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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2600

Organization and Functions of the Office of Government Ethics

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: This rule describes the basic organization and functions of the Office of Government Ethics (OGE). It is necessitated because OGE, which was formerly a part of the Office of Personnel Management (OPM), became a separate executive branch agency on October 1, 1989. The purpose of this rule is to make information related to the fundamental organization and functions of OGE readily available to the public and to other Federal agencies.

EFFECTIVE DATE: September 28, 1990.

ADDRESSES: Any comments on this document may be sent to: the Office of Government Ethics, suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: Ms. Powell.

FOR FURTHER INFORMATION CONTACT: Laurie A. Powell, Office of Government Ethics, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

On October 1, 1989, in accordance with sections 3 and 10(b) of its 1988 reauthorization legislation (Pub. L. 100–598, 102 Stat. 3031, 3035), the Office of Government Ethics became a separate agency in the executive branch of the United States Government. See 5 U.S.C. appendix IV, section 401. OGE was formerly part of the Office of Personnel Management. In December 1989, OGE established its own chapter XVI of title 5 of the Code of Federal Regulations, as assigned by the Office of the Federal Register, for OGE's rules, regulations and general statements of policy. See 54 FR 50229–50231 (Dec. 5, 1989).

In this document, the Office of Government Ethics is issuing a short rule describing its basic organization and functions as a separate executive agency. The rule consists of three sections. Section 2600.101 briefly describes the origin and purpose of OGE in the 1978 Ethics in Government Act and its recent separate agency status. In section 2600.102, the current Washington, DC office address of OGE is given, and the fact that OGE does not have any regional offices is stated. The last section, § 2600.103 of this rule, describes the functions of the five OGE offices—the Office of the Director, the Office of the General Counsel, the Office of Monitoring and Compliance, the Office of Education, and the Office of Administration.

B. Procedural Matters

Administrative Procedure Act

As Director of the Office of Government Ethics, I have determined that this regulation solely concerns matters of Federal agency organization and procedure. Thus, it is exempt from the notice and opportunity for public comment and delayed effective date requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities. Thus, no Regulatory Flexibility Act (5 U.S.C. chapter 6) analysis is required.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply since this regulation does not impose any information collection requirements requiring Office of Management and Budget approval thereunder.

List of Subjects in 5 CFR Part 2600

Conflict of interests, Government employees, Organization and functions (Government agencies).

Approved: September 24, 1990.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, pursuant to its authority under the Ethics in Government Act, the Office of Government Ethics is adding the text of and an authority citation for 5 CFR part 2600, previously reserved, and is revising the title thereof to read as follows:

PART 2600—ORGANIZATION AND FUNCTIONS OF THE OFFICE OF GOVERNMENT ETHICS

Sec.

Authority: 5 U.S.C. appendixes III, IV; E.O. 12674.

§ 2600.101 Statement of the history and purpose of the Office of Government Ethics.

The U.S. Office of Government Ethics (OGE) is an executive branch agency which is responsible for overseeing and providing guidance on Government ethics for the executive branch, including the ethics programs of executive departments and agencies. OGE was created by the Ethics in Government Act ("the Act") of 1978, Public Law No. 95–521, as amended. OGE was originally part of the Office of Personnel Management (OPM). Public Law No. 100–598 of November 3, 1988, provided for OGE's separate agency status, effective October 1, 1989. The Act created OGE to provide overall direction for executive branch policies designed to prevent conflicts of interest and to help insure high ethical standards on the part of agency officers and employees. Pursuant to the Ethics Reform Act of 1989 (Public Law No. 101–194), as revised by the technical amendments of May 4, 1990 (Public Law No. 101–280), OGE is the "supervising ethics office" for the executive branch for various purposes, including public and confidential financial disclosure reporting by executive agency officials. OGE also has various Government ethics guidance responsibilities under Executive Order 12674 of April 12, 1989, "Principles of Ethical Conduct for Government Officers and Employees" (3 CFR 1989 Compilation, pp. 215–218).

§ 2600.102 Office of Government Ethics address.

The Office of Government Ethics is located at suite 500, 1201 New York

Avenue NW., Washington, DC 20005-3917. OGE has no regional offices.

§ 2600.103 Office of Government Ethics divisions; functions.

(a) The Office of Government Ethics is divided into the following offices:

(1) The Office of the Director;

(2) The Office of the General Counsel;

(3) The Office of Monitoring and Compliance;

(4) The Office of Education; and

(5) The Office of Administration.

(b) *The Office of the Director.* The Director of the Office of Government Ethics is appointed by the President and confirmed by the Senate. The responsibilities of the OGE Director include: Advising the White House and executive branch Presidential appointees on Government ethics matters; maintaining ethics liaison with and providing guidance on ethics to executive branch departments and agencies; providing ethics liaison to the Congress; responding to public and press inquiries on ethics; and overseeing and coordinating all OGE rules, regulations, formal advisory opinions and major policy decisions. The OGE Deputy Director is also attached to this office and assists the Director in carrying out OGE's responsibilities, including serving as Acting Director in the absence of the Director.

(c) *The Office of the General Counsel.* The responsibilities of the OGE Office of the General Counsel include: Developing regulations and approving executive agency implementation under conflict of interest laws, administrative standards of conduct, post-Government employment restrictions, and public and confidential financial disclosure reporting; initiating executive branch administrative ethics corrective actions; reviewing public financial disclosure statements of advice-and-consent Presidential executive branch nominees, to identify and resolve conflicts; advising the OGE Director whether to approve and reviewing the ongoing administration of executive branch Ethics in Government Act qualified trusts; issuing certificates of divestiture; providing informal ethics advisory opinions/advice; participating in training and public forums on ethics; monitoring and providing technical assistance on legislative Government ethics initiatives; making Freedom of Information Act and Privacy Act determinations for OGE; facilitating executive agency referrals of criminal conflict of interest violations to the Department of Justice; and advising on executive agency exemptions and designations under 18 U.S.C. 207 and 208.

(d) *The Office of Monitoring and Compliance.* The responsibilities of the OGE Office of Monitoring and Compliance include: auditing the ethics programs in executive branch departments and agencies, regional offices and military bases to insure compliance with ethics regulations and requirements; monitoring compliance with ethics agreements made by Presidential executive branch appointees requiring Senate advice and consent, and reviewing their annual and termination SF 278 financial disclosure reports, as well as assisting in the review of their nominee reports; reviewing executive agency designations pursuant to 18 U.S.C. 207; participating in training and public forums on ethics; and providing advice, review and liaison to the executive agencies on all ethics administrative matters pursuant to a desk officer system which the office operates.

(e) *The Office of Education.* The responsibilities of the OGE Office of Education include: providing information on and promoting understanding of ethical standards through training courses for executive agency ethics practitioners and development of instructional materials, such as the *Government Ethics Newsgram,* handbooks and videotapes; carrying out the mandate of Executive Order 12674 to develop and disseminate an ethics reference manual for executive branch employees; coordinating on required annual executive agency ethics training plans and annual agency ethics program reports, including a yearly ethics survey; and providing liaison with the public and outside groups such as non-profit and educational organizations, as well as officials of state, local and foreign governments to promote understanding of Government ethics.

(f) *The Office of Administration.* The Office of Administration is responsible for providing and coordinating essential administrative support services to all OGE operating programs and divisions. These intra-agency functions include: Personnel; payroll; fiscal resource management; facilities management; procurement, records and property management; publishing and distribution; printing; management information systems support; library; personnel security; and funding mandatory overhead expenses necessary for the operation of OGE.

[FR Doc. 90-22973 Filed 9-27-90; 8:45 am]

BILLING CODE 6345-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture to the Assistant Secretary for Administration and from the Assistant Secretary for Administration to the Director, Office of Operations, to facilitate reporting information to the Internal Revenue Service in accordance with section 6050M of the Internal Revenue Code of 1986.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, Procurement Analyst, Procurement Division, Office of Operations, United States Department of Agriculture, Washington, DC 20250, 202-447-5729.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to facilitate reporting information to the Internal Revenue Service in accordance with 26 U.S.C. 6050M and 26 CFR 1.6050M-1.

Section 6050M of the Internal Revenue Code of 1986 (26 U.S.C. 6050M) requires the head of every Federal executive agency to file an information return with the Department of the Treasury reporting the name, address, and Taxpayer Identification Number (TIN) of each person with whom the executive agency enters into a contract, together with any other information required by the Secretary of the Treasury. This return shall be made at such time and in such a manner as the Secretary of the Treasury may by regulation prescribe. By final rule dated December 6, 1989, the Internal Revenue Service prescribed reporting requirements governing the submission of such information returns. The regulations provide that the authority to submit the return and to execute the written verification ("jurat") which accompanies the return may be delegated by the agency head. 26 CFR 1.6050M-1(a); 26 CFR 1.6050M-1(d)(5).

Federal executive agencies may elect to have the Director of the Federal Procurement Data Center (FPDC) make information returns to the Internal Revenue Service on their behalf. The regulations allow this alternate method of filing if the agency reports all the information required for the information

return as part of its regular quarterly submission to FPDC. In such cases, the quarterly reports must be accompanied by agency authorization to the Director of the FPDC to make the return and the signed verification statement prescribed by 26 CFR 1.6050M–1(d)(5).

The Director, Office of Operations, is responsible for the submission of quarterly contract action reports to the FPDC. Delegation of the authority to submit the information return required by 26 U.S.C. 6050M to the Director, Office of Operations, would facilitate submitting the data required for this return as part of the regular quarterly submissions to FPDC. Such delegation would also facilitate prompt submission of the FPDC report and of the information return.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

For the reasons set out in the Preamble, part 2, title 7, Code of Federal Regulations is amended as follows.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.25 is amended by adding paragraph (c)(3)(ix) as follows:

§ 2.25 Delegations of authority to the Assistant Secretary for Administration.

* * * * *

(c) * * *

(3) * * *

(ix) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes executing such verifications or certifications as may be required by 26 CFR 1.6050M–1, and making the election by 26 CFR 1.6050M–1(d)(5)(i).

* * * * *

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

3. Section 2.76 is amended by adding paragraph (a)(3)(ix) as follows:

§ 2.76 Director, Office of Operations.

(a) *Delegations.* * * *

(3) * * *

(ix) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes executing such verifications or certifications as may be required by 26 CFR 1.6050M–1, and making the election allowed by 26 CFR 1.6050M–1(d)(5)(i).

* * * * *

Dated: September 18, 1990.

For subpart C:

Jack C. Parnell,

Acting Secretary.

Dated: September 18, 1990.

For subpart J:

Adis M. Vila,

Assistant Secretary for Administration.

[FR Doc. 90–23008 Filed 9–27–90; 8:45 am]

BILLING CODE 3410–98–M

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV–90–196FR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; 1990–91 Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures for the 1990–91 fiscal period (August 1–July 31) for the Texas Valley Citrus Committee (TVCC), established under Marketing Order No. 906. This action is needed by the TVCC to pay anticipated marketing order expenses. This action will enable the TVCC to continue to perform its duties and the order to operate.

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

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, 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 final rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This agreement and 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 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 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 135 handlers subject to regulation under the marketing order for oranges and grapefruit grown in Texas, and about 2,500 orange and grapefruit producers in Texas. 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 marketing order for Texas oranges and grapefruit, administered by the U.S. Department of Agriculture (Department), requires that an annual budget of expenses be prepared by the

TVCC and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC'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 is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The TVCC met on August 1, 1990, and unanimously recommended a 1990–91 budget with expenditures of $107,810. Of this total, $49,260 is for administration of the marketing order and $58,550 is for administration of TexaSweet Citrus Advertising, Inc. (TCAI), TCAI has carried out the TVCC's advertising and promotion program for the past several seasons and plans limited public relations activities for 1990–91.

The TVCC's 1990–91 expenditures are substantially lower than the amounts expended during each of the past several seasons and are at a level needed to keep the marketing order functioning until commercial citrus production is reestablished in Texas. In comparison, 1989–90 budgeted expenditures were $1,496,634. The TVCC reports that it does not expect any commercial citrus shipments to be made from Texas this season due to severe freeze damage to the citrus trees in December of 1989. Since no crop production is expected, the TVCC recommended that no assessment rate be established for 1990–91.

The TVCC plans to draw funds from its reserve and use about $34,000 in interest income to finance its 1990–91 expenditures. Sufficient funds are in the TVCC's reserve, which amounted to about $440,000 on July 31, 1990, to cover the anticipated deficit.

The TVCC further unanimously recommended that any unexpected funds from the 1989–90 fiscal period be placed in its reserve fund.

A proposed rule concerning this action was published in the Federal Register on August 29, 1990, with a 10-day comment period ending September 10, 1990. No comments were received.

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

This final rule adds § 906.230 under this marketing order, based on the TVCC's recommendations and other information.

After consideration of all relevant matter presented, the information and recommendations submitted by the TVCC, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because approval of the expenses rate must be expedited. This marketing order's fiscal period began on August 1, 1990, and the TVCC needs appoval to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

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

2. New § 906.230 is added to read as follows:

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

§ 906.230 Expenses.

Expenses of $107,810 by the Texas Valley Citrus Committee are authorized for the fiscal period ending on July 31, 1991. Any unexpended funds from the 1989–90 fiscal period may be carried over as a reserve.

Dated: September 25, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–23010 Filed 9–27–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 910

[Lemon Reg. 737]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from September 30 through October 6, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATE: Regulation 737 (7 CFR part 910) is effective for the period from September 30 through October 6, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed 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 action on small entities as well as larger ones.

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

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon 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 are less than $3,500,000. The majority of handlers and producers

of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The Committee's most recent estimate (September 12) of 1990–91 production is 42,100 cars (one car equals 1,000 cartons at 38 pounds net weight each), compared to 37,881 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990–91 production at 6,600 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24, 292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 10,800 cars compared to the 9,436 cars produced last year. On October 11, 1990, the National Agricultural Statistics Service will publish an estimate of the 1990–91 lemon crop.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. Based on its earlier crop estimate of 40,834 cars, the Committee estimates that about 44 percent of the 1990–91 crop will be utilized in fresh domestic channels (17,900 cars), compared with the 1989–90 total of 16,600 cars, about 44 percent of the total production of 37,881 cars in 1989–90. Fresh exports are projected at 22 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 34 percent compared with 34 percent of the 1989–90 crop. Based on the September 12 revised crop estimate, the Committee is expected to revise its utilization schedule in the near future.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990–91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on September 25, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended that 325,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is 15,000 cartons above the estimated projections in the Committee's current shipping schedule.

During the week ending on September 22, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 296,000 cartons compared with 286,000 cartons shipped during the week ending on September 23, 1989. Export shipments totaled 96,000 cartons compared with 136,000 cartons shipped during the week ending on September 23, 1989. Processing and other uses accounted for 171,000 cartons compared with 143,000 cartons shipped during the week ending on September 23, 1989.

Fresh domestic shipments to date for the 1990–91 season total 2,427,000 cartons compared with 2,335,000 cartons shipped by this time during the 1989–90 season. Export shipments total 995,000 cartons compared with 1,097,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 1,798,000 cartons compared with 949,000 cartons shipped by this time during 1989–90.

For the week ending on September 22, 1990, regulated shipments of lemons to the fresh domestic market were 296,000 cartons on an adjusted allotment of 348,000 cartons which resulted in net undershipments of 52,000 cartons. Regulated shipments for the current week (September 23 through September 29, 1990) are estimated at 310,000 cartons on an adjusted allotment of 356,000 cartons. Thus, undershipments of 46,000 cartons could be carried over into the week ending October 6, 1990.

The average f.o.b. shipping point price for the week ending on September 22, 1990, was $14.42 per carton based on a reported sales volume of 307,000 cartons compared with last week's average of $12.77 per carton on a reported sales volume of 305,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $12.89 per carton. The average f.o.b. shipping point price for the week ending on September 23, 1989, was $15.35 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.55 per carton.

The Department's Market News Service reported that, as of September 25, the market is "steady". Demand is very good for first grade California-Arizona lemons ranging in size from 75 through 140, and demand is moderate for choice fruit sized 235. At the meeting a Committee member commented that demand for lemons is good. It also was noted that harvesting activities in District 3 should begin to increase with the break in weather patterns. Committee members discussed the movement of fruit in storage, anticipated pick activity, and the desire to maintain regulation. The Committee unanimously recommended volume regulation for the period from September 30 through October 6, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $9.54 per carton, 116 percent of the projected season average fresh on-tree parity equivalent

price of $8.20 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $8.53, 114 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from September 30 through October 6, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until September 25, 1990, and this action needs to be effective for the regulatory week which begins on September 30, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

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

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

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Section 910.1037 is added to read as follows:

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

§ 910.1037 Lemon Regulation 737.

The quantity of lemons grown in California and Arizona which may be handled during the period from September 30 through October 6, 1990, is established at 325,000 cartons.

