sanctuary. The specific objectives of protection efforts are to: (1) Coordinate policies and procedures among the agencies sharing responsibility for protection and management of resources; (2) encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (*e.g.*, monitoring and emergency-response programs); (3) develop an effective and coordinated program for the enforcement of Sanctuary regulations; (4) enforce Sanctuary regulations in addition to other regulations already in place; (5) promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives, through an educational/interpretive program stressing resource sensitivity and wise use; (6) ensure that the water quality of Monterey Bay is maintained at a level consonant with Sanctuary Designation; (7) establish cooperative agreements and other mechanisms for coordination among all the agencies participating in Sanctuary management; (8) ensure that the appropriate management agency incorporates research results and scientific data into effective resource protection strategies; and (9) reduce threats to Sanctuary resources.

Research Program

Effective management of the proposed Sanctuary requires the initiation of a Sanctuary research program. The purpose of Sanctuary research activities is to improve understanding of the Monterey Bay area environment, resources and qualities, and to resolve specific management problems, some of which may involve resources common to both the Bay and nearby State parks, refuges, and reserves. Research results will be used in interpretive programs for visitors and others interested in the Sanctuary, as well as for protection and management of resources and qualities.

Specific objectives for the research program are to: (1) Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improved management of the Sanctuary; (2) incorporate research results into the interpretive/education program in a format useful for the general public; (3) focus and coordinate data collection efforts on the physical, chemical, geological and biological oceanography of the Sanctuary; (4) encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes; (5) initiate a monitoring program to assess environmental changes as they occur due to natural and human processes; (6) identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; and (7) encourage information exchange among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management.

Education

The goal for education programs is to improve public awareness and understanding of the significance of the Sanctuary and the need to protect its resources and qualities.

The management objectives designed to meet this goal are to: (1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability; (2) broaden support for the Sanctuary management by offering programs suited to visitors with a range of diverse interests; (3) provide for public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and (4) collaborate with other organizations to provide educational services complementary to the Sanctuary program.

Visitor Use

The Sanctuary goal for visitor management is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities.

Specific management objectives are to: (1) Provide relevant information about Sanctuary regulations, use policies and standards; (2) collaborate with public and private organizations in promoting compatible uses of the Sanctuary; (3) encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and qualities and (4) monitor and assess the levels of use to identify and control potential degradation of resources and qualities and minimize potential user conflicts.

The proposed Sanctuary would be managed from a headquarters located in the Monterey Bay region.

III. Proposed Designation Document

Section 304(a)(4) of the Act requires that the proposed designation document include the geographic area proposed to be included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and the types of activities that will be subject to regulation by the Secretary to protect these characteristics. This section also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. Thus the terms of designation serve as a constitution for the Sanctuary.

Proposed Designation Document for the Monterey Bay National Marine Sanctuary

Under the authority of title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 *et seq.*, Monterey Bay and its surrounding waters offshore central California, and the submerged lands under Monterey Bay and its surrounding waters, as described in Article 2, are hereby designated as a National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and esthetic resources and qualities of the Monterey Bay National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists those activities that may have to be regulated on the effective date of designation or at some later date in order to protect Sanctuary resources and qualities. Thus, the act of designation will empower the Secretary of Commerce to regulate the activities listed in section 1. Listing does not necessarily mean that an activity will be regulated; however, if an activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended by the same procedures by which the original designation was made.

Article II. Description of the Area

The Monterey Bay National Marine Sanctuary (the "Sanctuary") boundaries encompass a total of approximately 2,200 square nautical miles (approximately 7,550 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California. The boundary encompasses the coastal and ocean waters over the entire Monterey Canyon between the northern boundary of Pescadero Marsh, 2.0 nautical miles north of Pescadero Point, and the southern boundary of Julia Pfeiffer Burns Underwater Park and Area of Special Biological Significance, 2.5 nautical miles south from Partington Point, and extending from the mean high tide line from these sites seaward approximately 18 nautical miles on a southwesterly heading of 240° and joined by an arc with a radius of 46 nautical miles drawn from Moss Landing over the entire Monterey Canyon complex out to the abyssal plain at 1500 fathoms (approximately 3000 meters). The land-side boundary follows the mean-high tide level but does not include Santa Cruz, Moss Landing, or Monterey Harbors. The precise boundaries are set forth in appendix I to this designation document.

Article III. Characteristics of the Area That Give It Particular Value

The Monterey Bay area is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive ecosystem and a wide variety of marine habitat. The area is characterized by a narrow continental shelf fringed by a variety of coastal types. The Monterey Submarine Canyon is unique in its size, configuration, and proximity to shore. This submarine canyon, along with adjacent submarine canyons, enriches local waters through strong seasonal upwelling, modifies currents, and provides habitat for pelagic communities. Monterey Bay itself is a rare geological feature, as it is one of the few large bays along the Pacific coast.

The Monterey Bay area has a highly diverse floral land faunal component. Algal diversity is extremely high and the concentrations of pinnipeds, whales, otters and some seabird species is outstanding. The fish stocks, particularly in Monterey Bay, are abundant and the variety of crustaceans and other invertebrates is high.

In addition there are many direct and indirect human uses of the area. The most important economic activity directly dependent on the resources is commercial fishing, which has played an important role in the history of Monterey Bay and continues to be of great economic value.

The diverse resources of the Monterey Bay area are enjoyed by the residents of this area as well as the numerous visitors. The population of Monterey and Santa Cruz counties is rapidly expanding and is based in large part of the attractiveness of the area's natural beauty. The high water quality and the resulting variety of biota and their proximity to shore is one of the prime reasons for the international renown of the area as a prime tourist location. The quality and abundance of the natural resources has attracted man from the earliest prehistoric times to the present and as a result the area contains significant archaeological and paleontological resources, such as Costanoan Indian midden deposits, aboriginal remains and sunken ships and aircraft.

The biological and physical characteristics of the Monterey Bay area combine to provide outstanding opportunities for scientific research on many aspects of marine ecosystems. The diverse habitats are readily accessible to researchers. Six major research facilities are found in the area. These institutions are exceptional resources with a long history of research and large databasese possessing a considerable amount of baseline information on the Bay and its resources. Extensive marine and coastal education and interpretive efforts complement Monterey Bay's many research activities. For example, the Monterey Bay Aquarium has attracted millions of visitors who have experienced the interpretive exhibits of the marine environment. Point Lobos Ecological Reserve, Elkhorn Slough National Estuarine Research Reserve, Long Marine Laboratory and Año Nuevo State Reserve all have excellent docent programs serving the public, and marine related programs for school groups and teachers.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, ecological, recreational, research, educational, historical, and esthetic resources and qualities of the area:

a. Exploring for, developing, or producing oil, gas or minerals in the Sanctuary;

b. Discharging or depositing any material or other substance;

c. Possessing, moving, or injuring, or attempting to possess, move, or injure, a Sanctuary historical resource;

d. Drilling through, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure or material on the seabed of the Sanctuary;

e. Taking marine mammals in the Sanctuary or seabirds in or above the Sanctuary

f. Flying over the Sanctuary in motorized aircraft at low altitude;

g. Operating commercial (other than fishing) vessels in the Sanctuary; and

h. Operating thrill craft (*e.g.*, jet skis, wet bikes, surf jets, hovercraft, speed boats less than 13 feet in length) in the Sanctuary.