Dated: September 26, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–23166 Filed 9–27–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 920

[Docket No. FV–90–194]

Kiwifruit Grown in California; 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. 920 for the 1990–91 fiscal period. Authorization of this budget enables the Kiwifruit Administrative Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program will be derived from assessments on handlers.

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

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, 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 and Order No. 920 (7 CFR part 920) regulating the handling of kiwifruit grown in California. 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 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 100 handlers of California kiwifruit under Marketing Order No. 920, and approximately 1,220 kiwifruit 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 the handlers and producers may be classified as small entities.

The budget of expenses for the 1990–91 fiscal year was prepared by the Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are producers of California kiwifruit. They are familiar with the committee's needs and with the cost of 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 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 kiwifruit. 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 July 12, 1990, and unanimously recommended a 1990–91 budget of $191,448. This compares with $136,293 last year. Decreases include $2,800 for maturity test kits and $1,300 for field staff travel. Major increases this year include $7,690 for salaries, $4,285 for benefits, and $7,500 for a new staff vehicle. Included also is $39,097 for a dry weight maturity testing program which covers salary costs for 13 field people and equipment such as microwaves, scales, and supplies.

The committee is implementing dry weight testing to collect data throughout California and evaluate the use of this method during inspection. Dry weight testing measures total solids which may be more accurate than the present method used in determining when to harvest, as it may indicate the ability of the fruit to continue ripening once harvested.

Presently the Brix method is used to measure the soluble solids (or sugar) content of kiwifruit in order to determine when it is to be harvested. Kiwifruit with a soluble solids content of 6.5 percent are considered mature enough to harvest. While this is a good indicator of palatability, it does not guarantee that the fruit is mature enough to continue ripening after harvest.

The committee also recommended an assessment rate of $0.01 per 7½ pound tray or equivalent, up from $0.0075 last year. This rate, when applied to anticipated shipments of 10.5 million trays, would yield $105,000 in assessment income. This, when combined with $86,446 from interest income and the reserve, would provide adequate funds for budgeted expenses. Operating reserve funds, currently at $124,202, would be reduced to less than one fiscal period's expenses.

While this final action imposes 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 August 22, 1990 (55 FR 34264). That document contained a proposal to add § 920.206 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through September 4, 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 began on August 1, 1990, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable kiwifruit handled during the fiscal periods. 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 920

Kiwifruit, marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

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

2. A new § 920.206 is added to read as follows:

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

§ 920.206 Expenses and assessment rate.

Expenses of $191,446 by the Kiwifruit Administrative Committee are authorized, and an assessment rate of $0.01 per 7½ pound tray or equivalent of kiwifruit is established for the fiscal period ending July 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: September 25, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–23009 Filed 9–27–90; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Parts 1700, 1701, 1702

Agency Organization and Functions, Public Information and Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR chapter XVII of the Code of Federal Regulations by revising part 1700 to include information formerly located in parts 1700, 1701, and 1702. Parts 1701 and 1702 are removed. In accordance with REA's plans to simplify and clarify Agency regulations, the information in these three regulations is being updated and combined into a single rule. Pursuant to 7 CFR part 1610, the provisions of this regulation applicable to the REA Rural Telephone program also apply to the Rural Telephone Bank (RTB or the Bank) unless otherwise stated.

These provisions are being published simply to inform the public of internal Agency functions. Therefore, no period of public comment is necessary.

EFFECTIVE DATE: This final rule is effective September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Blaine D. Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, Room 4064 South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone (202) 382–9552.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act.

REA has concluded that the promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

The programs covered in this rule are listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electrification Loans and Loan Guarantees; 10.851, Rural Telephone Loans and Loan Guarantees; 10.852, Rural Telephone Bank Loans, and 10.853, Rural Economic Development Loans and Grants.

For the reasons set forth in the final rule related Notice to 7 CFR part 3015, subpart V (50 FR 47034), rural electrification, rural telephone and rural telephone bank loans and loan guarantees are excluded from the scope of Executive Order 12372 regarding intergovernmental consultation with State and local officials, except for loans made to Government entities. Rural economic development loans and grants, except those for feasibility studies, are subject to the Executive Order.

This rule contains no reporting or recordkeeping provisions requiring Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C 3501 et seq.)

Background

A general statement of the procedures followed by REA in fulfilling the mission prescribed for it by the Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 901—950b), as amended, was formerly located in 7 CFR part 1700; a description of public information provided by the Agency under the Freedom of Information Act (FOI Act) (5 U.S.C. 552) was in 7 CFR part 1701, and the organization and functions of REA were in 7 CFR part 1702. As part of a project to clarify and simplify Agency regulations, REA is updating the information from these Parts and publishing it in a single regulation. Parts 1701 and 1702 are being removed by this action.

Final rule amendments to 7 CFR part 1610.8, published May 16, 1989, at 54 FR 21047, and October 25, 1989, at 54 FR 43415, provide that the RTB shall utilize REA's regulations, including 7 CFR parts 1700—1702, as they apply to the Bank.

This amendment describes internal administrative procedures of the Agency and, therefore, according to the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.), requires no public comment period. Appendix A to part 1701, Material Approved for Incorporation by Reference, is hereby removed.

List of Subjects

7 CFR Part 1700

Electric power, Freedom of information, Loan programs—energy, Loan programs—communications, Organization and functions (Government agencies), Rural areas, Telephone.

7 CFR Part 1701

Freedom of information, Incorporation by reference, Reporting and recordkeeping requirements.

7 CFR Part 1702

Organization and functions (Government agencies).

Therefore, REA revises part 1700 and removes parts 1701 and 1702 of 7 CFR chapter XVII as follows:

1. Part 1700 is revised to read as follows:

PART 1700—GENERAL INFORMATION

Subpart A—Organization and Functions

Subpart B—Programs

Subpart C—Public Information

Authority: 7 U.S.C. 901–950(b); Title I, Subtitle D, Section 1403, Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203: Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72; 7 U.S.C. 1921 et seq., and 44 FR 30313, May 25, 1779; 5 U.S.C. 301, 552; 7 CFR 1.1–1.16.

Subpart A—Organization and Functions

§ 1700.1 General.

(a) The Rural Electrification Administration (REA) was established by Executive Order No. 7037, signed by the President on May 11, 1935. Statutory authority was provided by the Rural Electrification Act of 1936 (RE Act) (49 Stat. 1363; 7 U.S.C. 901). The Act established REA as a lending agency with responsibility for developing a program for rural electrification.

(b) An October 28, 1949, amendment to the RE Act authorized REA to make loans to improve and extend telephone service in rural areas. The Rural Telephone Bank (RTB or the Bank), an Agency of the United States, was established by another amendment to the RE Act, approved May 7, 1971. The Administrator of REA serves as the Bank's chief executive with the title of Governor. On May 11, 1973, the RE Act was further amended to establish a revolving fund and to provide authority for REA to guarantee loans made by other lenders. The RE Act was amended further on December 21, 1987 to establish a Rural Economic Development Subaccount, and to authorize funds from this subaccount to provide zero-interest loans and grants to REA borrowers to promote rural economic development and job creation.

(c) The offices of REA are located in the South Building of the United States Department of Agriculture at 14th and Independence Avenue, SW., Washington, DC 20250–1500.

(d) Programs are administered by four area offices which are composed of the following states and territories:

(1) *Northeast* Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin;

(2) *Northwest* Alaska, Idaho, Iowa, Minnesota, Montana, North Dakota, Oregon, South Dakota, Washington, and Wyoming;

(3) *Southeast* Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Puerto Rico, South Carolina, Tennessee, and the Virgin Islands;

(4) *Southwest* Arizona, California, Colorado, Hawaii, Kansas, Nebraska, Nevada, New Mexico, Oklahoma, Texas, Utah, and present and former Pacific Trust territories, except that the Pacific territories and Hawaii are included in the Northwest area in the electric program.

§ 1700.2 Office of the Administrator.

(a) The Administrator (who also serves as Governor of the RTB) is appointed by the President, with the advice and consent of the Senate, for a term of 10 years. The Administrator functions as the chief executive of the Agency under the general supervision and direction of the Under Secretary for Small Community and Rural Development. The Administrator is aided directly by two Deputy Administrators and by Assistant Administrators for the Electric Program, the Telephone Program, and Management. The Special Projects Staff and the Equal Opportunity and Civil Rights Staff also report directly to the Administrator. The work of the Agency

is carried on through the offices and divisions described in this part.

(b) The Special Projects Staff is responsible for monitoring, analyzing and negotiating with selected borrowers that are in default or expected to be default on loan payments, in order to ensure repayment of the Government's loans.

(c) The Equal Opportunity and Civil Rights Staff administers the program for equal opportunity in the delivery of services and benefits by REA borrowers and in the employment practices in the Agency. The staff:

(1) Formulates and coordinates plans, policies and procedures for a nationwide program of nondiscrimination on the part of REA borrowers in carrying out borrower programs subject to the provisions of Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1974, as amended; the Americans with Disabilities Act of 1990; and Executive Order 11246, as amended by Executive Order 11375.

(2) Develops and monitors plans, policies and programs designed to promote equal employment opportunity for REA personnel under Title VIII of the Civil Rights Act of 1064, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Equal Employment Opportunity Act of 1972; Section 501 of the Rehabilitation Act of 1973; pertinent provisions of the Civil Service Reform Act of 1978; and related rules, regulations and other equal employment, nondiscrimination statutes.

§ 1700.3 Office of the Deputy Administrator—Program Operations.

The Deputy Administrator—Program Operations directs and coordinates the electric, telephone and rural development programs and borrower accounting activities; reviews Agency policies in these areas and, as necessary, implements changes; and participates with the Administrator and other officials in planning and formulating the programs and activities of the Agency.

§ 1700.4 Rural electric program.

(a) The Assistant Administrator—Electric directs and coordinates the rural electrification program of the Agency, participating with the Administrator and Deputy Administrator—Program Operations and others in planning and formulating the electric programs and activities of the Agency.

(b) Area Offices—The four area offices are the primary points of contact between REA and all electric system borrowers. Each office administers the rural electric program for an assigned geographical area with assistance of field representatives located in areas assigned to them. The area offices have the following responsibilities with respect to loan feasibility and security and accomplishment of the purposes of the RE Act:

(1) Provide guidance to borrowers on Agency's loan policies and procedures, and make recommendations to the Administrator on applications for REA loans or loan guarantees and rural development loans and grants. If delegated the authority by the Administrator, Area Directors may approve certain loans, lien accommodations and other actions.

(2) Review proposed retail schedules with respect to their effects on repayment of REA loans and achievement of RE Act purposes; review and approve proposed wholesale rate schedules of power supply borrowers.

(3) Assure that power plant, distribution, and transmission systems and facilities are designed and constructed in accordance with the terms of the loan and the Agency's regulations. Review and approve borrowers' engineering plans and specifications; engineering, equipment and construction contracts; construction; and payments to engineers and contractors. Area offices also work with borrowers to assure that completed construction meets REA standards for quality of construction and loan security.

(4) Review borrowers' power supply and construction plans; technical power planning documents and annual cost studies; and borrower contracts and agreements relating to the sale or procurement of power.

(5) Provide information to borrowers on supplemental power resources and load and energy management.

(6) Advise borrowers on REA requirements regarding the environmental aspects of the design, construction and operation of power plants; and transmission and distribution systems. Review borrowers' environmental analyses and prepare environmental findings for the Administrator.

(7) Provide information to borrowers regarding management, financial, and technical operations and practices with respect to the feasibility and security of the Government's loans and achievement of RE Act purposes.

(c) Electric Staff Division—This division administers certain engineering, financial and operating activities relating to the rural electric program. The division:

(1) Is responsible for engineering aspects of REA's standards, specifications and other requirements with respect to design, construction, and technical operation and maintenance of power-plant, distribution, and transmission systems and facilities, including load management, energy conservation and communications.

(2) Develops engineering practices, policies and guidelines for the Agency relating to electric borrowers' systems; conducts analysis and provides guidance on matters relating to fuels for electric generating stations; analyzes the effects of environmental laws and regulations on REA-financed electric systems; and develops related policies and procedures for the Agency.

(3) Develops criteria, procedures and analyses for improvement of the operating performance and financial condition of electric borrowers.

(4) Develops techniques for evaluating the financial and operating performance of electric borrowers; develops procedures, criteria and techniques for forecasting borrowers' power requirements; develops and maintains financial expertise on the distribution and power supply loan program; and develops and maintains expertise in matters relating to retail and wholesale rates.

(5) Provides assistance to the area offices and, as appropriate, to borrowers.

(6) Maintains liaison with other Government agencies, utilities, industry officials and professional organizations on the above matters.

§ 1700.5 Rural telephone program.

(a) The Assistant Administrator—Telephone directs and coordinates the rural telephone program of the Agency, participating with the Administrator and Deputy Administrator—Program Operations and other officials in planning and formulating the programs and activities of the Agency.

(b) Area Offices—The four area offices are the primary points of contact between REA and all telephone system borrowers. Each office administers the rural telephone program for an assigned geographical area with assistance of field representatives located in areas assigned to them. The area offices have the following responsibilities with respect to loan feasibility and security and accomplishment of the purposes of the RE Act:

(1) Provide guidance to applicants and borrowers on Agency and Rural Telephone Bank loan policies and

procedures, and make recommendations to the Administrator on applications for loans or guarantees. If delegated the authority by the Administrator, Area Directors may approve certain loans, lien accommodations and other actions.

(2) Review and analyze borrowers' toll revenue settlements and local service rates for adequacy to meet loan service payments and other expenses.

(3) Assure that telephone systems and facilities are designed and constructed in accordance with the terms of the loan and the Agency's regulations. They review, analyze and approve borrowers' engineering plans and specifications; engineering, equipment and construction contracts; and borrowers' payments to engineers and contractors. They work with the borrowers to assure that completed construction meets REA standards for quality of service and loan security.

(4) Provide information to borrowers regarding management and technical operations and practices with respect to the feasibility and security of the government's loans and achievement of RE Act purposes.

(c) Telecommunications Staff Division—This division administers engineering staff activities related to the design, construction, and technical operation and maintenance of rural telephone systems and facilities. The division:

(1) Develops Agency engineering practices, policies, guidelines and technical data relating to telephone borrowers' systems.

(2) Evaluates the application of new communications network technology to rural telephone systems.

(3) Provides expertise and analysis related to the operational, financial and borrower-management activities of the rural telephone program. It develops standards, policies and procedures for telephone loan requirements and processing.

(4) Develops techniques and criteria for evaluating the financial and operating performance of rural telephone borrowers; develops proposed management, organizational and operating practices for use by borrowers; and develops operating practices and procedures with respect to rates and the valuation of telephone systems and facilities.

(5) Provides assistance to the area offices and, as appropriate, to borrowers.

(6) Maintains liaison with other Government agencies, utilities, industry officials, and professional organizations on the above matters.

§ 1700.6 Rural development program.

(a) Under this program, zero interest loans and grants are made to REA electric and telephone borrowers to promote rural economic development and job creation. Loan and grant processing and servicing is administered by the electric and telephone area offices pursuant to policies and procedures set forth in 7 CFR part 1703.

(b) *Rural Development Staff.* The Rural Development Staff performs the following functions:

(1) Coordinates Agency efforts to promote rural economic development and job creation projects in rural areas.

(2) Develops regulations and procedures regarding rural economic development activities.

(3) Provides economic and community development technical assistance to borrowers.

(4) Advises Agency personnel on rural economic development matters.

§ 1700.7 Borrower Accounting Division.

(a) The division ensures that accounting policies, systems and procedures with respect to borrowers' accounting operations meet regulatory, Departmental, General Accounting Office, Office of Management and Budget and Treasury Department requirements. The division:

(1) Assists in solving, or recommending solutions to special program and administrative problems involving accounting interpretations and analysis, including the development and presentation of data to agency staff, regulatory bodies, and other agencies.

(2) Examines borrowers' records and operations and reviews expenditures of loan and other funds deposited in the REA Construction Fund Account to determine that funds are expended in conformity with the RE Act.

(3) Approves CPA's to perform audits for borrowers. Reviews reports prepared by CPA's to determine conformance with acceptable accounting practices, procedures and standards. Reviews and approves plant accounting documentation of audits performed by CPA firms, and incorporates the results of this review into the overall Loan Fund Audit.

(4) Develops proposed standards and procedures for Agency examination programs and evalutes adequacy and effectiveness of the review procedures.

(5) Evaluates borrowers' accounting systems and procedures and recommends changes, as necessary, to provide for more complete and accurate reporting of borrowers' operations. Provides advice and assistance to borrowers concerning the installation and operation of accounting systems.

(b) *Area Offices.* The division is organized into four geographic area offices each of which has several field accountants located throughout the area.

§ 1700.8 Office of the Deputy Administrator—Management and Policy Support.