Section 2. Consistency with International Law

The regulations governing the activities listed in section 1 of this Article shall apply to United States-flag vessels and to persons who are citizens, nationals or resident aliens of the United States and shall apply to foreign-flag vessels and persons not citizens, nationals, or resident aliens of the United States to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any activity, including those not listed in section 1, is subject to immediate temporary regulations, including prohibition, in accordance with the Administrative Procedure Act.

Article V. Defense or Law Enforcement Activities

No prohibition set forth in the Sanctuary regulations shall apply to activities that are necessary for national defense or law enforcement. Whenever an activity necessary for national defense or law enforcement would violate a prohibition set forth in the Sanctuary regulations were it not necessary for national defense or law enforcement, the head of the agency taking the action shall notify the Secretary of Commerce of designate of the proposed activities if there is sufficient time to permit consultation without jeopardizing national defense or law enforcement. Such notification shall be sufficiently in advance of undertaking the activity in order to permit consultations as to how the activity could be conducted to minimize any adverse impact on Sanctuary resources and qualities without compromising national defense or law enforcement. Activities that are not necessary for national defense or law enforcement, such as training exercises and routine vessel operations, are subject to all prohibitions contained in the Sanctuary regulations.

Article VI. Effect on Other Regulations, Leases, Permits, Licenses, and Rights

Section 1. Fishing Regulations, Licenses, and Permits

Fishing in the Sanctuary, including fishing for shellfish and invertebrates and mariculture, shall not be regulated as part of the Sanctuary management regime authorized by the Act. However, fishing in the Sanctuary may be regulated other than under the Act by Federal and State authorities of competent jurisdiction, and designation of the Sanctuary shall have not effect on any regulation, permit, or license issued thereunder, *e.g.*, regulations promulgated under the the California Fish and Game Code and regulations implementing Fishery Management Plans promulgated under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. Notwithstanding the above, discharges and deposits from fishing vessels may be regulated pursuant to Article IV, section 1, paragraph (b); drilling through, dredging or otherwise altering the seabed of the Sanctuary or constructing, placing or abandoning any structure of material on the seabed of the Sanctuary in connection with fishing and mariculture activities may be regulated pursuant to Article IV, section 1, paragraph (d); and taking of marine mammals and seabirds may be regulated pursuant to Article IV, section 1, paragraph (e).

Section 2. Other

If any valid regulation issued by any Federal, State, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation more protective of Sanctuary resources and qualities shall govern.

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization isued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce or his or her designate as a result of this designation or as a result of any Sanctuary regulation if such lease, permit, license, approval, other authorization, or right of use or access was issued or in existence as of the effective date of this designation. The Secretary of Commerce or his or her designate, however may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued as of the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or to any right of subsistence use or access in existence as of the effective date of Sanctuary designation, provided that the owner or holder of such authorization or right notifies the Secretary or his or her designate of the existence of such authorization or right and requests certification in accordance with the Sanctuary regulations, if the exercise of such authorization or right would otherwise violate a prohibition set forth in the Sanctuary regulations, and complies with any terms and conditions on the exercise of such authorization or right imposed by the Secretary or his or her designate as he or she deems necessary to achieve the purposes for which the Sanctuary was designated. Pending the imposition of terms and conditions by the Secretary or his or her designate, such owner or holder may exercise any such authorization or right without being in violation of any prohibitions set forth in the Sanctuary regulations.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, if the Secretary or his or her designate was notified of the application for such authorization by the applicant in accordance with the Sanctuary regulations and the Secretary or his or her designate did not object to the issuance of such authorization, and such authorization contains, and the owner or holder complies with, such terms and conditions as the Secretary or his or her designate deems necessary to protect Sanctuary resources and qualities.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by a permit issued by the Secretary or his or her designate in accordance with the Sanctuary regulations. Such permits shall only be issued if the Secretary or his or her designate finds that the activity for which the permit is applied will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; have only negligible, short-term adverse effects on Sanctuary resources and qualities; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California.

In addition, the Secretary or his or her designate may issue special used

permits in accordance with section 310 of the Act.

If the Sanctuary regulations prohibit oil, gas, or mineral exploration, development, or production, the Secretary or his or her designate may in no event permit or otherwise approve such activities in the Sanctuary, and any leases, licenses, permits, approvals, or other authorizations issued after the effective date of Sanctuary designation authorizing the exploration, development, or production of oil, gas or minerals in the Sanctuary shall be invalid.

Article VII. Alteration of this Designation

The terms of designation may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State, regional, and local agencies, review by the appropriate Congressional committees and Governor of the State of California, and approval by the Secretary of Commerce or his or her designate.

Appendix I—Proposed Monterey Bay National Marine Sanctuary Boundary Coordinates

(Appendix I will set forth the precise boundaries based on the comments received on the DEIS).

End of Proposed Designation Document

IV. Summary of Proposed Regulations

The proposed regulations would set forth the boundaries of the proposed Sanctuary, prohibit a relatively narrow range of activities, establish procedures for applying for National Marine Sanctuary permits to conduct otherwise prohibited activities, establish certification procedures for existing leases, licenses, permits, approvals, other authorizations, or rights authorizing the conduct of a prohibited activity, establish notification procedures for applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity, set forth the maximum per-day penalties for violating Sanctuary regulations, and establish procedures for administrative appeals.

Specifically, the proposed regulations would add a new part 944 to title 15, Code of Federal Regulations.

Proposed § 944.1 would set forth as the purpose of the regulations to implement the designation of the Monterey Bay National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Proposed § 944.2 and proposed appendix I following proposed § 944.11 would set forth the boundaries of the Sanctuary.

Proposed subsection 944.3 would define various terms used in the regulations. Other terms appearing in the proposed regulations are defined at 15 CFR 922.2 or in the Act.

Proposed § 944.4 would allow all activities except those prohibited by § 944.5 to be undertaken subject to any emergency regulation promulgated pursuant to § 944.6 and all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction.

If any valid regulation issued by any Federal, State, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation more protective of Sanctuary resources and qualities shall govern.

Proposed § 944.5 would prohibit a variety of activities and thus make it unlawful to conduct them. However, any of the prohibited activities other than exploring for, developing, or producing oil, gas or minerals in the Sanctuary could be conducted lawfully if:

(1) Necessary for national defense or law enforcement; necessary to respond to an emergency threatening life, property, or the environment; or pursuant to a National Marine Sanctuary permit issued under proposed § 944.8;

(2) Pursuant to a certification by the Director of the Office of Ocean and Coastal Resource Management under proposed § 944.9 of a valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction as of (or if conducted pursuant to any valid right of subsistence use or access, in existence as of) the effective date of this designation subject to complying with any terms and conditions imposed by the Director as he or she deems necessary to achieve the purposes for which the Sanctuary was designated; or

(3) Pursuant to a valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction after the effective date of Sanctuary designation, provided that the Director was notified of the application in accordance with the requirements of proposed § 944.10 and the Director did not object to the issuance of such authorization, and such authorization contains, and the owner or holder complies with, such terms and conditions, as the Director deems necessary to protect Sanctuary resources and qualities.