The Deputy Administrator—Management and Policy Support directs and coordinates the legislative, public information, administrative and budget activities of the Agency and participates with the Administrator and other officials in planning and formulating the programs, policies and other functions of the Agency. Activities are carried out by an Assistant Administrator—Management and others who report directly to the Deputy Administrator.

§ 1700.9 Office of Assistant Administrator—Management.

The Assistant Administrator—Management directs and coordinates the general administrative activities of the agency, participates with the Administrator and Deputy Administrators and other officials in planning and formulating the programs and activities of the agency and administers the provisions of the Freedom of Information Act. The Office of Budget and four other divisions are directed and coordinated by the Assistant Administrator—Management.

(a) The Office of Budget administers the budgetary and financial management program of the Agency. The office:

(1) Determines the annual funding needs for current and multi-year forecasts, participating with the Administrator in presenting and supporting the Agency's budget and program plans.

(2) Administers budget execution, apportionment, allotment and use and control of all Agency funds.

(b) The Personnel Management Division administers the personnel program of the Agency, covering both headquarters and field personnel throughout the Nation. The division:

(1) Administers the provisions of the Classification Act, to achieve uniform application of position classification principles and standards to all REA positions; conducts organization studies and develops recommendations for changes; develops and administers the Agency's personnel management evaluation activities.

(2) Administers the employment program for the Agency, including staffing, recruitment, placement and separation; administers the Agency's

merit promotion program; maintains liaison with the National Finance Center on personnel data processing activities including payroll.

(3) Administers Agency responsibilities for employee relations including: grievances and appeals, performance appraisals, performance recognition system, conflict of interest, awards, benefits, and leave.

(4) Directs, coordinates, and evaluates a program of employee training to achieve the maximum utilization of skills and abilities of personnel; conducts training sessions; plans and directs conferences; prepares training budget; approves training requests; and coordinates an information program for foreign visitors.

(5) Provides advice and assistance to Agency officials and employees to ensure sound and effective administration of the Agency's personnel program.

(6) Maintains working relations and liaison on personnel management matters with the staff and other agencies of the Department and other government agencies.

(7) Participates fully with the Administrator in the implementation and enforcement of USDA equal employment opportunity programs (see § 1700.2(c) (2)); coordinates equal employment opportunity complaint system with the Department; develops and administers the Agency's Federal Equal Opportunity Recruitment Program.

(c) The Administrative Services Division administers the Agency's management improvement program, including cost reduction and operations improvement, work and productivity measurement, the Agency issuance system and the forms and report program. The division:

(1) Administers general services involving contracting and procurement, space management, property and supplies management, records management and communications.

(2) Administers the Agency's rulemaking and regulatory review activities, coordinating with the Office of the Federal Register, the Office of the General Counsel, and the Office of Management and Budget.

(d) The Automated Information Systems Division analyzes the application of data processing to REA program activities, including feasibility studies on the cost and benefits of automated data processing. The division:

(1) Establishes standards and procedures for developing, maintaining and using the Agency's major automated systems covering borrower information, loan accounting and special management programs; perform systems analyses, development, and programming, and ensures data security.

(2) Operates the data processing equipment of the Agency, including the conversion of data from source documents and the preparation of statements, reports, analyses, and other information; provides training and assistance to users.

(3) Collects and analyzes financial, operating, and other statistical data obtained from borrowers and other sources, and prepares reports on the progress and status of the programs of REA and the RTB.

(e) The Fiscal Accounting Division administers the fiscal accounting program of the agency and the RTB. The division:

(1) Develops, recommends and implements accounting policies, systems, and procedures regarding the Agency's and Bank's operations.

(2) Maintains accounts to provide control over and accountability for all funds, assets, liabilities, income and expenses of the Agency and the Bank; and prepares reports required by REA, RTB, the Department, and other government agencies.

(3) Examines and certifies for payment, vouchers and invoices covering administrative expenses and loan fund advances of the Agency and the Bank.

(4) Reviews, examines and processes monthly billings and debt service payments for REA and RTB loans.

(5) Reviews, examines and processes loan fund advances, billings, debt service payments and all other accounting related activities connected with Federal Financing Bank loans to REA borrowers.

(6) Maintains custody of the original copies of notes and mortgages and certain loan collateral.

§ 1700.10 Information, legislation, policy and program support.

The Deputy Administrator—Management and Policy Support, directs two separate staffs of the Agency dealing with public information, legislation, and policy analysis.

(a) The Legislative and Public Affairs staff performs the following functions:

(1) Analyzes the policy, programs and procedural implications of Federal and State legislation affecting REA programs, prepares special reports for the Administrator on legislative affairs and responds to inquiries from Congress and others concerning REA programs.

(2) Maintains liaison with the Department's legislative staff and with congressional offices.

(3) Manages the information activities of the Agency to provide borrowers and the public with timely information concerning the operations, status, progress and accomplishments of the rural electrification, rural telephone and rural development programs.

(4) Evaluates the public information activities of the Agency and advises on actions that will improve public understanding and acceptance of Agency functions.

(5) Administers the provisions of the Public Information section of 5 U.S.C. 552.

(b) The Policy Analysis staff develops long-range programs and policies, analyzes and evaluates economic and statistical data, prepares studies and reports on matters relating to program planning and evaluation and on new developments that have an impact on the REA program.

§§ 1700.11–1700.1900.19 [Reserved]

Subpart B—Programs

§ 1700.20. Insured electric loans pursuant to section 305 of the Rural Electrification Act, as amended.

(a) *General.* These loans are made from the Rural Electrification and Telephone Revolving Fund for purposes authorized by section 4 of the RE Act. The standard interest rate on these loans is 5 percent, but a rate as low as 2 percent is authorized by section 305(b) of the RE Act if a borrower:

(1) Has experienced extreme financial hardship; or

(2) Cannot, in accordance with generally accepted management and accounting principles and without charging rates to its customers or subscribers so high as to create a substantial disparity between such rates and the rates charged for similar service in the same or nearby areas by other suppliers, provide service consistent with the objectives of the RE Act.

(b) These loans are made to finance the construction and operation of electric facilities and systems to provide initial and continued adequate electric service to persons in rural areas not receiving central station service at the time of the initial REA loan. The loans, approval of which rests solely within the discretion of the Administrator, must be self-liquidating within a period not to exceed 35 years, and must be reasonably secured in the judgment of the Administrator. Under the RE Act, they may be made to persons, corporations, public bodies, and cooperative, non-profit, or limited dividend associations. Preference is given to public bodies and cooperative,

non-profit, or limited dividend associations.

(c) *Loan applications.* Applications for these loans are made on forms prescribed by REA and supported by a resolution of the applicant's board of directors. Copies of these standard forms are made available by REA on request. Loan applicants are assisted, as necessary, in preparing the loan application and supporting data. If an application is acceptable after legal, engineering, economic, and financial studies, funds are obligated by a loan contract and the borrower gives a note, mortgage and, in some cases, other security.

(d) *Construction.* Under the loan agreements, REA reserves the right to approve the design and construction of the facilities, and to require progress reports on construction and audits of the borrower's records relating to construction.

(e) *Advance of loan funds.* Loan funds are advanced on the basis of requisitions submitted by borrowers in accordance with the loan contract and REA regulations.

§ 1700.21 Insured telephone loans pursuant to section 205 of the Rural Electrification Act, as amended.

(a) *General.* (1) These loans are made from the Rural Electrification and Telephone Revolving Fund for purposes authorized by section 201 of the RE Act. The standard interest rate on these loans is 5 percent, but a rate as low as 2 percent is authorized by section 305(b) of the RE Act under the same conditions as specified in § 1700.20(a) of this part.

(2) These loans are made for the purpose of improvement, expansion, construction, acquisition and operation of telephone lines, facilities, or systems to furnish or improve telephone service in rural areas. Borrowers may be required to provide a portion of the investment themselves. The loans, approval of which rests solely within the discretion of the Administrator, must be repaid within a period, not to exceed 35 years, that approximates the expected useful life of the facilities financed and must be reasonably secured in the judgment of the Administrator. The loans may be made to any type of commercial or nonprofit corporation now providing or who may hereafter provide telephone service in rural areas. Preference is given to persons already providing telephone service in rural areas and to cooperative, nonprofit, limited dividend or mutual associations.

(b) *Loan applications.* Applications for these loans are made on forms prescribed by REA, copies of which are available from REA on request. Loan applicants are assisted, as necessary, in conducting area coverage surveys and in preparing loan applications. If an application is acceptable after legal, engineering, economic and financial studies, funds are obligated by a loan contract and the borrower gives a note, mortgage and, in some cases, other security.

(c) *Construction.* Under the loan agreements, REA reserves the right to approve the design and construction of facilities and to require progress reports on construction and audits of the borrower's records relating to construction.

(d) *Advance of loan funds.* Loan funds are advanced on the basis of requisitions submitted by borrowers in accordance with the loan contract and 7 CFR part 1744.

§ 1700.22 Rural Telephone Bank loans pursuant to section 408 of the Rural Electrification Act, as amended.

These loans are made for the purposes authorized by section 201 of the Act. The loans, approval of which rests solely within the discretion of the Governor, bear interest at a rate equal to the cost of funds to the Bank; must be repaid within a period, up to a maximum of 35 years, that approximates the expected useful life of the facilities financed; and must be reasonably secured in the judgement of the Administrator. These loans are administered by REA staff as part of the rural telephone program pursuant to the policies and procedures set forth in 7 CFR part 1610.

§ 1700.23 Guaranteed loans pursuant to section 306 of the Rural Electrification Act, as amended.

These loans are made by any legally organized lending agency and guaranteed in the full amount thereof by the Administrator for purposes provided in the RE Act. The loans guaranteed under this section are serviced by the lender except that loans made by the Federal Financing Bank are serviced by REA. The interest rate on these loans is as agreed upon by the borrower and the lender.

§ 1700.24 Loans and grants pursuant to section 313 of the Rural Electrification Act, as amended.

These zero-interest loans and grants are made to borrowers under the RE Act for the purpose of promoting rural economic development and rural job creation projects. Selection and approval of applications for zero-interest loans and grants rests solely within the discretion of the Administrator, and preference is given to providing borrowers with zero-interest loans rather than grants under this program. (See 7 CFR part 1703.)

§ 1700.25 Other loan authorities.

The Administrator has authority under section 5 of the RE Act to make loans to electric borrowers for the purpose of financing the wiring of the premises of persons in rural areas and for the purchase and installation of electrical and plumbing appliances and equipment, including machinery. The Administrator also has authority under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) to finance community antenna television (CATV) services and facilities. Funds have not been appropriated for these purposes since 1969 in the case of section 5 loans and not since 1981 in the case of CATV loans.

§ 1700.26 Studies, investigations, and reports.

Pursuant to section 2 of the RE Act, the Agency may make, or cause to be made, studies, investigations, and reports concerning the condition and progress of electrification and telephony in rural areas in the several States and territories and may publish and disseminate information with respect thereto.

§ 1700.27 Loan security activities.

In carrying out its program, and in the interest of loan security, the Agency requires periodic reports of borrowers on operations, annual audits, etc., and provides specialized and technical accounting, engineering, and other managerial assistance to borrowers with respect to the construction and operation of their facilities, to help them establish efficient and economical service in rural areas.

§ 1700.28 Issuances implementing procedure.

There are available from REA, upon request:

(a) Basic forms of loan agreements; and

(b) Rules and bulletins issued from time to time which implement the loan agreements and the Agency's policies and procedures.

§ 1700.29 [Reserved]

Subpart C—Public Information

§ 1700.30 Public inspection and copying.

(a) 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying.

(b) The Rural Electrification Administration issues from time to time REA Bulletins which implement the procedures set forth in part 1700 and the

loan and security instruments which provide for and secure REA loans. REA also issues REA Bulletins which furnish technical information to assist in the design, construction, operation, and maintenance of borrowers' systems. As REA Bulletins are issued, copies are mailed to all borrowers concerned, and to others participating in the REA program who may be affected. REA will make all REA Bulletins available for public inspection and copying. Forms related to REA Bulletins, including forms of basic loan and security agreements, will also be made available for public inspection and copying.

(c) REA will make available for public inspection and copying its administrative staff manuals and instructions to the staff affecting any member of the public except those exempt from disclosure pursuant to the provisions of 5 U.S.C. 552(b).

(d) Members of the public may request access to such materials maintained by REA at the Office of the Director, Administrative Services Division, Room 0168—South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, between the hours of 8:30 a.m. and 4:30 p.m. Copies of such materials may be obtained in person or by mail.

§ 1700.31 Indexes.

5 U.S.C. 552(a)(2) requires that each agency publish or otherwise make available a current index of all materials required to be made available for public inspection and copying. REA will maintain and publish current indexes and quarterly supplements thereto, providing identifying information for all REA Bulletins and for staff manuals and instructions made available pursuant to § 1700.30. Requests for copies should be addressed, in person or by mail, to the Office of the Director, Administrative Services Division, Room 0168—South Building, U.S. Department of Agriculture, Washington, DC 20250–1500.

§ 1700.32 Requests for records.

Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and addressed to Office of the Director, Legislative and Public Affairs Staff, Rural Electrification Administration, Room 4043, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. A request shall describe the records sought as set forth in 7 CFR 1.3(b). A charge may be made to cover the costs of fulfilling the request. Requests may be submitted in person or by mail.

§ 1700.33 Appeals.

Any person whose request under § 1700.32 is denied shall have the right to appeal such denial. This appeal shall be submitted in accordance with 7 CFR 1.3(e) and addressed to the Administrator, Rural Electrification Administration, Room 4051, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500.

PART 1701—[REMOVED]

Appendix A to Part 1701—[Removed]

PART 1702—[REMOVED]

2. Part 1701 and Appendix A to part 1701, and part 1702 are hereby removed.

Dated: September 25, 1990.

Gary C. Byrne,

Administrator.

[FR Doc. 90–23024 Filed 9–27–90; 8:45 am]

BILLING CODE 3410–15–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 89–216]

Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal import regulations by adding health certification requirements and requirements concerning quarantine upon arrival in the United States for llamas and alpacas from Chile, and from certain other countries declared free of rinderpest and foot-and-mouth disease. This action is necessary to strengthen the protection against the introduction into the United States of communicable livestock diseases.

EFFECTIVE DATE: October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Whiting, Chief Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8590.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR subchapter D (referred to below as the regulations), among other things, regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various livestock diseases.

On September 28, 1989, we published a document in the **Federal Register** (54 FR 39759–39765, Docket Number 89–116) in which we proposed amending the animal import regulations by adding health certification requirements and requirements concerning quarantine upon arrival in the United States for llamas and alpacas from Chile. We proposed this action to strengthen the protection against the introduction into the United States of communicable livestock diseases in the event Chile was declared free of rinderpest and foot-and-mouth disease (FMD). In this issue of the **Federal Register** we are publishing a companion rule ("Change in Disease Status of Chile Because of Foot-and-Mouth Disease," Docket Number 89–209) that adds Chile to the list of countries declared to be free of rinderpest and FMD.

We solicited comments concerning our proposal for a 60-day period ending November 27, 1989. We received approximately 250 comments, 2 of which favored the proposed health certification and quarantine requirements. The remainder opposed these requirements. The majority of those commenters who opposed the requirements asserted that the requirements would not be adequate to prevent the introduction of communicable livestock diseases into the United States. Many of these commenters stated that a 90-day quarantine at the Harry S Truman Animal Import Center (HSTAIC), along with the use of sentinel animals and appropriate testing, would be the only adequate defenses for ensuring that llamas and alpacas from Chile are not carriers of FMD or other infectious diseases. Among those who submitted comments were State departments of agriculture; llama/alpaca breeders and importers; llama/alpaca and other livestock associations; veterinary hospitals and clinics; members of Congress and State legislators; and other interested organizations and individuals, including veterinarians and animal scientists.

We have carefully considered the comments received in response to the proposal. In this document we discuss those comments that relate to our proposal to amend the animal import regulations by adding health certification and quarantine upon arrival requirements. Those comments that raise issues associated with our proposal to declare Chile free of FMD

are discussed in the final rule (Docket Number 89-209) mentioned above.

A large number of commenters stated that uncertainty exists concerning the reliability of standard tests for FMD and other diseases, including tuberculosis (TB), bluetongue, and brucellosis in llamas and alpacas; that some llamas and alpacas may be silent carriers of FMD and pass undetected through a 30-day quarantine in the United States; that our proposed requirements should include a 90-day quarantine in Chile followed by a 90-day quarantine in the United States to provide adequate time for the FMD virus to manifest itself in diseased animals; that sentinel animals are needed as a safeguard during quarantine since FMD and other diseases are more easily detected in them than in llamas and alpacas; that standard quarantine facilities will be inadequate for importing llamas and alpacas from Chile because these facilities are not designed to contain outbreaks of virulent exotic diseases such as FMD; that using more than one facility increases the risk of multiple-site outbreaks of FMD in the United States; and that there is no mention in the proposed rule as to what procedure will be followed if a llama or alpaca should test positive for FMD while in quarantine in the United States. Many commenters stated that HSTAIC is the only facility that should be used to import llamas and alpacas from Chile because it is designed and equipped to handle exotic disease outbreak and clean-up situations, because it uses sentinel animals, and because it is geographically isolated from the mainland of the United States.

There is substantial database on FMD research and field studies. The existence of a "silent carrier" state or emergence of an animal that is truly infected with FMD virus yet fails to seroconvert is scientifically unsubstantiated. Yet, several anecdotal incidents linger and tend to neutralize many years of research of the subject. Most research on FMD has not been conducted on llamas and alpacas. This leaves open the possibility, as suggested by a number of commenters, that these ruminants may be a different type of host and FMD research work conducted on other ruminants may be neither applicable nor valid in these species. We do not have sufficient information available to us to accept or reject these premises.

In analyzing risks, we classify FMD as one of the most serious animal diseases existing today. Although Chile has been proven to be free of detectable signs of FMD, a risk analysis suggests that additional research is needed on llamas and alpacas to determine whether these animals harbor a scientifically verifiable predisposition for being silent carriers.

This research cannot be conducted in a timely manner at the Plum Island Animal Disease Laboratory. Therefore, in the interests of expediency, we are exploring the possibility of conducting the research in a country in which FMD is endemic. Gathering the information necessary to evaluate the feasibility of this approach is expected to take 18 months.

Accordingly, based on the information currently available, and until a definitive judgment can be made concerning the silent carrier potential of llamas and alpacas, we deem it prudent at this time to include additional precautions with respect to the importation into the United States of llamas and alpacas from certain parts of the world.

The health certification and quarantine upon arrival requirements contained in this document will apply not only to llamas and alpacas imported into the United States from Chile, but also to llamas and alpacas imported into the United States from any country in which rinderpest or FMD has been known to exist and that is added—after the effective date of this rule—to the list of countries declared to be free of rinderpest and FMD. (Countries falling into this category will be referred to below as "certain other countries.")

Countries currently listed in § 94.1(a)(2) of the regulations as free of rinderpest or FMD will not be affected by these requirements. All of the countries appearing on this list are countries in which rinderpest or FMD has never been known to exist, or countries that have been free of these diseases for at least 5 years. The Department has determined that any llamas or alpacas that may be imported into the United States from these countries would not pose a significant risk of introducing communicable livestock diseases into the United States.

Whether the health certification and quarantine upon arrival requirements will remain in effect indefinitely, or eventually be modified or terminated, will depend on the outcome of the silent carrier research we are initiating.

We are implementing the recommendation that HSTAIC be the only facility through which llamas and alpacas from Chile and certain other countries can be imported into the United States, and that sentinel animals be used during the quarantine.[1]

We believe that requiring the use of this facility, along with the employment of sentinel animals, will further strengthen the line of defense we are creating to protect the United States against the introduction of communicable livestock diseases. We believe these additional precautions are warranted in light of commenter statements concerning the silent carrier potential of llamas and alpacas.

We define a silent carrier as an animal that appears healthy, but harbors a certain disease and can spread the disease to other animals. It should be emphasized that we regard a silent carrier situation in llamas and alpacas as a possibility, but a remote one. Very few cases of FMD in llamas and alpacas have ever been documented in South America, and Chile's last two FMD outbreaks were caused by infected cattle, not by llamas or alpacas. In addition, our research indicates that llamas show symptoms of FMD once they have been exposed to the disease.[2]

Despite these facts, we believe that our responsibility to protect the United States against the introduction of communicable livestock diseases compels us to consider the consequences of FMD and implement safeguards in addition to those described in the proposed rule. Extraordinary diseases such as FMD deserve extraordinary precautions. The analysis of risk is a function of the probability of an adverse event occurring and the consequences of that event. While the probability of FMD virus entering the United States and causing a disease outbreak is extremely minuscule, the devastation of such an event to the economic stability of our food animal populations cannot be denied. Thus, llamas and alpacas from Chile and certain other countries will be quarantined at HSTAIC, placed with sentinels, and tested for FMD. These procedures will be adopted until a further clarification of the potential FMD carrier status of llamas and alpacas is completed. While the Department considers the possibility of an FMD virus entering the United States from an FMD-free country as remote, we

[1] Recently published provisions in 9 CFR part 92 (55 FR 6358-6366, Docket Number 89-185, published February 23, 1990) allow llamas and alpacas from FMD-free countries to be quarantined at HSTAIC.

[2] "Foot-and-Mouth Disease Studies in the Llama." A copy of this research can be obtained by writing to the Administrator, c/o Dr. Robert Whiting, Chief Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

nevertheless choose to adopt these extraordinary safeguards until our research on FMD in llamas and alpacas is completed.

In response to commenters' recommendations that all appropriate testing be conducted during quarantine, we are adding an FMD virus isolation test to the complement of tests already described in the proposed rule. The FMD tests described in the proposed rule are designed to detect antibodies produced by an animal's immune system in response to FMD viral infection. In comparison, the FMD virus isolation test we are adding to the requirements is designed not to detect antibodies, but to detect the FMD virus itself.

In addition, sentinel animals, both pigs and calves, will be quarantined with the llamas and alpacas in HSTAIC at a ratio of one pig and one calf per eight imported llamas and alpacas. The sentinels will undergo all serological tests for FMD required for the llamas and alpacas.

As sentinels, calves and especially pigs have scientifically proven to be susceptible to infections with the FMD virus. Studies have shown that they rapidly contract the disease, exhibit clinical signs such as fever, vesicles, and seroconversion, and may therefore play an important role in disclosing a "silent carrier" in animals. The use of sentinels is a normal component of our protocols in importing animals from countries in which FMD exists. The use of sentinels here is viewed as a safety net testing strategy should the "silent carrier" theory have credence. We are choosing to include sentinels in this protocol until the silent carrier state issue is completely resolved.

The time involved in collecting these additional test samples, sending them to the Foreign Animal Disease Diagnostic Laboratory on Plum Island for testing, and awaiting test result information, will require us to extend the quarantine time from 30 days to a minimum of 40 days. It should be noted that the quarantine time could extend beyond 40 days should unforeseen delays occur during the sample collection and testing process.

We are making no changes based on comments that questioned the adequacy of a quarantine period that is less than 90 days, or comments that questioned the reliability of standard tests for FMD and other diseases. The tests that will be used on llamas and alpacas from Chile and certain other countries have proven effective and reliable when used on a variety of other exotic ruminants—such as vicunas, wildebeests, and various kinds of antelope—that are routinely imported into the United States. In addition, we believe that a 40-day quarantine and the use of sentinel animals will provide an adequate time and an environment conducive for a disease to manifest itself. An animal will usually begin showing signs of FMD 3 to 7 days after being infected.

The proven reliability of FMD tests and other tests in ruminants, the lack of FMD-susceptibility historically demonstrated by llamas and alpacas, the fact that llamas have exhibited symptoms of FMD when exposed to this disease under research conditions, the fact that sentinel animals will be used during the quarantine process, the fact that a FMD virus isolation test is being added to the quarantine upon arrival requirements, and the fact that Chile has met the criteria for being declared free of FMD, convince us that the quarantine periods specified in the proposed rule are sufficient.

A number of commenters stated that there are no approved tests for brucellosis, TB, or anaplasmosis in llamas or alpacas; that Ivermectin is not approved for use in llamas and alpacas; that several viral strains of FMD occur in Chile which require separate vaccines and testing; and that llamas and alpacas from Chile may carry other infectious diseases that have, until recently, been unidentified in these animals—such as eperythrozoonosis and dermatological problems. Some commenters stated that eperythrozoonosis may have been introduced into the United States during the 1987 importation of Bolivian llamas through HSTAIC.

We are making no changes based on these comments. We have determined that Ivermectin is an effective product for treating parasites in llamas and alpacas.

The tests and procedures we are implementing are designed to protect the United States from communicable livestock diseases. Further, we cannot be expected to implement testing procedures for diseases about which we are unaware. Concerning the issue of eperythrozoonosis, we are aware of no conclusive link between the importation of Bolivian llamas in 1987 and the reported appearance of eperythrozoonosis and other diseases in llama and alpaca herds in the United States. Eperythrozoonosis is not an exotic disease; it has been present in various animal species in the United States for more than 50 years.

Several commenters stated that more than one blood test for FMD is needed during quarantine in the United States.

We agree. Conducting the FMD blood tests more than once, we believe, would strengthen the protection against the introduction of this disease into the United States. We are therefore requiring that llamas and alpacas from Chile and certain other countries shall test negative to the virus neutralization and virus infection associated antigen (VIAA) serological tests for FMD twice in our quarantine upon arrival requirements.

A number of commenters asserted that the preembarkation procedures described in the proposed rule are not adequate to ensure that llamas and alpacas exported from Chile to the United States are free of disease, and that the inadequacy of these procedures is demonstrated by the fact that Chile will not certify that these animals are FMD-free. Certain commenters stated that llamas and alpacas should be tested for FMD in Chile, before being exported to the United States. Other commenters stated that the accuracy of the information contained in the Chilean health certificates will be questionable, since it will not be possible for Chilean veterinarians to be familiar—through first-hand observation—with the individual history of every llama or alpaca offered for export to the United States.

We are making no changes based on these comments. We believe that the preembarkation procedures described in the proposed rule will significantly reduce the risk of a diseased animal being exported from Chile, and certain other countries, to the United States. Each shipment of llamas and alpacas exported from Chile, and certain other countries, will be accompanied by a certification from the exporting country's national government that the country is free of FMD. This certification is the national government's official statement that the animals it offers for export are free of this disease. Since Chile is certifying that it is free of FMD, and since we are declaring Chile free of the disease (see Docket Number 89-209, "Change in Disease Status of Chile Because of Foot-and-Mouth Disease," which appears in this issue of the **Federal Register**), no preembarkation tests for FMD in that country will be required. Further, the health certification system described in our proposed rule has been used in comparable animal importation situations in other countries, and has consistently proven effective.

Many commenters made a number of assertions concerning USDA's 1987 study of FMD in llamas and alpacas, conducted in the Plum Island research facilities by Drs. Juan Lubroth and Ronald J. Yedloutschnig. Certain commenters stated that the study is invalid because it was conducted improperly. Other commenters stated that the study is inconclusive, or that it

proves that llamas can be silent carriers of FMD.

We disagree with these assertions. The 1987 Plum Island study was an attempt to gather information concerning FMD in llamas. As do all studies, it represents one step in a series of steps to understand more about a given subject. No study should be regarded as a "final word" product, but as a building block and a guideline to be used until further studies can be conducted. The 1987 Plum Island study was only one factor among a number of factors taken into consideration when formulating the direction of this rulemaking process. We believe the study was conducted in a scientifically valid manner, and we concur with the conclusions drawn by the Plum Island researchers. Those conclusions are that llamas are susceptible to FMD, that the virus isolation technique used in the study was adequate to detect FMD, and that llamas do not appear to be long-term carriers of FMD. A large number of commenters took exception to this last conclusion, asserting that two of the six llamas described in the study never showed clinical signs of FMD and never developed antibodies to the disease, even though the FMD virus was transiently found in the throats of both animals. It is critical to note, however, that the FMD virus could no longer be detected in the throats of these animals when they were examined 14 days following exposure to the disease. Even humans may be transient carriers of FMD virus after breathing virus particles. This is not a true infection and the virus survives only briefly. We believe this observation supports the conclusion that llamas do not appear to be long-term carriers of the FMD virus.

Many commenters stated that APHIS is abdicating its responsibilities by proposing preembarkation requirements that place major health certification responsibilities upon a foreign government.

We disagree. The preembarkation requirements described in the proposed rule are by no means unique; they are standard procedures used routinely by the Department in conducting importations from other countries. The success of our preembarkation requirements in other countries convinces us that their use in Chile, as well as in certain other countries, will provide an effective line of defense against the introduction of FMD and other diseases into the United States.

Some commenters stated that other ruminants imported from Chile should be subject to the same health certification and quarantine requirements as llamas and alpacas.

We are making no changes based on these comments. The volume of data on FMD infections in food animals, e.g., cattle, sheep, and goats, clarify the infectious status, testing procedures and pathogenesis of FMD in these species. Preembarkation and postembarkation testing requirements have proven adequate in preventing the introduction of disease into the United States from FMD-free countries.

A large number of commenters asserted that Executive Order 12372 was ignored during this rulemaking process.

We disagree. Executive Order 12372 is intended to apply to Federal financial assistance and direct Federal development programs and activities of the Department of Agriculture. This rule does not involve matters of this nature. In this document we have therefore omitted the reference to Executive Order 12372. However, it should be noted that APHIS regularly cooperates with State and local officials in carrying out its Federal regulatory program.

A small number of commenters stated that we have violated the Administrative Procedure Act by failing to effect meaningful participation by the public during this rulemaking process. Specifically, these commenters asserted that APHIS failed to respond to certain Freedom of Information Act requests in a timely manner, thereby impeding the public's ability to provide meaningful comments on the proposed rule. One commenter asserted that we further discouraged public participation in the rulemaking process by denying a request to extend the comment period on the proposed rule.

We do not believe the public was impeded from commenting on the proposed rule. The Department has made a good faith effort to provide information to all those who requested it, and to provide this information in as timely a manner as circumstances would allow. The decision not to extend the comment period on the proposed rule was based on our determination that the 60-day comment period afforded the public adequate time to formulate and submit comments.

A small number of commenters opposed the proposed rule, not because they felt the health certification and quarantine upon arrival requirements were not sufficiently stringent, but because they felt there should be no special requirements at all. Some of these commenters stated that any special conditions imposed on the importation of llamas and alpacas from Chile would be discriminatory.

We disagree. Although we are recognizing Chile as free of FMD, we have determined that the additional safeguards explained above are necessary to strengthen the protection against the introduction into the United States of communicable livestock diseases.

One commenter recommended that we build additional high security quarantine import centers through which to import llamas and alpacas, and that importers be required to pay for the operation of these centers. Another commenter petitioned us to insert language in this rule that would cause importers to be held financially liable for losses to the United States agricultural community caused by FMD or other exotic diseases. Another commenter stated that our importation protocols should require that research be conducted on llamas and alpacas while they are in quarantine, and that importers be required to pay for the cost of this research.

We are making no changes based on these comments. A careful review of the comments has led us to the conclusion that the recommendations contained in them fall outside the scope of our proposed rule.

Several commenters stated that Chile's eartagging program will not be effective because it will be subject to tampering, such as false tagging.

We are making no changes based on these comments. It cannot be argued that Chile's eartagging program will be completely tamper-proof. No animal identification system is. This is why we have created a llama/alpaca importation system containing multiple lines of defense against FMD introduction into the United States.

A number of commenters asserted that officials carrying out our health certification procedures in Chile will be bribed into allowing diseased or potentially diseased animals to become candidates for exportation to the United States.

We are making no changes based on these comments. The commenters provided no evidence to support these assertions, and the Department is aware of no information that is available to support or disprove these assertions.

Reorganization

Since the publication of our proposed rule in September 1989, part 92 has been reorganized. A final rule was published in the **Federal Register** on August 2, 1990 (55 FR 31484–31562, Docket Number 90–023). Below is a redesignation table.

Old Section	*New Section*
§ 92.5(a)(1)	§ 92.405(a)
§ 92.11(b)(1)	§ 92.411(b)(1)
§ 92.11(b)(2)	§ 92.411(b)(2)

Miscellaneous

Commenters' recommendations we are implementing in this final rule have required us to revise our analysis concerning the economic impact of this rule on small entities. This analysis appears under the heading, "Executive Order 12291 and Regulatory Flexibility Act." In addition, paragraph (b) of new § 92.435 now contains, as a result of commenters' recommendations, revised costs for which importers will be responsible.

Clarification of Intent

In addition to the changes noted above, we are making two other changes to the provisions set forth in the proposed rule in order to clarify our intent regarding certain testing and treatment for llamas and alpacas. In paragraph (a)(9)(ii) of new § 92.435, we are changing the words "at a serum dilution of 1:25 or its equivalent in international units (1:30)" to read "at a serum dilution of 1:25, or less than 30 international units per milliliter." This change corrects an editing error and does not alter the intent of the test requirement. We are also correcting an editing error that occurred in paragraph (a)(12) of that section. In this paragraph we are changing the number "20" to "25" because 20 milligrams of dihydrostreptomycin per kilogram of body weight would have been an insufficient dosage. Twenty-five milligrams is the correct dosage.

We have also made minor nonsubstantive changes for clarity.