The prohibitions would apply to United States-flag vessels and to persons who are citizens, nationals or resident aliens of the United States and to foreign-flag vessels and persons not citizens, nationals, or resident aliens of the United States to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

The first activity prohibited would be exploring for, developing, or producing oil, gas or minerals in the Sanctuary. The resources and qualities of the Monterey Bay area, particularly sea otters, sea birds, and pinnipeds that use the haul-out sites, kelp forests and rocks along the Monterey Bay coast, and the high water quality, are especially vulnerable to oil and gas activities in the area. A prohibition on oil and gas activities within the proposed Sanctuary boundaries will provide partial protection from oil and gas activities for the resources and qualities within the proposed boundaries. A prohibition on mineral activities within the proposed Sanctuary is necessary to be consistent with the prohibition on the fifth activity as discussed below.

The second activity prohibited would be depositing or discharging from any location within the boundaries of the Sanctuary materials or other substances except fish, fish parts, chumming materials or bait used in or resulting from normal fishing operations in the Sanctuary; biodegradable effluents incidental to vessel use generated by marine sanitation devices approved by the U.S. Coast Guard; water generated by routine vessel operations (*e.g.*, cooling water and deck washdown) excluding bilge pumping; or engine exhaust. This prohibition is necessary in order to protect the Sanctuary resources and qualities from the effects of pollutants deposited or discharged into the Sanctuary.

The third activity prohibited would be depositing or discharging, from beyond the boundaries of the Sanctuary, materials or other substances, except for the exclusions discussed above for the second activity, that subsequently enter the Sanctuary and injure a Sanctuary resource or quality. The intent of this prohibition is to protect the Sanctuary resources and qualities from the harmful effects of land and sea-generated non-point and point source pollution.

The fourth activity prohibited would be moving, possessing, or injuring or attempting to move, possess, or injure a

Sanctuary historical resource. Historical resources in the marine environment are fragile, finite and non-renewable. This prohibition is designed to protect these resources so that they may be researched and information about their contents and type made available for the benefit of the public. This prohibition does not apply to accidental moving, possession or injury during normal fishing operations.

The fifth activity prohibited would be drilling through, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure or material on the seabed of the Sanctuary, except as a result of: Anchoring vessels; normal fishing operations; routine harbor maintenance; installation of navigation aids; maintenance of mariculture operations existing as of the effective date of these regulations; and the construction of docks and piers. The intent of this prohibition is to protect the resources of the Sanctuary from the harmful effects of activities such as, but not limted to, excavations for archeological purposes, drilling into the seabed, strip mining, ocean mineral extraction and dumping of dredge spoils.

The sixth activity prohibited would be taking marine mammals in the Sanctuary or seabirds in or above the Sanctuary, except in accordance with and as permitted by regulations promulgated under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). The term "taking" includes all forms of harassment. The MMPA and the ESA both prohibit the taking of specific species protected under those Acts. Sanctuary enforcement officials may consider harassment cases pursuant to the MMPA and ESA. The proposed prohibition would overlap with the MMPA and ESA but also extend protection for Sanctuary resources on an environmentally holistic basis. It would include all marine mammals in the Sanctuary and seabirds in or above the Sanctuary.

The seventh and final activity prohibited would be flying motorized aircraft at less than 1000 feet above the Sanctuary within three nautical miles of State of California designated reserves, parks, beaches or refuges, or the Los Padres National Forest. This prohibition is intended to protect marine birds and mammals from the disturbance and harassment of low-flying aircraft. For example, seabirds are often congregated near the shoreline and sea otters are distributed among the kelp beds within three nautical miles of the coastline.

Proposed § 944.6 would authorize the regulation, including prohibition, on a temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury.

Proposed § 944.7 would set forth the maximum statutory civil penalty per day for conducting a prohibited activity—$50,000. Each day of a continuing violation would constitute a separate violation.

Regulations setting forth the administrative procedures governing the assessment of civil penalties, enforcement hearings and appeals, permit sanctions and denials for enforcement reasons, and the issuance of written warnings are governed by part 904, title 15, Code of Federal Regulations.

Proposed § 944.8 would set forth the procedures for applying for a National Marine Sanctuary permit to conduct an otherwise prohibited activity and the criteria governing the issuance, denial, amendment, suspension, and revocation of such permits. Permits would be granted by the Director of the Office for Ocean and Coastal Resource Management if he or she finds that the activity will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in the management of the Sanctuary; have only negligible, short-term adverse effects on Sanctuary resources and qualities; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the duration of the activity and its effects, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the end value of the applicant's activity, and such other matters as the Director deems appropriate.

Proposed § 944.9 would set forth procedures for requesting certification of leases, licenses, permits, approvals, other authorizations, or rights authorizing the conduct an activity otherwise prohibited under § 944.5(a)(2)–(7) issued or in existence as of the date of Sanctuary designation. Pursuant to 944.5(f), the prohibitions in § 944.5(a)(2)–(7) do not apply to any activity authorized by a valid lease, permit, license, approval, or other authorization issued as of the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or to any right of subsistence use or access in existence as of the effective date of Sanctuary designation, provided that the owner or holder of such authorization or right notifies the Director of the existence of such authorization or right in accordance with the requirements of § 944.8 and requests certification of such authorization or right, and provided that the owner or holder complies with any terms or conditions on the exercise of such authorization or right imposed by the Director as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

Proposed § 944.9 would allow the owner or holder 90 days from the effective date of Sanctuary designation to request certification. The owner or holder would be allowed to conduct the activity without being in violation of § 944.5(a)(2)–(7) pending final agency action on a timely certification request.

The Director would be required to certify such authorization or right within 120 days of receipt of a request for certification, unless: If within 30 days of receipt of a request for certification, the Director has requested additional information, the owner or holder shall then have 30 days from receipt of the request to supply the requested additional information. From the date of the receipt of the additional information or data the Director would have either: 120 days to certify such authorization or right; or 60 days to publish a notice in the **Federal Register** of the intent to hold a public hearing on the request for certification. A hearing shall then be held within 30 days of the publication of the notice to hold the public hearing and a decision on the certification will be made 60 days from the close of the public hearing.

As a condition of certification, the Director would impose such terms and conditions on the exercise of such authorization or right as he or she deems necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under section 304(c)(2) of the Act.

Either the owner or holder or the issuing agency may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 944.11.

Proposed § 944.10 would state that consistent with § 944.5(g), the prohibitions of § 944.5(a)(2)–(7) do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, provided that the Director is notified of the application for such lease, license, permit, approval or other authorization within fifteen days of the date of application or of the effective date of Sanctuary designation, whichever is later, and that the Director does not object to the issuance of such lease, license, permit, or authorization, and provided that such lease, license, permit, or authorization contains, and the owner or holder complies with, such terms and conditions as the Director deems necessary to protect Sanctuary resources and qualities.

Any person applying for a permit, license, approval or other authorization from any Federal, State, or local authority to conduct an activity that would be prohibited under § 944.5(a)(2)–(7) would be required to notify the Director, in writing, within 15 days of the date of application or of the effective date of Sanctuary designation, whichever is later, of the filing of the application.