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed above.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less that $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Prior to the adoption of this rule and its companion rule declaring Chile free of FMD (see Docket Number 89-209, "Change in Disease Status of Chile Because of Foot-and-Mouth Disease," which appears in this issue of the Federal Register), llamas and alpacas imported into the United States from Chile were required—during those periods when Chile was not recognized as being free of FMD—to undergo embarkation quarantine in Chile, under APHIS supervision, as well as a 90-day quarantine at the Harry S Truman Animal Import Center upon arrival in the United States. The cost of Chilean veterinary supervision of the embarkation quarantine has been approximately $350 per head. The cost of APHIS supervision of the embarkation quarantine and the costs associated with a 90-day quarantine at HSTAIC have ranged from $5,500 per head for 50 animals to $2,000 per head for 480 animals.

We are implementing new health certification requirements and requirements concerning quarantine upon arrival for llamas and alpacas imported into the United States from Chile. Small importers involved in llama/alpaca importations may benefit economically from this action, since they may be able to import and sell more llamas and alpacas than they have in the past. Other factors, however, could substantially limit the number of llamas and alpacas entering the United States, thereby limiting the economic benefits experienced by importers.

The primary factor that may limit these potential benefits is that llamas and alpacas from Chile will be required to undergo quarantine at HSTAIC, as discussed earlier in this docket. We estimate that the quarantine space available at HSTAIC will allow a maximum of 1,200 llamas and alpacas to be processed through this facility during any one year. It is unlikely, however, that this many llamas and alpacas will be processed through HSTAIC due to the competition for quarantine space there.

In addition, the demand for llamas and alpacas has increased in other countries as well as the United States. The intense international competition that has developed for these animals will, we believe, limit the number of llamas and alpacas available for importation into the United States.

Therefore, even though HSTAIC is capable of processing 1,200 llamas and alpacas per year, the factors discussed above lead us to believe that this figure may not be a realistic projection of yearly llama and alpaca importations from Chile. Actual import levels could be as low as 300 to 600 animals per year.

We estimate that the cost per head of complying with the requirements of this rule will be approximately $375 in Chile and approximately $1,000 to $4,000 in the United States. The cost of meeting the requirements in the United States will depend, in part, on the number of llamas and alpacas that are processed through HSTAIC at any one time. The requirements as presented in this rule, along with their associated costs, should not have a significant economic impact upon importers. These entities will already be realizing an overall reduction in importation costs because they will not longer be required to pay the cost of USDA supervision services in Chile, and because the quarantine period in the United States is being shortened.

At this time it is not possible for us to estimate how many small entities are engaged in the llamas/alpacas importing business, or how many will eventually choose to enter this field. However, we believe this number will be small when compared to the total number of animal importers operating in the United States.

The economic impact of this rule upon small llamas/alpacas breeders in the United States will be influenced entirely by the reaction of consumers to an increased supply of llamas and alpacas. We cannot, with certainty, predict how consumers will react to this situation.

As the supply of llamas and alpacas increases, prices for these animals may drop, and breeders may face economic losses. However, the extent of their losses would depend on the extent of the price decline. If consumers in the United States respond to the increased supply by paying considerably less for these animals, then breeders would face greater economic losses. If consumers respond by paying only slightly less, then breeders' losses would be minimized. Consumers may not respond to the increased supply at all. In this event, prices would remain constant and breeders would suffer no losses.

If breeders and importers are two mutually exclusive groups, the economic impact of this rule on breeders could be negative, as discussed above. Some breeders, however, may opt to expand their breeding stock by importing Chilean llamas and alpacas for substantially less than they could purchase comparable, domestically-produced llamas and alpacas. In this way, a portion of their losses as breeders may be offset by their gain as importers. However, we do not know to what extent, if any, breeders and importers are mutually exclusive groups.

Based on the information available to us, we believe that an increase in the supply of llamas and alpacas in the United States may eventually produce a price decline for these animals. We do not believe the price decline would be drastic. We estimate that the llamas and alpacas population in the United States is between 20,000 and 45,000, and is growing at the rate of approximately 7,000 per year. The importation of 1,200 llamas and alpacas from Chile in a single year represents approximately 17 percent of domestic production figures. Importation levels of 300 to 600 animals per year represent approximately 8 percent of domestic production figures. We do not believe that an 8 to 17 percent annual increase over domestic production levels is likely to produce a flooded llamas/alpacas market in the United States.

In summary, a growing domestic production rate combined with increased llamas/alpaca importations may eventually produce a price decline for llamas and alpacas in the United States, but the decline would likely be moderate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this rule have been submitted for approval to the Office of Management and Budget. Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.405 [Amended]

2. In paragraph (a) of § 92.405, "and 92.433" is changed to "92.433, and 92.435 of this part".

§ 92.411 [Amended]

3. In the first sentence of paragraph (b)(1) of § 92.411, "other than llamas and alpacas from countries listed in § 94.1(d) of this chapter" is inserted immediately after "Ruminants".

4. In paragraph (b)(2) of § 92.411, the following sentence is added at the end of the paragraph:

§ 92.411 Quarantine requirements.

* * * * *

(b) * * *

(2) * * * Llamas and alpacas imported from any country listed in § 94.1(d)(1) of this chapter shall be subject to § 92.435 of this part.

* * * * *

5. A new § 92.435 is added to read as follows:

§ 92.435 Llamas and alpacas.

No llama or alpaca shall be imported or entered into the United States from any country listed in § 94.1(d)(1) of this chapter unless in accordance with paragraphs (a) and (b) of this section.

(a) *Health certification requirements.* No llama or alpaca shall be imported into the United States from any country listed in § 94.1(d)(1) of this chapter unless accompanied by a health certificate either signed by a salaried veterinarian of the exporting country's national veterinary services, or signed by a veterinarian authorized by the exporting country's national veterinary services and endorsed by a salaried veterinarian of the exporting country's national veterinary services (the endorsement representing that the veterinarian signing the health certificate was authorized to sign the health certificate and that, as far as can be determined, the statements on the health certificate are accurate), certifying that:

(1) The exporting country is free from rinderpest, foot-and-mouth disease, contagious pleuropneumonia, and surra.

(2) The llama or alpaca and its sire and dam were born in the exporting country and have never been outside of the exporting country.

(3) The llama or alpaca was inspected on the premises of origin by the certifying veterinarian and found free of evidence or communicable disease.

(4) The llama or alpaca came from the premises of origin that, as far as can be determined by the certifying veterinarian, based on information available from the owner of the premises of origin and other sources, had been free of outbreaks of communicable disease for the 6-month period immediately preceding the date of movement of the llama or alpaca from the premises of origin.

(5) The llama or alpaca was individually identified using an eartag, tattoo, or brand prior to moving the llama or alpaca from the premises of origin to the preembarkation quarantine facility.

(6) The llama or alpaca was moved from the premises or origin to a preembarkation quarantine facility in a means of conveyance which, immediately prior to loading the llama or alpaca, was cleaned and disinfected with a disinfectant specified in § 71.10 of this chapter, under the supervision of, and in the presence of, a full-time salaried employee of the exporting country's national veterinary services.

(7) The llama or alpaca was kept in isolation from other animals (except llamas and alpacas scheduled for the same shipment) in the preembarkation quarantine facility for a period of at least 60 days immediately prior to export, under the supervision of, and in the presence of, a full-time salaried veterinarian of the exporting country's national veterinary services, and has remained free from evidence of communicable diseases and exposure to communicable diseases during the 60-day period immediately prior to export. (For the purposes of this section, "isolation" means that the llama or alpaca was kept in an area in which llamas and alpacas intended for export are held and have no physical contact with other animals, except llamas and alpacas scheduled for the same shipment.) All windows and other openings in the preembarkation facility were covered with screen, 16 mesh or finer.

(8) All llamas and alpacas which entered the preembarkation quarantine facility were handled on an "all-in, all-out" basis, except for llamas and

alpacas removed from the preembarkation quarantine facility in accordance with this section. Any llama or alpaca in the preembarkation quarantine facility with any llama or alpaca that tested positive for a communicable disease and was removed from the preembarkation quarantine facility in accordance with this section were considered exposed to that communicable disease.

(9) *Testing.* Samples from all llamas and alpacas in the preembarkation quarantine facility were taken by a full-time salaried employee of the exporting country's national veterinary services; all samples were tested at a laboratory approved by the exporting country's national veterinary services; and testing in the preembarkation quarantine facility was performed as follows:

(i) *Tuberculosis testing*: All llamas and alpacas in the preembarkation quarantine facility tested negative to an intradermal tuberculin test utilizing mammalian Purified Protein Derivative tuberculin administered by full-time salaried veterinarian of the exporting country's national veterinary services; *Provided, however*, if any llamas or alpacas tested positive, they were removed from the preembarkation quarantine facility, slaughtered, examined, and found to have no tubercular lesions, and after no less than 60 days, the remainder of the llamas and alpacas in the preembarkation quarantine facility were retested with the intradermal tuberculin test utilizing mammalian Purified Protein Derivative tuberculin administered by a full-time salaried veterinarian of the exporting country's national veterinary services, and found negative to this test. Negative test results mean that the veterinarian administering the test detected no response using both visual examination and manual palpation techniques at the site of the injection 72 hours after the injection.

(ii) *Brucellosis*: All llamas and alpacas in the preembarkation quarantine facility were subjected to the brucellosis tube agglutination test and received negative test results at a serum dilution of 1:25, or less than 30 international units per milliliter, within 30 days prior to export; *Provided, however*, if any llamas or alpacas tested positive, they were removed from the preembarkation quarantine facility, and after no less than 30 days, the remainder of the llamas or alpacas in the preembarkation quarantine facility were retested with the brucellosis tube agglutination test and received negative test results at a serum dilution of 1:25, or less than 30 international units per milliliter.[22]

(iii) *Bluetongue*: All llamas and alpacas in the preembarkation quarantine facility tested negative to the agar gel immunodiffusion serological test for bluetongue; *Provided, however*, if any llamas or alpacas tested positive, they were removed from the preembarkation quarantine facility, and after no less than 30 days, the remainder of the llamas and alpacas in the preembarkation quarantine facility were retested with the agar gel immunodiffusion serological test for bluetongue and found negative to this test.[22]

(iv) *Vesicular stomatitis*: All llamas and alpacas in the preembarkation quarantine facility tested negative for vesicular stomatitis at a 1:8 dilution utilizing the serum virus neutralization test with both New Jersey and Indiana antigens, and at a 1:10 dilution utilizing the complement fixation test with Cocal, Alagoas, and Piry antigens; *Provided, however*, if any llamas or alpacas tested positive, they were removed from the preembarkation quarantine facility, and after no less than 30 days, the remainder of the llamas and alpacas in the preembarkation quarantine facility were retested for vesicular stomatitis at a 1:8 dilution utilizing the serum virus neutralization test with both New Jersey and Indiana antigens, and at a 1:10 dilution utilizing the complement fixation test with Cocal, Alagoas, and Piry antigens, and found negative to these tests.[22]

(v) *Trypanosomiasis*: All llamas and alpacas in the preembarkation quarantine facility tested negative to the indirect fluorescent antibody test for *Trypanosoma vivax; Provided, however*, if any llamas or alpacas tested positive, they were removed from the preembarkation quarantine facility, and after no less than 30 days, the remainder of the llamas and alpacas in the preembarkation quarantine facility were retested with the indirect fluorescent antibody test for *Trypanosoma vivax* and found negative to this test.[22]

(10) All llamas and alpacas in the preembarkation quarantine facility were examined daily by a full-time salaried veterinarian of the exporting country's national veterinary services for clinical signs of communicable disease.

(11) The rectal temperatures of a randomly selected sample of at least 25 percent of the llamas and alpacas in the preembarkation quarantine facility were taken each day by a full-time salaried employee of the exporting country's national veterinary services, with any abnormal temperature readings being reported to the full-time salaried veterinarian of the exporting country's national veterinary services; and the temperature of each llama and each alpaca in the preembarkation quarantine facility was taken at least 2 times per week by a full-time salaried employee of the exporting country's national veterinary services, with any abnormal temperature readings being reported to the full-time salaried veterinarian of the exporting country's national veterinary services.

(12) *Leptospirosis.* All llamas and alpacas in the preembarkation quarantine facility were injected twice, by a full-time salaried employee of the exporting country's national veterinary services, with 25 milligrams of dihydrostreptomycin per kilogram of body weight, with an interval of 14 days between injections.

(13) *Endoparasites.* All llamas and alpacas in the preembarkation quarantine facility were treated twice, by a full-time salaried employee of the exporting country's national veterinary services, with Ivermectin at a dosage of 200 micrograms per kilogram of body weight, with a 14- to 21-day interval between treatments.

(14) *Ectoparasites.* (i) All llamas and alpacas in the preembarkation quarantine facility were treated twice, by a full-time salaried employee of the exporting country's national veterinary services, with a pesticide with a 10-day interval between treatments (the pesticide and the concentration used must have been approved by the Administrator as adequate to kill ticks, mites, and lice);

(ii) The llamas and alpacas were treated, by a full-time salaried employee of the exporting country's national veterinary services, by being thoroughly wetted with a pesticide using either a sprayer with a hand-held nozzle, a spray-dip machine, or a swim vat;

(iii) The health certificate contains the name of the pesticide, the concentration used to treat the llamas and alpacas and the dates of treatment; and

(iv) The llamas and alpacas were inspected by the veterinarian signing the health certificate and found free of any ectoparasites within 72 hours prior to being loaded on the means of conveyance which transported the llamas and alpacas to the United States.

(15) No llama or alpaca in the preembarkation quarantine facility was vaccinated with a live or attenuated or inactivated vaccine during the 14 days preceding export to the United States.

[22] The importation of llamas or alpacas which have been exposed to disease within 60 days before their exportation is prohibited by 21 U.S.C. 104.

(16) *Movement from the preembarkation quarantine facility to the port of embarkation.* The llamas and alpacas were moved from the preembarkation quarantine facility to the port of embarkation in a means of conveyance which, immediately prior to loading the llamas and alpacas, was cleaned and disinfected under the supervision of, and in the presence of, a full-time salaried employee of the exporting country's national veterinary services with a disinfectant specified in § 71.10 of this chapter. The movement from the preembarkation quarantine facility to the port of embarkation was by the most expeditious route to prevent possible exposure to disease in transit. From the time of cleaning and disinfecting the means of conveyance through the unloading of the llamas and alpacas for export to the United States, there were no other animals aboard the means of conveyance.

(b) *Quarantine upon arrival.* (1) As a condition of entry into the United States, llamas and alpacas from any country listed in § 94.1(d) of this chapter shall be quarantined at the Harry S Truman Animal Import Center for not less than 40 days, counting from the date of arrival at the Harry S Truman animal Import Center.

(2) All llamas and alpacas from any country listed in § 94.1(d) of this chapter shall test negative to the virus neutralization and virus infection associated antigen serological tests for foot-and-mouth disease twice, at an interval of no less than 21 days, during quarantine at the Harry S Truman Animal Import Center.

(3) All llamas and alpacas from any country listed in § 94.1(d) of this chapter shall test negative to a virus isolation procedure using oesophageal-pharyngeal tissue samples. The tissue samples shall be collected from the esophageal-pharyngeal area, using the probang procedure, within 7 days following arrival of the llamas and alpacas at the Harry S Truman Animal Import Center.

(4) In order to qualify for release from quarantine, llamas and alpacas from any country listed in § 94.1(d) of this chapter shall also test negative to any test duplicative of the tests required under paragraph (a) of this section and any other tests as may be determined necessary by the Administrator to determine their freedom from communicable diseases.

(5) Llamas and alpacas from any country listed in § 94.1(d) of this chapter shall be quarantined with sentinel animals during the entire time the llamas and alpacas remain at the Harry S Truman animal Import Center. The ratio of sentinel animals to imported llamas and alpacas shall be one pig and one calf per eight imported llamas and alpacas. The sentinel animals shall be observed for a minimum of 40 days for clinical signs of communicable disease and shall test negative to the virus neutralization and virus infection associated antigen serological tests for foot-and-mouth disease twice, at an interval of no less than 21 days, during quarantine at the Harry S Truman Animal Import Center. The sentinels shall also undergo any other tests that may be deemed necessary by the Administrator. The last serological test for foot-and-mouth disease will be performed a minimum of 21 days following initial exposure to the imported llamas and alpacas.

(6) The importer shall reimburse the United States Department of Agriculture for all costs, excluding capital expenditures at the Harry S Truman Animal Import Center, associated with the importation and entry into the United States of llamas and alpacas from any country listed in § 94.1(d) of this chapter.

(c) *Llamas and alpacas refused entry.* a llama or alpaca imported or offered for entry into the United States that is not accompanied by a health certificate as required by paragraph (a) of this section or that is found upon inspection at the Harry S Truman Animal Import Center to be affected with a communicable disease or to have been exposed to a communicable disease, shall be refused entry and shall be handled thereafter in accordance with 21 U.S.C. 103 or quarantined, or otherwise disposed of as the Administrator may direct.

Done in Washington, DC, this 25th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-22998 Filed 9-27-90; 8:45 am]

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9 CFR Part 94

[Docket No. 89-209]

Change In Disease Status of Chile Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal import regulations by adding Chile to the list of countries declared to be free of rinderpest and foot-and-mouth disease. No outbreaks of rinderpest have ever occurred in Chile, and we have determined that foot-and-mouth disease has been eradicated there. We are also adding Chile to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of meat and other animal products from ruminants or swine into the United States. This revision relieves certain prohibitions and restrictions on the importation, from Chile into the United States, of ruminants and swine, and of fresh, chilled, and frozen meats of these animals.

However, Chile is not included in the lists of countries declared to be free of hog cholera and swine vesicular disease. Therefore, the restrictions imposed on the importation of swine and swine products because of these diseases remain in effect for Chile.

A companion rule appearing in this issue of the **Federal Register** ("Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease," Docket Number 89-216) adds certain health certification and quarantine upon arrival requirements for llamas and alpacas imported from Chile, as well as from any other country in which rinderpest or foot-and-mouth disease has been known to exist and that is added to the list of countries declared free of rinderpest and foot-and-mouth disease following the effective date of this document.

EFFECTIVE DATE: October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Jr., Acting Chief Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations), among other things, regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest and foot-and-mouth disease (FMD). Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those countries listed in § 94.1(a)(2).

On August 17, 1989, we published in the **Federal Register** (54 FR 33918-33920, Docket Number 88-216), a document proposing to (1) amend § 94.1 of the regulations by adding Chile to the list of countries declared to be free of

rinderpest and FMD, and (2) amend § 94.11 of the regulations by adding Chile to the list of countries free of rinderpest and FMD that are subject to special restrictions on the importation of their meat and other animal products from ruminants and swine into the United States. We solicited comments concerning the proposal for a 60-day period ending October 16, 1989.

To give interested persons additional time to prepare comments, we extended the comment period 30 days, to November 15, 1989, in a docket published in the **Federal Register** on October 12, 1989 (54 FR 41845–41846, Docket Number 89–183).

Based on the rationale set forth in the proposal and in this document, we are declaring Chile free of rinderpest and FMD. However, as explained in the companion rule that appears in this issue of the **Federal Register** ("Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease," Docket Number 89–216) we are adding health certification and quarantine upon arrival requirements for llamas and alpacas imported from Chile, as well as from any other country in which rinderpest or foot-and-mouth disease has been known to exist and that is added to the list of countries declared free of rinderpest and foot-and-mouth disease following the effective date of this document. Countries subject to these requirements will be listed in a new paragraph (d) in § 94.1.

Because Chile is not recognized as being free of hog cholera and swine vesicular disease, swine and pork or pork products offered for importation into the United States from Chile will continue to be subject to the prohibitions and restrictions imposed in part 94 because of those diseases.

We have carefully considered the comments received in response to our proposal. In this document we discuss those comments that relate to our proposal to declare Chile free of FMD. Those comments that raise issues associated with another proposed rule, "Llamas and Alpacas Imported from Chile" (54 FR 39759–39765, Docket Number 89–116), are addressed in the final rule ("Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease," Docket Number 89–216) that appears in this issue of the **Federal Register**. That document deals specifically with health certification and quarantine upon arrival requirements for llamas and alpacas from Chile, as well as from any other country in which rinderpest or foot-and-mouth disease has been known to exist and that is added to the list of countries declared free of rinderpest and foot-and-mouth disease following the effective date of this document.

Comments

We received approximately 750 comments. Among those who submitted comments were State departments of agriculture; llama/alpaca breeders and importers; llama/alpaca and other livestock associations; livestock producers; veterinary hospitals and clinics; State and Federal officials, including State veterinarians; members of Congress; State legislators; universities; game preserves; zoos; farm bureau organizations; and other interested organizations and individuals, including veterinarians and animal scientists.

A majority of the comments, approximately 90 percent of the total received, either opposed FMD-free status for Chile or stated that Chile should not be declared free of FMD unless llamas and alpacas exported from that country undergo a high security quarantine before entering the United States. Many of the commenters specifically recommended a 90-day quarantine, with sentinel animals and appropriate testing, at the Harry S. Truman Animal Import Center (HSTAIC). This center is a maximum security quarantine facility located in Key West, Florida. It was established for the importation of animals, including those not otherwise eligible to be imported into the United States because they are from countries in which exotic diseases, such as FMD, exist. As previously mentioned, matters concerning the use of HSTAIC, length of quarantine, and other requirements for llamas and alpacas from Chile are not addressed in this document, but in the companion rule ("Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease," Docket Number 89–216) that appears in this issue of the **Federal Register**.

The remainder of the comments, approximately 10 percent of the total received, either favored the proposed rule, requested an extension of the comment period, or requested additional information.

Commenters who opposed the proposed rule or called for the implementation of high security quarantine requirements shared the belief that the importation of llamas and alpacas from Chile would pose an unacceptable risk of introducing FMD into the United States. The issues raised by these commenters are discussed below.

Many commenters stated that Chile should not be declared free of FMD because that country has a history of repeated outbreaks of this disease. They asserted that these outbreaks are proof that Chile will be incapable of consistently maintaining FMD-free status. Other commenters stated that Chile will be unable to remain free of FMD because a silent, undetectable reservoir of FMD exists in its cattle and camelid populations. A large number of commenters stated that Chile's ability to remain free of FMD is compromised by the common borders it shares with Peru, Bolivia, and Argentina, countries in which FMD exists; that these borders are poorly patrolled and that there is routine smuggling of potentially FMD-infected animals across these borders into Chile; that FMD could also cross these borders into Chile via air transmission or via contaminated objects such as clothing or vehicles; and that llamas and alpacas smuggled into Chile from countries in which FMD exists could be selected for export to the United States or might commingle with llamas and alpacas destined for export to the United States. Some commenters stated that Chile does not have reliable method of monitoring and reporting FMD; that an FMD outbreak in Chile is imminent because Chile imports live ruminants and swine from countries in which FMD exists under conditions less restrictive than would be required for importation into the United States, and also because Chile imports meat and meat products from countries in which FMD exists. Other commenters stated that Chile and other countries that share common borders with countries in which FMD exists should be required to remain free of FMD for 3, 4, or 5 years—instead of the current 1-year period—before the Animal and Plant Health Inspection Service (APHIS) considers declaring them FMD-free.

We are making no changes, based on these comments, to our proposal to declare Chile free of rinderpest and FMD.

We disagree that Chile's past FMD-outbreaks are a sure indication that the country's current FMD-prevention efforts will prove unsuccessful. Chile suffered two FMD outbreaks during the last decade, in 1984 and 1987. In both cases, all infected and exposed animals were destroyed and eradication measures successfully completed. Information and documents submitted by the Government of Chile establish that laws and regulations are in effect in Chile and are administered in such a manner as to protect Chile against the introduction of rinderpest or FMD

through the importation of animals, meat, and other animal products from countries where FMD or rinderpest exists.

Since the country's last FMD outbreak in 1987, Chile has strengthened its disease-prevention efforts. The country instituted a program to identify all of the country's llamas and alpacas with official eartags. Annual inspections will keep this identification system up-to-date. Chile has also increased the number of FMD inspections conducted on its livestock population, including camelids; established an animal depopulation zone between itself and Argentina, and reduced the number of Chilean livestock entering the summer pasture areas near the Chile-Argentine border. Chilean livestock are identified, inspected, and tested for FMD upon entering and leaving these pasture areas.

Commenters' assertions that a silent, undetectable reservoir of FMD exists in the Chilean cattle and camelid populations appear to be unsubstantiated. Chile's domestic animal population was not the source of the two FMD outbreaks that occurred in Chile during the 1980's. In both instances, the disease was introduced into the country from outside sources.

Further, while no country's borders are completely impenetrable, it is our view that Chile has an effective program for controlling its borders with Argentina, Peru, and Bolivia to prevent the introduction of FMD via the smuggling of livestock and camelids into Chile. Surveillance along Chile's borders is a cooperative effort between Chile's Federal veterinary service, the Federal police, customs officials, and international police. In addition to its border control system, Chile also maintains a series of internal checkpoints along its roadways and highways. We have also determined that Chile has a reliable animal disease surveillance and reporting system, as evidenced by the swiftness with which Chile's 1987 FMD outbreak was reported to the United States and to the rest of the world.

We are aware that Chile imports live ruminants, swine, meat, and meat products from countries in which FMD exists. This is why we are adding Chile to the list in § 94.11(a) of countries free of rinderpest and FMD that are subject to special restrictions on the importation of meat and other animal products form ruminants and swine into the United States. The countries listed in § 94.11(a) are subject to these special restrictions because they (1) supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries in which rinderpest or FMD exists; (2) have a common land border with countries in which rinderpest or FMD exists; or (3) import ruminants or swine from countries in which rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

We disagree with commenter statements concerning the length of time that Chile should be required to remain free of FMD before being designated by APHIS as an FMD-free country. Based on Departmental experience, it has been determined that a 1-year period of no FMD cases is sufficient to ensure that the disease has been completely eradicated, since the disease would manifest itself within that period of time if it had not been successfully eradicated. Chile's last FMD outbreak occurred more than 3 years ago.

Several commenters stated that determining the FMD status of South American countries should be done on a regional basis; that is, Chile should not be given FMD-free status until all countries in South America, or at least the llama and alpaca-producing countries in South America, are free of FMD.

It is not the purpose of this rule to review the Department's criteria for determining the disease status of countries. We are therefore making no changes based on these comments. We have determined that Chile has met the Department's criteria for being declared free of FMD.

Several commenters stated that APHIS should not consider granting FMD-free status to Chile until more research has been conducted on FMD in llamas and alpacas. Other commenters stated that we should not declare Chile free of FMD because we have not examined the risks associated with this action.

We are making no changes, based on these comments, to our proposal to declare Chile free of rinderpest and FMD. We have examined the risks associated with declaring Chile free of FMD and have determined that this action will not result in a significant risk of introducing animal diseases exotic to the United States. We based this determination on information supplied to us by Chilean veterinary officials, on first-hand observation of Chile's disease prevention programs, on the restrictions we are implementing concerning meat and other animal products of ruminants and swine imported from Chile, and on the requirements in the final rule ("Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease," Docket Number 89-216) which is published in this issue of the Federal Register and which imposes restrictions upon the importation of llamas and alpacas into the United States from Chile.

We disagree with the conclusions drawn in a preliminary probabilistic risk assessment submitted to us by one commenter. The assessment's conclusion that an FMD-infected animal would pass undetected through U.S. quarantine once every 2 years appears to be unrealistic, given the fact that this FMD introduction rate exceeds the FMD introduction rate experienced by Chile in recent years. We believe the assessment contains numerous factual errors, methodological errors, and questionable assumptions, and, therefore, overestimates the risk associated with the importation into the United States of llamas and alpacas from Chile.[1]

Several commenters stated that Chile should not be declared free of FMD because the importation of llamas and alpacas from Chile would flood the United States market, hurting or destroying the llama/alpaca industry in this country. Other commenters stated that llamas and alpacas from Chile are genetically inferior to domestic llamas and alpacas, and that the breeding of these inferior animals with domestic animals would reduce the quality of the llama/alpaca population in the United States, causing a price decline that would hurt domestic breeders.

We are making no changes based on these comments. These reasons do not appear to be adequate for refusing to declare Chile free of FMD. The regulations in 9 CFR part 94 are established pursuant to animal quarantine and related laws that generally provide authority to take action to prevent the introduction or dissemination of certain diseases. These statutory provisions do not provide authority to establish regulations based merely on factors relating to economic competition or genetics. Although we consider the economic impact of our regulations in accordance with Executive Order 12291 and the Regulatory Flexibility Act, we do not have authority to prohibit or restrict the importation of llamas and alpacas to protect domestic breeders from competition or to ensure that the genetic base of the llamas and alpaca

[1] A copy of our analysis of the preliminary probabilistic risk assessment referred to above can be obtained by writing to the Administrator, c/o Dr. Gary P. Combs, Chief, Program Evaluation and Planning, APHIS, USDA, room 803, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

population in the United States is not changed.

A large number of commenters stated that Executive Order 12372 was ignored during this rulemaking process.

We disagree. Executive Order 12372 is intended to apply to Federal financial assistance and direct Federal development programs and activities of the Department of Agriculture. This rule does not involve matters of this nature. In this document we have therefore omitted the reference to Executive Order 12372. However, it should be noted that APHIS regularly cooperates with State and local officials in carrying out its Federal regulatory program.

Some commenters stated that this rulemaking process is subject to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and that we have failed to meet the requirements of this act concerning the preparation of various environmental documents. One commenter stated that the National Environmental Policy Act is triggered by this rulemaking process, in part, because an outbreak of FMD in the United States could affect wild animal populations, thereby necessitating disease control measures that could have a significant impact upon the environment.

We disagree with the commenters' assertions concerning the National Environmental Policy Act. We have prepared a special environmental assessment to evaluate the environmental implications of this action. Our special environmental assessment concludes that this action will have no environmental impact, and that an environmental impact statement need not be prepared. This assessment supports our initial determination that the environment is not affected by the regulatory change we are making.[2]

A small number of commenters stated that we violated the Administrative Procedure Act by failing to effect meaningful participation by the public during this rulemaking process. Specifically, these commenters asserted that APHIS failed to respond to certain Freedom of Information Act requests in a timely manner, thereby impeding the public's ability to provide meaningful comments on the proposed rule.

We do not believe the public was impeded from commenting on the proposed rule. The Department has made a good faith effort to provide information to all those who requested it, and to provide this information in as timely a manner as circumstances would allow.

One commenter stated that we should redefine the parameters by which animals are permitted into the United States; another commenter stated that we should strengthen the risk assessment criteria we use in determining the impact of importing plants, animals, and plant/animal products from areas with exotic pest infestations; and several commenters stated that we must create more disease status levels or categories—as opposed to the current "disease free" or "not free" system—in order to make our regulations more flexible.

We are making no changes based on these comments. During this rulemaking proceeding we have focused exclusively on those issues relating to the rinderpest and FMD status of a particular country. It is not the purpose of this rule, nor would it be feasible as a part of this rulemaking proceeding, to undertake a revision of the Department's animal import regulations in their entirety. Nor is it the purpose of this rule to undertake a review of the criteria used by the Department in its risk analysis process, or to amend the Department's regulations concerning disease status categories. It should be noted, however, that the Department's policies and regulations undergo a continuous process of review and revision. Although the above comments fall outside the scope of this particular rulemaking proceeding, we will give them careful consideration when reviewing those Departmental policies and regulations to which they more closely relate.

Several commenters asserted that certain Chilean officials may have a financial interest in llama and alpaca exportations, and may therefore not report an FMD outbreak should one occur. Other commenters asserted that APHIS officials are being bribed to obtain FMD-free status for Chile.

We are making no changes based on these comments. The commenters provided no evidence to support these assertions, and the Department is aware of no information that is available to support or disprove these assertions.

Several commenters asserted that the decision to declare Chile free of FMD was based on political considerations.

We disagree. The decision to declare Chile free of FMD was based on our determination that Chile has met the requirements for FMD-free status.

A number of commenters questioned various aspects of the economic analysis that appeared in our proposed rule under the heading, "Executive Order 12291 and Regulatory Flexibility Act." However, changing circumstances have required us to make substantial revisions in that analysis. Following is a discussion of those comments that raised issues dealing specifically with our economic analysis as it appeared in our proposed rule (54 FR 33918–33920, Docket Number 88–216).

Many commenters stated that our analysis was incomplete in that it failed to examine the proposal's potential economic impact upon llama and alpaca breeders.

We agree that the analysis appearing in our proposed rule to declare Chile free of FMD (54 FR 33918–33920, Docket Number 88–216) did not discuss the potential economic effect of our proposed action on breeders of llamas and alpacas in the United States. Although our original analysis contains this information, it was inadvertently omitted from our published proposal.[3] The information is no longer relevant with respect to this rulemaking proceeding, however, and has therefore been excluded from the economic analysis contained in this document.

Other commenters questioned our statements that 228 importers may be interested in importing llamas and alpacas from Chile; that we expected most llamas and alpacas imported during the first several years to be kept by importers for breeding purposes and not sold for immediate financial gain; and that Chile would continue to limit the number of llamas and alpacas it quarantines at any one time, which would in turn limit the number of llamas and alpacas available for export to the United States in any one year.

Upon further consideration, we agree that these statements may not have been an accurate forecast of impending developments. They are no longer included in our analysis.