The Director would be required to notify the agency to which application has been made within the time period allowed for comment on the application of whether he or she has an objection to issuance or what terms and conditions such license, permit, approval, or other authorization must contain in order to protect Sanctuary resources and qualities.

Either the applicant or the issuing agency may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designate in accordance with the procedures set forth in § 944.11.

Proposed § 944.11 would set forth the procedures for appealing to the Assistant Administrator or designate actions of the Director with respect to: (1) The grant, conditioning, amendment, denial, suspension or revocation of a permit under § 944.8; (2) the conditioning, amendment, or revocation of a certification under § 944.9; or (3) the objection to issuance or the imposition of terms and conditions under § 944.10.

Thus, the regulatory regime that the proposed regulations would establish provides for multiple uses of Monterey Bay while at the same time providing for the protection of Sanctuary resources and qualities.

For example, if a city or town were discharging sewage effluents into the Bay pursuant to a valid National Pollution Discharge Elimination System (NPDES) permit issued prior to the effective date of Sanctuary designation, the city or town could continue to discharge under the permit without being in violation of the discharge prohibition by requesting certification of the permit under proposed § 944.9. The Director would then impose on the exercise of the NPDES permit such terms and conditions as he or she deems necessary to achieve the purposes for which the Sanctuary wa designated. Such discharges would remain subject to all prohibitions, restrictions and conditions imposed by any other authority of competent jurisdiction.

For another example, if an entity is dumping dredge spoils in the Bay pursuant to a valid existing permit, the entity could continue to do so by requesting and obtaining certification in accordance with proposed § 944.9.

Prior to conditioning existing or future leases, permits, licenses, approvals, other authorizaitons, or rights NOAA intends to consult with relevant issuing agencies as well as owners, holders or applicants. NOAA's policy is to encourage best available management practices to minimize non-point source pollution entering the Sanctuary and to require at a minimum secondary treatment and sometimes tertiary treatment or more, depending on predicted effects on Sanctuary resources and Sanctuary qualities, for municipal sewage discharge.

V. Miscellaneous Rulemaking Requirements

Marine Protection, Research, and Sanctuaries Act

Section 304 of the Act requires the Secretary to submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the same day as this notice is published, a prospectus on the proposal, which must contain, among other things, the terms of the proposed designation, the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the area, and a draft environmental impact statement. In accordance with section 304, the required prospectus is being submitted to the specified Congressional Committees.

Executive Order 12291

Under Executive Order 12291, the Department must judge whether the regulations proposed in this notice are "major" within the meaning of section 1 of the Order, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. The Administrator of NOAA has determined that the regulations proposed in this notice are not major because, if adopted, they are not likely to result in:

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

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

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

Regulatory Flexibility Act

The regulations proposed in this notice would allow all activities to be conducted in the proposed Sanctuary other than a relatively narrow range of prohibited activities. The procedures proposed in these regulations for applying for National Marine Sanctuary permits to conduct otherwise prohibited activities, for requesting certifications for existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for licenses, permits, approvals, or other authorizations to conduct a prohibited activity would all act to lessen any adverse economic effect on small entities. The proposed regulations, in total, if adopted in final form as proposed, are not expected to have a significant economic impact on a substantial number of small entities and the General Counsel of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. No. 96–511). The collection of information requirement applies to persons seeking permits to conduct otherwise prohibited activities and is necessary to determine whether the proposed activities are consistent with the management goals for the Sanctuary. The collection of information requirement contained in

the proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 1.83 hours annually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public on the collection of information requirement are specifically invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530 (Attn: Paperwork Reduction Act Project 0648–XXXX); and to Richard Roberts, room 305, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

A Federalism Assessment (FA) was prepared for the proposed designation, draft management plan, and proposed implementing regulations. The FA concluded that all were fully consistent with the principals, criteria, and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation annd Implementation (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a Draft Environmental Impact Statement (DEIS) has been prepared for the proposed designation and the proposed regulations. As required by section 304(a)(2), the DEIS includes the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area. Copies of the DEIS are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

Executive Order 12630

This proposed rule, if issued in final form as proposed, would not have takings implications within the meaning of Executive Order 12630 because it would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation. While the absolute prohibition on the exploration, development, production of oil, gas and minerals from the Sanctuary might have a takings implication if it abrogated an existing lease for OCS tracts within the proposed Sanctuary or an approval of an exploration or development and production plan, no OCS leases have been sold for tracts within the proposed Sanctuary and no exploration or production and development plans have been filed or approved.

List of Subjects in 15 CFR Part 944

Administrative practice and procedure, Coastal zone, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 10, 1990.

John J. Carey,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR Chapter IX is proposed to be amended as set forth below.

1. Subchapter B heading is added to read as follows:

Subchapter B—Ocean and Coastal Resource Management

2. Parts 921 through 942 are transferred from subchapter A to subchapter B.

3. A new part 944 is added to subchapter B to read as follows:

PART 944—MONTEREY BAY NATIONAL MARINE SANCTUARY

Sec.

944.1 Purpose.
944.2 Boundaries.
944.3 Definitions.
944.4 Allowed activities.
944.5 Prohibited activities.
944.6 Emergency regulations.
944.7 Penalties for commission of prohibited acts.
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Appendix I to Part 944—Monterey Bay National Marine Sanctuary Boundary Coordinates

Authority: Sections 302, 303, 304, 305, 307 and 310 of title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

§ 944.1 Purpose.

The purpose of the regulations in this part is to implement the designation of the Monterey Bay National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

§ 944.2 Boundaries.

The Monterey Bay National Marine Sanctuary consists of an area of approximately 2,200 square nautical miles of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California. The boundary encompasses the coastal and ocean waters over the entire Monterey Canyon between the northern boundary of Pescadero Marsh, 2.0 nautical miles north of Pescadero Point, and the southern boundary of Julia Pfeiffer Burns Underwater Park and Area of Special Biological Significance, 2.5 nautical miles south from Partington Point, and extending from the mean high tide line from these sites seaward approximately 18 nautical miles on a southwesterly heading of 240° and joined by an arc with a radius of 46 nautical miles drawn from Moss Landing over the entire Monterey Canyon complex out to the abyssal plain at 1500 fathoms (approximately 3000 meters). The Monterey Bay National Marine Sanctuary does not include Santa Cruz, Moss Landing, or Monterey Harbors. The precise boundaries of the Sanctuary appear in appendix I to this part.

§ 944.3 Definitions.

(a) *Act* means title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et seq.*).

(b) *Administrator* or *Under Secretary* means the Administrator of the National Oceanic and Atmospheric Administration/Under Secretary of Commerce for Oceans and Atmosphere.

(c) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

(d) *Director* means the Director of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

(e) *Commercial vessel* means any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges; vessels used in seismic surveys; and vessels engaged in the trade of servicing offshore installations.

(f) *Effective date of Sanctuary designation* means the date the regulations implementing the designation of the Sanctuary become effective.

(g) *Historical resource* means a resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events.

(h) *Injure* means to change adversely, either in the long- or short-term, a chemical or physical attribute of, or the viability of.