A number of commenters questioned our conclusions that other countries would absorb some of the llama/alpaca importations from Chile, thereby

[2] A copy of the special environmental assessment prepared in connection with the proposed rule entitled, "Change in Disease Status of Chile Because of Foot-and-Mouth Disease" (54 FR 33918–33920, Docket Number 88–216) and of the administrative determination prepared in connection with the proposed rule entitled, "Llamas and Alpacas Imported From Chile" (54 FR 39759–39765, Docket Number 89–116) can be obtained by writing to the Administrator, c/o Michael T. Werner, Deputy Director, Environmental Documentation; Biotechnology, Biologics, and Environmental Documentation; APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[3] A copy of the economic analysis prepared in connection with our proposed rule to declare Chile free of FMD (54 FR 33918–33920, Docket Number 88–216) can be obtained by writing to the Administrator, c/o Kevin Shea, Chief, Policy Analysis and Development, APHIS, USDA, room 865, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

reducing the number that would be imported to the United States in any one year.

We disagree. Llamas and alpacas have gained popularity not only in the United States, but in other countries as well. Competition for these animals is intense, and a number of countries are working on regulations to import them. We therefore believe that only a portion of Chile's llama/alpaca exports would be available to the United States market.

Other commenters stated that our analysis was based on assumptions and provided no evidence to support its conclusion that increased llama and alpaca importations would not have a significant economic impact upon a substantial number of small entities.

We disagree. We based our analysis on information available to the Department. This information is included in the rulemaking record.

Several commenters stated that our analysis failed to consider the economic impact of the proposed rule on the entire U.S. livestock industry in the event an FMD-infected animal were to be imported into the United States from Chile.

We based our analysis on what we believed would be the direct consequences of our proposed rule on small entities. We anticipated, at the time the analysis was produced, that importers and breeders of llamas and alpacas in the United States would be the only entities directly affected by our proposed rule.

Several commenters stated that we used insufficient economic data in arriving at our determination that the proposal is not a major rule, and that we produced no analysis to support our determination. These commenters stated that the proposal should be rewritten as a major rule, since an FMD outbreak in the United States could have an impact on the economy of over $100 million. Commenters argued that the damage to the United States llama/alpaca industry and other livestock industries, the cost of eradication, the negative effect on the exporting capacity of the United States, and other factors would combine to produce an economic impact of billions of dollars.

We are making no changes based on these comments, since they appear to be based on the assumption that an FMD outbreak will occur in the United States as a result of the adoption of our proposed rule. We did not use this assumption when making our determination that this action is not a major rule. Our determination that this action is not a major rule is basd exclusively on what we believe will be the effects of declaring Chile free of FMD.

Miscellaneous

Commenters' recommendations we are implementing in the companion rule (Docket Number 89-216, "Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and FMD," which appears in this issue of the Federal Register) have required us to revise our analysis concerning the economic impact of this rule on small entities. This analysis appears below under the heading, "Executive Order 12291 and Regulatory Flexibility Act."

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We expect that the amount of cattle, sheep and other ruminants imported from Chile as a result of this rule will be negligible. We also expect that the amount of fresh, chilled, or frozen meats of ruminants imported from Chile as a result of this rule will be negligible.

During the previous periods when Chile was recognized as being free of FMD, no cattle, sheep, or goats, or fresh, chilled, or frozen meats obtained from these animals were imported from Chile. Further, there is little or no demand in the United States for these animals or products from Chile. This rule will therefore have little or no impact on the small entities in the United States that deal with these products.

There is a demand in the United States for llamas and alpacas. These animals have attained a great deal of popularity during the last several years. Two groups of entities would face potential economic impacts in the event more llamas and alpacas were to be imported from Chile into the United States: Those entities in the United States who import llamas or alpacas for financial gain, and those entities in the United States who breed llamas or alpacas for financial gain.

Prior to the adoption of this rule and its companion rule adding health certification and quarantine upon arrival requirements for llamas and alpacas from any country in which rinderpest or FMD has been known to exist and that is added to the list of countries declared free of rinderpest the FMD following the effective date of this rule (see Docket Number 89-216, "Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and FM," which appears in this issue of the Federal Register), llamas and alpacas imported into the United States from Chile were required—during those periods when Chile was not recognized as being free of FMD—to undergo embarkation quarantine in Chile, under APHIS supervision, as well as a 90-day quarantine at the Harry S Truman Animal Import Center upon arrival in the United States. The cost of Chilean veterinary supervision of the embarkation quarantine has been approximately $350 per head. The cost of APHIS supervision of the embarkation quarantine and the costs associated with a 90-day quarantine at HSTAIC have ranged from $5,500 per head for 50 animals to $2,000 per head for 480 animals.

We are adding Chile to the list of countries declared free of rinderpest and FMD. Small importers involved in llama and alpaca importations may benefit economically from this action, since they may be able to import and sell more llamas and alpacas than they have in the past. Other factors, however, could substantially limit the number of llamas and alpacas entering the United States, thereby limiting the economic benefits experienced by importers.

The primary factor that may limit these potential benefits is that llamas and alpacas from Chile will be required to undergo quarantine at HSTAIC, as discussed earlier in this docket. We estimate that the quarantine space available at HSTAIC will allow a maximum of 1,200 llamas and alpacas to be processed through this facility during any one year. It is unlikely, however, that this many llamas and alpacas will be processed through HSTAIC due to the competition for quarantine space there.

In addition, the demand for llamas and alpacas has increased in other countries as well as the United States. The intense international competition that has developed for these animals will, we believe, limit the number of llamas and alpacas available for importation into the United States.

Therefore, even though HSTAIC is capable of processing 1,200 llamas and alpacas per year, the factors discussed above lead us to believe that this figure may not be a realistic projection of yearly llama and alpaca importations from Chile. Actual import levels could be as low as 300 to 600 animals per year.

We estimate that the cost of complying with the health certification requirements in Chile will be approximately $375 per head, while the quarantine upon arrival requirements are expected to cost approximately $1,000 to $4,000 per head in the United States. The cost of meeting the requirements in the United States will depend, in part, on the number of llamas and alpacas that are processed through HSTAIC at any one time. The requirements as presented in the companion rule (Docket Number 89-216, "Llamas and Alpacas Imported from Chile and Certain Other Countries Declared Free of Rinderpest and FMD," appearing in this issue of the Federal Register) along with their associated costs, should not have a significant economic impact upon importers. These entities will already be realizing an overall reduction in importation costs because they will no longer be required to pay the cost of USDA supervision services in Chile, and because the quarantine period in the United States is being shortened.

At this time it is not possible for us to estimate how many small entities are engaged in the llama/alpaca importing business, or how many will eventually choose to enter this field. However, we believe this number will be small when compared to the total number of animal importers operating in the United States.

The economic impact of this rule upon small llama/alpaca breeders in the United States will be influenced entirely by the reaction of consumers to an increased supply of llamas and alpacas. We cannot, with certainty, predict how consumers will react to this situation.

As the supply of llamas and alpacas increases, prices for these animals may drop, and breeders may face economic losses. However, the extent of their losses would depend on the extent of the price decline. If consumers in the United States respond to the increased supply by paying considerably less for these animals, then breeders would face greater economic losses. If consumers respond by paying only slightly less, then breeders' losses would be minimized. Consumers may not respond to the increased supply at all. In this event, prices would remain constant and breeders would suffer no losses.

If breeders and importers are two mutually exclusive groups, the economic impact of this rule on breeders could be negative, as discussed above. Some breeders, however, may opt to expand their breeding stock by importing Chilean llamas and alpacas for substantially less than they could purchase comparable, domestically-produced llamas and alpacas. In this way, a portion of their losses as breeders may be offset by their gain as importers. However, we do not know to what extent, if any, breeders and importers are mutually exclusive groups.

Based on the information available to us, we believe that an increase in the supply of llamas and alpacas in the United States may eventually produce a price decline for these animals. We do not believe the price decline would be drastic. We estimate that the llama and alpaca population in the United States is between 20,000 and 45,000, and is growing at the rate of approximately 7,000 per year. The importation of 1,200 llamas and alpacas from Chile in a single year represents approximately 17 percent of domestic production figures. Importation levels of 300 to 600 animals per year represent approximately 8 percent of domestic production figures. We do not believe that an 8 to 17 percent annual increase over domestic production levels is likely to produce a flooded llama/alpaca market in the United States.

In summary, a growing domestic production rate combined with increased llama/alpaca importations may eventually produce a price decline for llamas and alpacas in the United States, but the decline would likely be moderate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding "Chile," immediately after "Channel Islands,".

3. In § 94.1, a new paragraph (d) is added to read as follows:

§ 94.1 Countries where rinderpest or foot-and-mouth disease exists; importations prohibited.

* * * * *

(d)(1) The following countries are countries in which rinderpest or foot-and-mouth disease has been known to exist and that are declared free of rinderpest and foot-and-mouth disease on or after September 28, 1990: Chile.

(2) No llama or alpaca shall be imported or entered into the United States from any country listed in paragraph (d)(1) of this section, unless in accordance with § 92.435 of this chapter.

§ 94.11 [Amended]

4. In § 94.11, paragraph (a) is amended by adding "Chile," immediately after "Channel Islands,".

Done in Washington, DC, this 25th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-22999 Filed 9-27-90; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 85F-0555]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Gellan Gum

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of gellan gum as a stabilizer

and thickener in frostings, glazes, icings, jams, and jellies. This action is in response to petitions filed by Kelco, a Division of Merck & Co., Inc.

DATES: Effective September 28, 1990; written objections and requests for a hearing by October 29, 1990.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 7, 1986 (51 FR 687), FDA announced that a food additive petition (FAP 6A3903) had been filed by Kelco, a Division of Merck & Co., Inc., P.O. Box 23176, San Diego, CA 92123, proposing that 21 CFR part 172 be amended to provide for the safe use of gellan gum as a stabilizer and thickener in confections and frostings. Upon further review of that petition, FDA determined that the petition was seeking approval for use of gellan gum in frostings, glazes, and icings, and not for use in confections generally (including candies). In the **Federal Register** of December 2, 1987 (52 FR 45867), FDA announced that Kelco had filed a second food additive petition (FAP 7A4022) for the use of gellan gum in all foods. The agency did not receive comments on either notice. The latter petition is currently under scientific review. Subsequent to the filing of the second petition, the company amended their first petition (FAP 6A3903) to include jams and jellies.

FDA has evaluated data in the petition (FAP 6A3903) and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended by adding new 21 CFR 172.665 to Subpart G as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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.

Any person who will be adversely affected by this regulation may at any time on or before October 29, 1990 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. New § 172.665 is added to subpart G to read as follows:

§ 172.665 Gellan gum.

The food additive gellan gum may be safely used in food in accordance with the following prescribed conditions:

(a) The additive is a high molecular weight polysaccharide gum produced from *Pseudomonas elodea* by a pure culture fermentation process and purified by recovery with isopropyl alcohol. It is composed of tetrasaccharide repeat units, each containing one molecule of rhamnose and glucuronic acid, and two molecules of glucose. The glucuronic acid is neutralized to a mixed potassium, sodium, calcium, and magnesium salt. The polysaccharide may contain up to 5 percent of acyl (glyceryl and acetyl) groups as the 0-glycosidically linked esters.

(b) The strain of *P. elodea* is nonpathogenic and nontoxic in man and animals.

(c) The additive is produced by a process that renders it free of viable cells of *P. elodea*.

(d) The additive meets the following specifications:

(1) Positive for gellan gum when subjected to the following identification tests:

(i) A 1-percent solution is made by hydrating 1 gram of gellan gum in 99 milliliters of distilled water. The mixture is stirred for about 2 hours, using a motorized stirrer and a propeller-type stirring blade. A small amount of the above solution is drawn into a wide bore pipet and transferred into a solution of 10-percent calcium chloride. A tough worm-like gel will form instantly.

(ii) To the 1-percent distilled water solution prepared for identification test (i), 0.50 gram of sodium chloride is added. The solution is heated to 80 °C with stirring, held at 80 °C for 1 minute, and allowed to cool to room temperature without stirring. A firm gel will form.

(2) Residual isopropyl alcohol (IPA) not to exceed 0.075 percent as determined by the procedure described in the Xanthan Gum monograph, the "Food Chemicals Codex," 3d Ed. (1981), p. 347, which reads:

IPA Standard Solution. Transfer 500.0 milligrams (mg) chromatographic quality isopropyl alcohol into a 50-milliliter (ml) volumetric flask, dilute to volume with water, and mix. Pipet 10 ml of this solution into a 100-ml volumetric flask, dilute to volume with water, and mix.

Tert-Butyl Alcohol (TBA) Standard Solution. Transfer 500.0 mg of chromatographic quality *tert*-butyl alcohol into a 50-ml volumetric flask, dilute to volume with water, and mix. Pipet 10 ml of this solution into a 100-ml volumetric flask, dilute to volume with water, and mix.

Mixed Standard Solution. Pipet 4 ml each of the *IPA Standard Solution* and of the *TBA Standard Solution* into a 125-ml graduated Erlenmeyer flask, dilute to about 100 ml with water, and mix. This solution contains approximately 40 micrograms (μg) each of isopropyl alcohol and *tert*-butyl alcohol per ml.

Sample Preparation. Disperse 1 ml of a suitable antifoam emulsion, such as Dow-Corning G–10 or equivalent, in 200 ml of water contained in a 1000-ml 24/40 round-bottom distilling flask. Add about 5 grams (g) of the sample, accurately weighed, and shake for 1 hour on a wrist-action mechanical shaker. Connect the flask to a fractionating column and distill about 100 ml, adjusting the heat so that foam does not enter the column. Add 4.0 ml of *TBA Standard Solution* to the distillate to obtain the *Sample Preparation.*

Procedure. Inject about 5 microliters (μl) of the *Mixed Standard Solution* into a suitable gas chromatograph equipped with a flame-ionization detector and a 1.8 meters (m)×3.2 millimeters (mm) stainless steel column packed with 80/100-mesh Porapak QS or equivalent. The carrier is helium flowing at 80 ml per minute (min). The injection port temperature is 200 °C, the column temperature is 165 °C, and the detector temperature is 200 °C. The retention time of isopropyl alcohol is about 2 min, and that of *tert*-butyl alcohol about 3 min.

Determine the areas of IPA and TBA peaks, and calculate the response factor, f, by the formula A_{IPA}/A_{TBA}, in which A_{IPA} is the area of the isopropyl alcohol peak, and A_{TBA} is the area of the *tert*-butyl alcohol peak.

Similarly, inject about 5 μl of the *Sample Preparation*, and determine the peak areas, recording the area of the isopropyl alcohol peak as a a_{IPA}, and that of the *tert*-butyl alcohol peak as a_{TBA}. Calculate the isopropyl alcohol content, in parts per million (ppm), in the sample taken by the formula $(a_{IPA}\times 4000)/(f\times a_{TBA}\times W)$, in which W is the weight of the sample taken in grams.

(e) The additive is used or intended for use in accordance with current good manufacturing practice as a stabilizer and thickener as defined in § 170.3(o)(28) of this chapter. The additive may be used in the following foods when standards of identity established under section 401 of the Federal Food, Drug, and Cosmetic Act do not preclude such use:

(1) Glazes, icings, and frostings and

(2) Jams and jellies.

(f) To assure safe use of the additive:

(1) The label of its container shall bear, in addition to other information required by the Federal Food, Drug, and Cosmetic Act, the name of the additive and the designation "food grade".

(2) The label or labeling of the food additive container shall bear adequate directions for use.

Dated: September 19, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–22955 Filed 9–27–90; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin, Tylosin/Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of three new animal drug applications (NADA's), one held by Simonsen Mill-Rendering Plant, Inc., which provides for the use of a tylosin Type A medicated article, and the other two NADA's held by Arkansas Micro Specialties, Inc., one of which provides for the use of a tylosin Type A medicated article and the other of which provides for the use of a tylosin/sulfamethazine Type A medicated article. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of Simonsen's NADA 96–776, which provides for the use of a tylosin Type A medicated article to make a Type C swine feed, and Arkansas Micro Specialties' NADA 139–600, which provides for the use of a tylosin Type A medicated article to make a Type C medicated swine, beef cattle, or chicken feed, and NADA 139–601, which provides for the use of a tylosin/sulfamethazine Type A medicated article to make a Type C medicated swine feed. Since Simonsen Mill-Rendering Plant, Inc., is no longer the sponsor of any approved NADA's, 21 CFR 510.600(c) is amended by removing the entries for the firm. This document also amends 21 CFR 558.625 (b)(26) and (b)(86), and 558.630(b)(10) to reflect withdrawal of approval of the NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry "Simonsen Mill-Rendering Plant, Inc.," and in the table in paragraph (c)(2) by removing the entry "034418".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.625 [Amended]

4. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(26) and (b)(86).

§ 558.630 [Amended]

5. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by removing "047863,".