(i) *Person* means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency, or instrumentality of the Federal Government or any State or local unit of government, or any foreign government.

(j) *Sanctuary* means the Monterey Bay National Marine Sanctuary.

(k) *Sanctuary quality* means a particular and essential characteristic of the Sanctuary, including but not limited to water quality and air quality.

(l) *Sanctuary resource* means any living or nonliving resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or aesthetic value, including, but not limited to, the substratum of the Bay, corals and coralline algae, benthic invertebrates and algae, plankton, fish, birds, marine mammals and historical resources.

(m) *Taking any marine mammal or seabird* means harassing, hunting, capturing, collecting, or killing, or attempting to harass, hunt, capture, collect, or kill, any marine mammal or seabird, including, but not limited to, any of the following: Collecting dead marine mammals or seabirds, or parts thereof, restraining or detaining any marine mammal or seabird, no matter how temporary, tagging a marine mammal or seabird, operating an aircraft or vessel or doing any other act that results in the disturbing or molesting of marine mammals or seabirds.

(n) *Thrill craft* means any motorized vessel that is generally less than thirteen feet in length as manufactured, is capable of exceeding a speed of twenty miles per hour, and has the capacity to carry not more than the operator and one other person while in operation. The term includes but is not limited to jet skis, wet bikes, surf jets, miniature speed boats, and hovercraft.

(o) *Vessel* means watercraft of any description capable of being used as a means of transportation in the waters of the Sanctuary.

Other terms appearing in the regulations are defined at 15 CFR 922.2 or in the Act.

§ 944.4 Allowed activities.

All activities except those prohibited by § 944.5 may be undertaken subject to any emergency regulation promulgated pursuant to § 944.6 and all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction. If any valid regulation issued by any Federal, State, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation more protective of Sanctuary resources and Sanctuary qualities shall govern.

§ 944.5 Prohibited activities.

(a) Except as specified in paragraphs (c) through (h) of this section, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Exploring for, developing, or producing oil, gas or minerals in the Sanctuary;

(2) Discharging or depositing, from within the boundaries of the Sanctuary, any material or other substance except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from normal fishing operations in the Sanctuary;

(ii) Biodegradable effluents incidental to vessel use generated by marine sanitation devices approved by the U.S. Coast Guard;

(iii) Water generated by routine vessel operations (*e.g.*, cooling water and deck washdown) excluding bilge pumping; or

(iv) Engine exhaust;

(3) Discharging or depositing, from beyond the boundaries of the Sanctuary, materials or other substances, other than those listed in paragraphs (a)(2)(i) through (a)(2)(iv) of this section, that subsequently enter the Sanctuary and injure a Sanctuary resource or Sanctuary quality;

(4) Moving, possessing or injuring, or attempting to move, possess, or injure, a Sanctuary historical resource. This prohibition does not apply to accidental moving, possession or injury during normal fishing operations;

(5) Drilling through, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure or material on the seabed of the Sanctuary. This prohibition does not apply if any of the above results from: Anchoring vessels; normal fishing operations; routine harbor maintenance; installation of navigation aids; maintenance of mariculture operations existing as of the effective date of these regulations; and the construction of docks and piers;

(6) Taking any marine mammal or seabird in or above the Sanctuary, except in accordance with and as permitted by regulations promulgated under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA); and

(7) Flying motorized aircraft at less than 1000 feet above the Sanctuary within three nautical miles of State of California designated reserves, parks, beaches or refuges, or the Los Padres National forest.

(b) The prohibitions in paragraph (a) of this section apply to United States-flag vessels and to persons who are citizens, nationals or resident aliens of the United States; and to foreign-flag vessels and persons not citizens, nationals, or resident aliens of the United States to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

(c) The prohibitions in paragraphs (a)(2) through (a)(7) of this section do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

(d) The prohibitions in paragraphs (a)(2) through (a)(7) of this section do not apply to activities that are necessary for national defense or law enforcement. Whenever an activity necessary for national defense of law enforcement would violate a prohibition set forth in the Sanctuary regulations were it not necessary for national defense or law enforcement, the head of the agency taking the action shall notify the Secretary of Commerce or designate of the proposed activity if there is sufficient time to permit consultation without jeopardizing national defense or law enforcement. Such notification shall be sufficiently in advance of undertaking the activity in order to permit consultations as to how the activity could be conducted to minimize any adverse impact on Sanctuary

resources and qualities without compromising national defense or law enforcement. Activities that are not necessary for national defense or law enforcement, such as training exercises and routine vessel operations, are subject to all prohibitions contained in the Sanctuary regulations.

(e) The prohibitions in paragraphs (a)(2) through (a)(7) of this section do not apply to any activity authorized by a permit issued pursuant to § 944.8.

(f) The prohibitions in paragraphs (a)(2) through (a)(7) of this section do not apply to any activity authorized by a valid lease, permit, license, approval, or other authorization issued as of the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence as of the effective date of Sanctuary designation, provided that the owner or holder of such authorization or right notifies the Director of the existence of such authorization or right in accordance with the requirements of § 944.9 and requests certification of such authorization or right, and provided that the owner or holder complies with any terms and conditions on the exercise of such authorization or right imposed by the Director as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(g) The prohibitions is paragraphs (a)(2) through (a)(7) of this section do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, if the Director was notified of the application for such authorization by the applicant in accordance with the requirements of § 944.10 and the Director did not object to the issuance of such authorization, and such authorization contains, and the owner or holder complies with, such terms and conditions as the Director deems necessary to protect Sanctuary resources and Sanctuary qualities.

(h) Notwithstanding paragraphs (e), (f), and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit authorizing, or otherwise approve, the exploration for, development or production of oil, gas or minerals in the Sanctuary, and any leases, licenses, permits, approvals, or other authorizations authorizing the exploration, development, or production of oil, gas or minerals in the Sanctuary issued after the effective date of Sanctuary designation shall be invalid.

§ 944.6 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities are subject to immediate temporary regulation, including prohibition, in accordance with the Administrative Procedure Act.

§ 944.7 Penalties for commission of prohibited acts.

(a) Each violation of the Act, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $50,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the administrative procedures governing the assessment of civil penalties, enforcement hearings and appeals, permit sanctions and denials for enforcement reasons, and the issuance of written warnings are governed by 15 CFR part 904.

§ 944.8 National Marine Sanctuary permits; application procedures and issuance criteria.

(a) A person may conduct an activity otherwise prohibited by § 944.5(a)(2) through (a)(7) if authorized by a permit issued under this section.

(b) Applications for such permits should be addressed to the Director of the Office of Ocean and Coastal Resource Management; ATTN: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. An application must include a detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel, and methodology to be employed. The qualifications and experience of all personnel must be set forth. The application must set forth the anticipated effects of the activity, if any, or Sanctuary resources and Sanctuary qualities. Copies of all other required licenses, permits, approvals, or other authorizations must be attached.

(c) Upon receipt of a complete application, the Director or designate, at his or her discretion, may request such additional information from the applicant as he or she deems necessary to act on the application, may seek the views of any persons and may hold a public hearing.

(d) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity otherwise prohibited by § 944.5 (a)(2) through (a)(7), if the Director finds that the activity will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; have only negligible, short-term adverse effects on Sanctuary resources and Sanctuary qualities; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director may consider such factors as: The professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and its effects, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the qualities for which the Sanctuary was designated; the end value of the applicant's activity; and such other matters as the Director deems appropriate.

(e) A permit issued pursuant to this section is nontransferable.

(f) The Director may amend, suspend or revoke a permit issued pursuant to this section or deny a permit application pursuant to this section, in whole or in part, for good cause. Any such action shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are governed by subpart D of 15 CFR part 904.

(g) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(h) It may be a condition of any permit issued that any data or other information obtained under the permit be made available to the public.

§ 944.9 Certification of leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity issued or in existence as of the effective date of Sanctuary designation.

(a) The prohibitions in § 944.5 (a)(2) through (a)(7) do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization issued as of the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or by any valid

right of subsistence use or access in existence as of the effective date of Sanctuary designation, provided that the owner or holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right, and simultaneously requests certification of such authorization or right, and provide that the owner or holder complies with any terms and conditions on the exercise of such authorization or right imposed, as a condition of certification, by the Director as necessary to achieve the purposes for which the Sanctuary was designated.

(b) The owner or holder of a valid lease, permit, license, approval or other authorization issued as of the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or of any valid right of subsistence use or access in existence as of the effective date of Sanctuary designation, authorizing an activity otherwise prohibited by § 944.5 (a)(2) through (a)(7) may conduct the activity without being in violation of § 944.5 (a)(2) through (a)(7) pending final agency action on a timely certification request.

(c) Requests for certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235. A copy of the lease, permit, license, approval or other authorization must accompany the request.

(d) After receipt of a request for certification, the Director may either issue a decision within 120 days of receipt of the request or, within 30 days of receipt of the request for certification, request additional information from the applicant as he or she deems necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The applicant then has 30 days to supply the requested information. Failure to supply the requested information within 30 days shall cause the applicant to be immediately subject to the prohibitions in § 944.5 (a)(2) through (a)(7). The Director, in his or her discretion, may seek the views of any persons on the certification request. The Director, at his or her discretion, will then issue a decision within 120 days of receipt of the requested information or may, within 60 days of receipt of the requested information, issue a notice in the **Federal Register** of the intent to hold a public hearing. The public hearing will then be held within 30 days of the publication of the notice in the **Federal Register**. The Director will then have 60 days to make a decision from the close of the public hearing, if any. As a condition of certification, the Director may impose such terms and conditions on the exercise of such authorization or right as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(e) Any certification called for in this section shall be presumed without the imposition of conditions or terms unless the Director acts on the certification request within 120 days of receipt thereof or, if the Director has requested additional information, within 120 days of receipt thereof, or 60 days from the close of any public hearing held.

(f) The Director may amend, suspend, or revoke any certification made under this section whenever the continued conduct of the activity would violate any terms or conditions of the certification. Any such action shall be communicated in writing to both the holder of the certified lease, permit, license, approval, or other authorization and the issuing agency and shall set forth the reason(s) for the action taken.

(g) Either the holder, owner or the issuing agency may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 944.11.

(h) Any amendment, renewal or extension not in existence as of the date of Sanctuary designation of a lease, permit, license, approval, other authorization or right shall be subject to the provisions of § 944.10.

§ 944.10 Notification of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) The prohibitions set forth in § 944.5 (a)(2) through (a)(7) do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, provided that the Director is notified of the application for such authorization within fifteen days of the date of application or of the effective date of Sanctuary designation, whichever is later, and that the Director or designate does not object to the issuance of such authorization and that such authorization contains, and the owner or holder complies with, such terms and conditions as the Director deems necessary to protect Sanctuary resources and Sanctuary qualities.

(b) Any person applying for a lease, permit, license, approval or other authorization from any Federal, State, or local authority to conduct an activity that would be prohibited under § 944.5 (a)(2) through (a)(7) must notify the Director in writing, within 15 days of the date of application or of the effective date of Sanctuary designation, whichever is later, of the filing of the application. Any application may request the Director of issue a finding as to whether an activity for which an application to any Federal, State, or local authority of competent jurisdiction for a lease, permit, license, approval, or other authorization is proposed to be made or has been made would be prohibited by § 944.5 (a)(2) through (a)(7) unless the Director is notified and does not object to issuance.

(c) Notification of the filing of an application must be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235. A copy of the application must accompany the notification.

(d) Upon receipt of a notification, the Director may request such additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, approval, or other authorization, or what terms and conditions such authorization must contain in order to protect Sanctuary resources and Sanctuary qualities. The Director, in his or her discretion, may seek the views of any persons and hold a public hearing on the application.

(e) The Director shall notify the agency to which application has been made within the time period allowed for comment on the application of whether he or she has an objection to issuance or what terms and conditions he or she determines such lease, license, permit, approval, or other authorization must contain in order to protect Sanctuary resources and Sanctuary qualities.

(f) If the Director fails to notify the agency to which application has been made within the time period allowed by that agency for comment on the application of his or her objection to issuance or of the terms and conditions he or she has determined such lease, license, permit, approval, other authorization or right must contain, then

his or her concurrence to issuance without terms or conditions to protect Sanctuary resources and Sanctuary qualities shall be presumed.

(g) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designate in accordance with the procedure set forth in § 944.11.

§ 944.11 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for a § 944.8 permit, a § 944.8 permittee, a § 944.9 certification requester, or a § 944.10 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designate:

(1) The grant, conditioning, amendment, denial, suspension or revocation of a National Marine Sanctuary permit by the Director under § 944.8;

(2) The conditioning, amendment, or revocation of a certification under § 944.9; or

(3) The objection to issuance or the imposition of terms and conditions under § 944.10.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) appealed and the reason(s) therefor, and be received within 30 days of the action(s) by the Director. Appeals must be addressed to the Assistant Administrator, National Ocean Service; ATTN: Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235.

(c) While the appeal is pending appellants requesting certification pursuant to and otherwise in adherence with § 944.9 may continue to conduct their activities without being in violation of the prohibitions in § 944.5 (a)(2) through (a)(7). All other appellants may not conduct their activities without being subject to the prohibitions in § 944.5 (a)(2) through (a)(7).

(d) Within 30 days of receipt of an appeal, the Assistant Administrator or his or her designate may request the appellant or any person to submit such information as the Assistant Administrator or his or her designate deems necessary in order for him or her to decide the appeal. The appellant shall then have 30 days from receipt of the request for additional information from the Assistant Administrator or his or her designate to supply the additional information. The Assistant Administrator or his or her designate, at his or her discretion, may hold an informal hearing on the appeal. If the Assistant Administrator or his or her designate determines that an informal hearing should be held, he or she may designate an officer before whom the hearing shall be held. Notice of the time, place, and subject matter of the hearing shall be published in the **Federal Register** within 120 days of receipt of the appeal. Such hearing shall be held no later than 30 days following publication of the notice in the Federal Register, unless the hearing officer extends the time for reasons he or she deems equitable. The appellant and the Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or his or her designate.

(e) The Assistant Administrator or his or her designate shall decide the appeal based on the record before the Director and the record of the appeal. If a hearing has been held before a hearing officer, the Assistant Administrator or his or her designate may adopt the hearing officer's recommended decision, in whole or in part, or reject or modify it. In any event, if a hearing is held, the Assistant Administrator or his or her designate shall notify the appellant and other interested persons of his or her decision and the reason(s) therefor in writing within 50 days of receipt of the recommended decision of the hearing officer. If an informal hearing is not held, the Assistant Administrator or his or her designate shall notify the appellant and other interested persons of the final decision and the reason(s) therefor in writing, normally within 50 days of the date of the receipt of adequate information to make the decision. The Assistant Administrator's or his or her designate's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in this section may be extended by the Assistant Administrator or his or her designate for good cause for a period not to exceed 30 days, either upon his or her own initiative or upon written request from the appellant stating the reason(s) therefor.

Appendix I to Part 944—Monterey Bay National Marine Sanctuary Boundary Coordinates

Note: Appendix I will set forth the precise boundaries based on the comments received on the DEIS/MP.

[FR Doc. 90-17907 Filed 8-2-90; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Hearings on the Draft Environmental Impact Statement/ Management Plan for the Proposed Monterey Bay National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: NOAA, as required by section 205(a)(3) of Public Law No. 100–627, is proposing to designate an approximately 2,200 square nautical mile area of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the coast of central California, as a National Marine Sanctuary. This notice announces NOAA's intent to hold public hearings on a Draft Environmental Impact Statement/Management Plan (DEIS/MP) for the proposed Monterey Bay National Marine Sanctuary. The purpose of the hearings is to receive the views of interested parties on the proposed designation and the DEIS/MP. The views expressed at these hearings, as well as written comments received on the draft, will be considered in the preparation of the Final Environmental Impact Statement/Management Plan.

The hearings will be held on September 12, 1990, from 7 to 10 p.m. at Monterey City Hall, Council Chambers, Pacific and Madison, Monterey, California; on September 13, 1990, from 7 to 10 p.m. at Veterans Hall Auditorium, 846 Front Street, Santa Cruz, California; and on September 14, 1990, from 7 to 10 p.m. at Half Moon Bay—Community Seniors Center, 535 Kelly Street, Half Moon Bay, California. All interested persons are invited to attend.

FOR FURTHER INFORMATION CONTACT: Frank Christhilf, Regional Manager, or Mark Murray-Brown, Program Specialist, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Ocean and Atmospheric Administration, 1825 Connecticut Avenue NW., suite 714, Washington, DC 20235, (202/673–5126). Copies of the DEIS/MP are available for review at: Half Moon Bay City Hall, 501 Main Street, Half Moon Bay, California; Half Moon Bay Library, 620 Correas Street, Half Moon Bay, California; Harrison Memorial Library, Carmel, California; Castroville Branch of the Monterey County Library, 11266 Merritt Street, Castroville, California; Aptos Library, 7695 Soquel Drive, Aptos, California; Santa Cruz City Library, 224 Church Street, Santa Cruz, California; Association of Monterey Bay Area Governments, 977 Pacific Street, Monterey, California; Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, California; California Coastal Commission Offices, 640 Capitola Road Extension, Santa Cruz, California. Copies of the DEIS/MP are also available upon request to the Marine and Estuarine Management Division.

SUPPLEMENTARY INFORMATION: In the **Federal Register** on January 6, 1989, NOAA announced Monterey Bay, CA, as an active candidate for National Marine Sanctuary Designation and the intent to prepare a DEIS/MP and to hold public scoping meetings on the proposal to designate Monterey Bay as a National Marine Sanctuary (54 FR 448). This announcement described the selection procedures and past history of the proposed Monterey Bay National Marine Sanctuary. The announcement also described the study area, the natural resources, human uses, existing protection of marine resources and the designation process for the proposed Sanctuary.

NOAA has prepared the DEIS/MP in accordance with the National Marine Sanctuary Program Regulations (15 CFR part 922); and published in the **Federal Register** on August 3, 1990, a Notice of Public Availability of the DEIS/MP; and a Notice of Proposed Rule Making, Notice of Proposed Designation and Summary of Draft Management Plan. Based on the analysis of information collected from the public scoping meetings, consultations with Federal, State and local agencies and research scientists, amongst others, and literature review, NOAA intends to designate an approximately 2,200 square nautical mile (sq. nmi) area of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay off the coast of central California as a National Marine Sanctuary. The preferred boundary alternative encompasses the coastal and ocean waters over the entire Monterey Canyon between a point 2.0 nmi north of Pescadero Point and a point 2.5 nmi south of Partington Point and extending seaward from these points approximately 18.5 nmi.

Seven boundary alternatives (including the preferred alternative) are presented in the DEIS/MP. The first boundary alternative is the smallest (approximately 460 sq. nmi) and encompasses only the coastal waters of Monterey Bay from Pigeon Point to Partington Point. The second alternative is the preferred alternative described above. The third alternative (approximately 2,900 sq. nmi) includes the preferred alternative with a southern boundary extension to Cambria. The fourth alternative (approximately 3,100 sq. min) also includes the preferred alternative with a northern boundary extension to the Gulf of the Farallones National Marine Sanctuary. The fifth alternative would establish the largest Sanctuary area (approximately 3,800 sq. nmi) and includes the preferred alternative and in addition, both the southern and northern extensions described above. The sixth boundary alternative (approximately 1,800 sq. nmi) extends from Pescadero Point to Partington Point and extends seaward approximately 46 nmi over the Monterey Canyon but excludes an area to the northwest that contains potential Lease Sale tracts identified by the Minerals Management Service for proposed Lease Sale 119. The seventh boundary alternative (approximately 880 sq. nmi) includes the first boundary alternative with a seaward extension over the Monterey Bay Canyon and also excludes all potential Lease Sale tracts for proposed Lease Sale 119. The President on June 26 instructed the Secretary of the Department of the Interior to allow no development in the Lease Sale 119 area outside the Sanctuary until the year 2000. The environmental consequences of each of these seven boundary alternatives are described in the DEIS/MP.

The designation of the Monterey Bay area as a National Marine Sanctuary would provide an integrated program of resource protection, research and education to assist in the long-term management and protection of its resources. Resource protection will involve cooperation with other agencies in formulating comprehensive resource protection policies and procedures including the enforcement of regulations.

Seven regulations are proposed governing: Hydrocarbon and mineral activities; discharges and deposits (both from within and outside of Sanctuary boundaries); overflights; alteration of or construction on the seabed (including, but not limited to drilling through the seabed); historical resources; and marine mammals and seabirds. Two other activities are potentially subject to regulations: Commercial vessel traffic (other than fishing) and operation of "thrill craft". Alternatives to the

proposed regulations includes status quo and non-regulatory options.

Research planned for the Sanctuary will include conducting baseline studies, as well as monitoring, analysis and prediction projects to provide information needed to further our understanding of marine ecosystems and in resolving management issues. Education programs planned for the Sanctuary will be directed to improving public awareness of the Sanctuary's resources and the need to manage them as wisely as possible to ensure their viability. The Marine and Estuarine Management Division (MEMD) is responsible for the overall management of the proposed Sanctuary. The MEMD, represented by an on-site Sanctuary Manager, will coordinate its on-site activities through cooperative agreements with the State, regional local and other Federal agencies. A Sanctuary Advisory Committee (SAC) will be established to assist the interested groups and agencies in participating in Sanctuary management. The MEMD will determine the structure, composition and functions of the SAC. The general administrative framework and specific roles of each agency in Sanctuary management are described in the DEIS/MP.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: July 27, 1990.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 90-17906 Filed 8-2-90; 8:45 am]

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federal register

Friday
August 3, 1990

Part VIII

The President

Executive Order 12722—Blocking Iraqi Government Property and Prohibiting Transactions With Iraq

Executive Order 12723—Blocking Kuwaiti Government Property

Part VIII

The President

Federal Register
Vol. 55, No. 150
Friday, August 3, 1990

Presidential Documents

Title 3—

The President

Executive Order 12722 of August 2, 1990

Blocking Iraqi Government Property and Prohibiting Transactions With Iraq

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the United States Code.

I, GEORGE BUSH, President of the United States of America, find that the policies and actions of the Government of Iraq constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. All property and interests in property of the Government of Iraq, its agencies, instrumentalities and controlled entities and the Central Bank of Iraq that are in the United States, that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked.

Section 2. The following are prohibited, except to the extent provided in regulations which may hereafter be issued pursuant to this Order:

(a) The import into the United States of any goods or services of Iraqi origin, other than publications and other informational materials;

(b) The export to Iraq of any goods, technology (including technical data or other information controlled for export pursuant to Section 5 of the Export Administration Act (50 U.S.C. App. 2404)) or services from the United States, except publications and other informational materials, and donations of articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes;

(c) Any transaction by a United States person relating to transportation to or from Iraq; the provision of transportation to or from the United States by any Iraqi person or any vessel or aircraft of Iraqi registration; or the sale in the United States by any person holding authority under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1514), of any transportation by air which includes any stop in Iraq;

(d) The purchase by any United States person of goods for export from Iraq to any country;

(e) The performance by any United States person of any contract in support of an industrial or other commercial or governmental project in Iraq;

(f) The grant or extension of credits or loans by any United States person to the Government of Iraq, its instrumentalities and controlled entities;

(g) Any transaction by a United States person relating to travel by any United States citizen or permanent resident alien to Iraq, or to activities by any such person within Iraq, after the date of this Order, other than transactions necessary to effect such person's departure from Iraq, or travel for journalistic activity by persons regularly employed in such capacity by a newsgathering organization; and

(h) Any transaction by any United States person which evades or avoids, or has the purpose of evading or avoiding, any of the prohibitions set forth in this Order.

For purposes of this Order, the term "United States person" means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States, or any person in the United States.

Section 3. This Order is effective immediately.

Section 4. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this Order. Such actions may include prohibiting or regulating payments or transfers of any property or any transactions involving the transfer of anything of economic value by any United States person to the Government of Iraq, its instrumentalities and controlled entities, or to any Iraqi national or entity owned or controlled, directly or indirectly, by Iraq or Iraqi nationals. The Secretary may redelegate any of these functions to other officers and agencies of the Federal government. All agencies of the United States government are directed to take all appropriate measures within their authority to carry out the provisions of this Order, including the suspension or termination of licenses or other authorizations in effect as of the date of this Order.

This Order shall be transmitted to the Congress and published in the **Federal Register.**

George Bush

THE WHITE HOUSE,
August 2, 1990.

[FR Doc. 90-18381
Filed 8-2-90; 9:44 am]
Billing code 3195-01-M

Editorial note: For a statement by Deputy Press Secretary Popadiuk on the blockage of Iraqi and Kuwaiti property, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 31).

Presidential Documents

Executive Order 12723 of August 2, 1990

Blocking Kuwaiti Government Property

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and 3 U.S.C. 301.

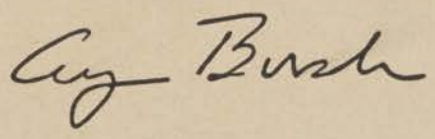
I, GEORGE BUSH, President of the United States, find that the situation caused by the invasion of Kuwait by Iraq constitutes an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and have declared a national emergency to deal with that threat.

I hereby order blocked all property and interests in property of the Government of Kuwait or any entity purporting to be the Government of Kuwait, its agencies, instrumentalities and controlled entities and the Central Bank of Kuwait that are in the United States, that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, including their overseas branches.

For purposes of this Order, the term "United States person" means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States or any person in the United States.

The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act to carry out the provisions of this Order.

This Order is effective immediately and shall be transmitted to the Congress and published in the **Federal Register.**



THE WHITE HOUSE,
August 2, 1990.

[FR Doc. 90-18382
Filed 8-2-90; 9:45 am]
Billing code 3195-01-M

Editorial note: For a statement by Deputy Press Secretary Popadiuk on the blockage of Iraqi and Kuwaiti property, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 31).

federal register

Friday
August 3, 1990

Part IX

Department of State

Revocation of Munitions Export Licenses to Iraq; Suspension of Munitions Exports to Kuwait; Notice

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1238]

Revocation of Munitions Export Licenses to Iraq; Suspension of Munitions Exports to Kuwait

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that all licenses and approvals to export or otherwise transfer defense articles and defense services to Iraq pursuant to section 38 of the Arms Export Control Act are revoked. All such licenses and approvals with respect to Kuwait are suspended.

EFFECTIVE DATE: August 2, 1990.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Chief, Licensing Division, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: Effective immediately, it is the policy of the U.S. Government to deny all applications for licenses and other approvals to export or otherwise transfer defense articles to Iraq and Kuwait. In addition, U.S. manufacturers and exporters and any other affected parties are hereby notified that the Department of State has revoked all licenses and approvals authorizing the export or other transfers of defense articles or defense services to Iraq. The Department of State has also suspended all such licenses and approvals with respect to Kuwait in order to ensure that no defense articles or defense services reach Iraqi authorities.

The licenses and approvals that have been revoked or suspended include manufacturing license and technical assistance agreements involving those countries. These actions also preclude the use in connection with Iraq and Kuwait of any exemptions from license or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

These actions have been taken pursuant to sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778, 2791) and section 126.7 of the ITAR (22 CFR 126.7) in furtherance of the foreign policy of the United States.

Dated: August 2, 1990.

Richard A. Clarke,

Assistant Secretary of State for Politico-Military Affairs.

[FR Doc. 90–18449 Filed 8–2–90; 1:36 pm]

BILLING CODE 4710-25-M

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S.J. Res. 75/Pub. L. 101-339

Relating to NASA and the International Space Year. (July 31, 1990; 104 Stat. 383; 2 pages) Price: $1.00

S.J. Res. 281/Pub. L. 101-340

To designate September 13, 1990, as "National D.A.R.E. Day". (July 31, 1990; 104 Stat. 385; 2 pages) Price: $1.00

S.J. Res. 339/Pub. L. 101-341

To designate August 1, 1990, as "Helsinki Human Rights Day". (July 31, 1990; 104 Stat. 387; 3 pages) Price: $1.00