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90–23038 Filed 9–27–90; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin, Tylosin/Sulfamethazine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of two new animal drug applications (NADA's), one held by Countrymark, Inc., for a tylosin Type A medicated article, and the other held by Nutri-Basics Co. for a tylosin/sulfamethazine Type A medicated article. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA 137-051 held by Countrymark, Inc. (formerly The Ohio Farmers Grain and Supply Association), and NADA 138-453 held by Nutri-Basics Co. (formerly Southern Micro-Blenders). NADA 137-051 provides for the use of a tylosin Type A medicated article to make Type C medicated swine, beef cattle, and chicken feeds. NADA 138-453 provides for the use of a tylosin/sulfamethazine Type A medicated article to make a Type C medicated swine feed. In this final rule FDA is amending 21 CFR 558.625(b)(82) and 558.630(b)(10) to reflect the withdrawal of these approvals.

Although the sponsor of NADA 137-051 was changed from The Ohio Farmers Grain and Supply Association to Countrymark, Inc., the regulations had not been changed accordingly. Since The Ohio Farmers Grain and Supply Association is no longer the sponsor of any approved NADA, 21 CFR 510.600(c)(1) and (c)(2) are amended to remove the entries for The Ohio Farmers Grain and Supply Association.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended to read as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Sections 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications is amended in the table in paragraph (c)(1) by removing the entry "The Ohio Farmers Grain and Supply Association" and in the table in paragraph (c)(2) by removing the entry "026439".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Sections 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.625 [Amended]

4. Section 558.625 Tylosin is amended by removing and reserving paragraph (b)(82).

§ 558.630 [Amended]

5. Section 558.630 Tylosin and sulfamethazine is amended in paragraph (b)(10) by removing "049685".

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-23034 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Dichlorophene and Toluene Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that portion of the regulations reflecting approval of a new animal drug application (NADA) held by Fort Dodge Laboratories. The NADA provides for use of a dichlorophene/toluene capsule in dogs and cats as an anthelmintic. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA 101-715, held by Fort Dodge Laboratories. The NADA provides for the use of a dichlorophene/toluene capsule for the removal of ascarids and hookworms and as an aid in removing tapeworms from dogs and cats. By letter dated February 5, 1990, the sponsor requested the agency to withdraw approval because the product is no longer being manufactured or marketed. This document amends 21 CFR 520.580(b)(1) to reflect the withdrawal of approval.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.580 [Amended]

2. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(1) by removing "000856,".

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-23036 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 90-168]

Special Local Regulations; Challenge of the Hudson, Peekskill, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Challenge of the Hudson, a rowing regatta to be held along the eastern shore of the Hudson River at Peekskill, New York. This event will be held from 8:00 a.m. to 6:00 p.m. on October 6, 1990. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This temporary regulation becomes effective on October 6, 1990 from 6 a.m. to 7 p.m.

FOR FURTHER INFORMATION CONTACT: Ensign Leslie J. Penney, U.S. Coast Guard, (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 to hold the event was not received by this office until September 7, 1990 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, U.S. Coast Guard, Project Officer, Boating Safety Office and Lieutenant R.E. Korroch, U.S. Coast Guard, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The Challenge of the Hudson is a rowing regatta which will be held along the eastern shore of the Hudson River at Peekskill, NY. The regulated area will be the race course. No vessel other than participants or those vessels authorized by either the sponsor or the Coast Guard Patrol Commander shall enter the regulated area. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary and sponsor provided patrols.

Economic Assessment and Certification

The regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a number of spectators and participants into the area which will aid the local economy. The effective period of regulation is short and the only adverse impact to uninterested and commercial vessels is that navigation in the regulated areas will be reduced to no wake speed. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

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:

1. The authority citation for part 100 continues to read as follows:

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

2. A temporary § 100.35-01-03T is added to read as follows:

§ 100.35-01-03T Challenge of the Hudson, Peekskill, NY

(a) *Regulated area:* The race course is along the east shore at Peekskill, NY within a roughly rectangular area described by the following points:

Commencing at Green's Cove in the Hamlet of Verplank

Latitude 41 15.1 North	Longitude 073 58.0 West then North to
Latitude 41 17.5 North	Longitude 073 56.3 West then North to
Latitude 41 17.5 North	Longitude 073 56.3 West then South to
Latitude 41 15.1 North	Longitude 073 58.2 West

(b) *Special local regulations:* The following requirements will be placed on vessels operating within the regulated area during the effective period of regulation:

(1) Vessels, including tows, greater than 20 meters in length shall not transit the regulated area at any time during the effective period unless authorized by the Coast Guard Patrol Commander. The Coast Guard Patrol Commander will attempt to minimize any delays for commercial vessels transiting the area.

(2) Vessels less than 20 meters in length may transit the regulated area if escorted by official regatta patrol vessels specified in paragraph (b)(4) of this section.

(3) Unless otherwise directed by the Coast Guard Patrol Commander transiting vessels shall: proceed at no wake speeds; remain clear of the race course as marked by the sponsor provided buoys; not interfere with races or any shells in the area; make no stops and keep to the western edge of the Hudson River.

(4) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels and other vessels so designated by the regatta sponsor of Coast Guard patrol personnel.

(5) No person or vessel may enter or remain in the regulated area during the effective period unless participating in the event or authorized to be there by the sponsor of Coast Guard patrol personnel.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) In the event of an emergency or as directed by the Coast Guard Patrol Commander, the sponsor shall dismantle the race course to allow the passage of any U.S. Government vessel or any other designated emergency vessel. At the discretion of the Patrol Commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate this event.

(c) *Effective dates:* This regulation will be effective from 7 a.m. to 7 p.m. on October 6, 1990.

Dated: September 20, 1990.

P.L. Collom,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 90-23001 Filed 9-27-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11-90-06]

Special Local Regulations: Navy Fleetweek Parade of Ships and Blue Angels Demonstration; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation and temporary rule.

SUMMARY: This document implements 33 CFR 100.1105 for the Navy Fleetwork Parade of Ships and Blue Angels Demonstration, San Francisco Bay, California and temporarily amends the regulated area for the Blue Angels activities. The regulations in 33 CFR 100.1105 are needed to restrict vessel traffic in the regulated areas during Fleetweek 1990 to ensure the safety of participants and spectators. The amendment to the regulated area represents a four degree (4°) clockwise rotation in the orientation of area "Bravo" over previously published coordinates. This amendment is necessary in order to accommodate a corresponding shift in the orientation of the flight line to be used by the Blue Angels in their demonstrations.

EFFECTIVE DATE: The regulations in 33 CFR 100.1105, as amended by this temporary rule, become effective on Friday, October 5, 1990, and Saturday, October 6, 1990, terminating on each of those days at the end of the scheduled activity as follows:

Regulated area "Alpha" for the Navy Parade of Ships becomes effective at 11:30 a.m. PDT, October 6, 1990, or when the lead U.S. Naval vessel in the column transits under the Golden Gate Bridge, whichever time is earlier, and terminates at 12:30 p.m. PDT, October 6, 1990, or when the last U.S. Naval vessel in the column is moored, whichever time is later, unless terminated earlier by Commander, Coast Guard Group San Francisco.

Regulated area "Bravo" for the Blue Angels practice flight becomes effective at 11:30 a.m. PDT, October 5, 1990, and terminates at 4 p.m. PDT, October 5, 1990, unless sooner terminated by Commander, Coast Guard Group San Francisco. Regulated Area "Bravo" for the Blue Angels and other airshow activities becomes effective again at 11:30 a.m. PDT, October 6, 1990, and terminates at 4 p.m. PDT, October 6, 1990, unless sooner terminated by Commander, Coast Guard Group San Francisco.

FOR FURTHER INFORMATION CONTACT: Lieutenant P.L. Newman, Operations Officer, Coast Guard Group San Francisco, California. Telephone (415) 399–3445.

Drafting Information

The drafters of this notice are Lieutenant P.L. Newman, project officer, Coast Guard Group San Francisco, and Lieutenant Allen Lotz, project attorney, Eleventh Coast Guard District Legal Office.

SUPPLEMENTARY INFORMATION

The U.S. Navy/City of San Francisco "Fleetweek" Navy Parade of Ships and the Navy Blue Angels Aerial Show will be held on Saturday, October 6, 1990. Regulated area "Alpha" will ensure unobstructed waters for safe navigation for the Parade of Navy Ships proceeding inbound via the Eastbound San Francisco Bay Traffic Lane. Following the ship parade, regulated area "Bravo," established for the aerial demonstration by the U.S. Navy Blue Angels and other participating aircraft, will ensure the safety of the aircraft, vessels, and persons onboard. In preparation for this demonstration, the Blue Angels will conduct a practice flight at approximately 12:30 p.m. on Friday, October 5, 1990. The regulated area for the performance by the Blue Angels and other aircraft may restrict vessel access to some marinas and commercial docks. The short duration and minimal size of the regulated area will minimize inconveniences.

Persons and vessels shall not enter or remain within the stated distances from the naval parade vessels in regulated area "Alpha", or enter or remain within regulated area "Bravo", unless authorized by the Coast Guard Patrol Commander. Fleetweek activities have traditionally attracted a sizeable fleet of vessels, and large vessel operators needing to transit near Fleetweek activities are encouraged to make such transits well before or after the regulated areas are in effect.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority for part 100 continues to read as follows:

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

2. In § 100.1105, the latitude and longitude coordinates in paragraph (b)(2) are temporarily revised to read as follows:

§ 100.1105 San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration.

* * * * *

(b) * * *

(2) * * *

Latitude	*Longitude*
37°49'31"N.	122°24'15"N.
37°49'12"N.	122°27'44"N.
37°48'33"N.	122°27'40"N.
37°48'51"N.	122°24'10"N.

* * * * *

Dated: September 2, 1990.

J.G. Schmidtman,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 90–23002 Filed 9–27–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–90–47]

Drawbridge Operation Regulations; Atlantic Intercoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: At the request of Brevard County, the Coast Guard is revising the regulations governing the SR 402 bridge at Titusville by permitting the number of openings to be limited during certain periods. This change is being made because the vehicular traffic pattern has changed. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky, (305) 536–4103.

SUPPLEMENTARY INFORMATION: On June 27, 1990, the Coast Guard published proposed rule (55 FR 26220) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated July 13, 1990. In each notice interested persons were given until August 13, 1990, to submit comments.

Drafting Information

The drafters of these regulations are Walter J. Paskowsky, project officer, and Lt. Genelle Tanos, project attorney.

Discussion of Comments

Two comments were received. One suggested the rule be changed to say, "the draw will not open" instead of "the draw need not open." Drawbridge regulations require drawbridge owners and tenders to open the draws upon request from a vessel unless specifically authorized not to open for the passage of vessels during certain periods. This does not preclude the bridge owner from directing drawbridges to open during these periods. The Florida Inland Navigation District opposed the lengthening of the closed periods citing safety hazards for waiting vessels. The proposed rule shifts the closed periods to an earlier time, but does not lengthen them. There is no increase in waiting time or increased danger for waiting

vessels. The Coast Guard has carefully considered the comments and has determined that no new information has been presented which justifies changing the proposed regulation. The final rule is therefore, unchanged from the proposed rule published on June 27, 1990.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures. (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–01(g).

2. Section 117.261(k) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo

* * * * *

(k) *SR 402 bridge, mile 878.9 at Titusville.* The draw shall open on signal; except that, from 6:15 a.m. to 7:15 a.m. and 3 p.m. to 4:30 p.m. Monday through Friday, except federal holidays, the draw need not open.

* * * * *

Dated: September 17, 1990.

J.L. Linnon,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 90–23000 Filed 9–27–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Francisco Bay Reg. SF–90–13]

Security Zone Regulations; Oakland Outer Harbor, Oakland, CA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone for waterside approaches to Oakland Outer Harbor. The zone is needed to safeguard vessels and waterfront facilities against destruction from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on September 15, 1990. It terminates on December 31, 1990 unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION: Contact LCDR R.E. Tinker at 415–437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making 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 prevent destruction to vessels, equipment and dock areas.

Drafting Information

The drafters of this regulation are LCDR R.E. Tinker, project officer for the Captain of the Port, and LCDR J.J. Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The incidents requiring this regulation are to protect vessels undergoing loading operations in support of Operation Desert Shield from clandestine acts perpetrated by persons not supporting U.S. actions. This regulation is issued pursuant to 50 U.S.C. 191 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 D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

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 33 CFR 165.5.

2. The new 165.T1178 is added to read as follows:

§ 165.T1178 Security Zone: Oakland Outer Harbor, Oakland, CA.

(a) *Location:* A Security Zone will be established in the waters of San Francisco Bay in the vicinity of the Oakland Outer Harbor, Oakland, CA. The Security Zone will include waters within a boundary starting on shore at Matson Dock (37 48.6N, 122 19.9W) and extending 345 T approximately 400 yards to Buoy #3 (FL G 4s) then following Range A from Buoy #3 to shore bearing 060T approximately 1600 yards and ending on shore in the vicinity of the Oakland Army Base at a point (37 48.9N, 122 19.2W).

(b) *Effective Date:* This regulation becomes effective on September 15, 1990. It terminates on December 31, 1990 unless sooner terminated by the Captain of the port.

(c) *Regulations:* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: September 15, 1990.

T.H. Gilmour,

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

[FR Doc. 90–23005 Filed 9–27–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Francisco Bay Reg. SF–90–09]

Security Zone Regulation; San Francisco Bay, CA

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

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone on the waters of San Francisco Bay extending one hundred yards around the naval vessel USS PELELIU on Saturday, October 6, 1990 during Fleetweek '90 activities. The USS PELELIU will anchor west of Alcatraz island on Friday, October 5, 1990 and depart anchorage

after Fleetweek '90 activities at approximately 3:30 p.m. PDT on Saturday, October 6, 1990. The zone is needed to safeguard the USS PELELIU against destruction, loss, and injury from sabotage or other subversive acts, accidents, or other causes of similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on October 6, 1990 at 10 a.m. PDT, and terminates on October 6, 1990 when the USS PELELIU is moored at Pier 30/32 San Francisco, CA. at approximately 4 p.m. PDT unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Ensign Curtis Farrell, U.S. Coast Guard Marine Safety Office San Francisco Bay, CA. 415-437-3073.

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

Drafting Information

The drafters of this regulation are Ensign Curtis Farrell, Project Officer, MSO San Francisco Bay and Lieutenant Allen Lotz, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin on October 6, 1990 at 10 a.m. PDT. It is expected Fleetweek '90 will attract significant public and media attention. The prominence and controversial nature of the event cause potential for strife or acts of violence. A Security Zone will provide the Captain of the Port San Francisco Bay with the authority necessary to help prevent situations where strategic naval assets of the United States may come to harm. The security of these assets is in the national interest and a Security Zone is justified to help protect these assets and spectators both onboard and near these assets. This regulation is issued pursuant to 50 U.S.C. 191 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 D 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 33 CFR 160.5.2.

2. A new section 165.T1174 is added to read as follows:

§ 165.T1174 Security Zone: San Francisco Bay

(a) *Location.* The following area is a Security Zone: The waters of San Francisco Bay extending 100 yards around the naval vessel USS PELELIU while anchored at 37-49-28 N, 122-26-30 W, and while the vessel transits from the above anchoring point until it moors at Pier 30/32 in San Francisco.

(b) *Effective dates.* This regulation becomes effective at 10 a.m. PDT on October 6, 1990. It terminates on October 6, 1990 when the USS PELELIU moors at Pier 30/32 in San Francisco at approximately 4 p.m. PDT, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into these zones is prohibited unless authorized by the Captain of the Port San Francisco Bay, CA. Section 165.33 also contains other general requirements. (33 U.S.C. 1225 and 1231; 49 CFR 1.46; and 33 CFR 160.5.)

Dated: September 19, 1990.

T.H. Gilmour,

Commander, U.S. Coast Guard, Alternate Captain of the Port.

[FR Doc. 90-23007 Filed 9-27-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Francisco Bay Reg. SF-90-10]

Safety Zone Regulation; San Francisco Bay, CA

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

ACTION: Emergency rule.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Francisco Bay featuring a parade of ships sailing into the Bay and low level air shows along the San Francisco Waterfront. To ensure the safety of Fleetweek participants and spectators, the Captain of the Port is establishing a moving Safety Zone around the Red & White Fleet ferry boat as it transports dignitaries from pier 1 to the USS PELELIU on October 6, 1990 prior to the beginning of the parade of ships. Entry into this safety zone is prohibited without the permission of the Captain of the Port, San Francisco Bay, CA.

EFFECTIVE DATES: This regulation becomes effective on October 6, 1990 at 10 a.m. PDT and terminates on October 6, 1990 at 4 p.m. PDT.

FOR FURTHER INFORMATION CONTACT: Ensign Curtis J. Farrell, Coast Guard Marine Safety Office, San Francisco Bay, CA 415-437-3073.

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

Drafting Information

The drafters of this regulation are Ensign Curtis J. Farrell, Project Officer, MSO San Francisco Bay and Lieutenant Allen Lotz, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at approximately 10 a.m. PDT on October 6, 1990 with the Red & White Fleet ferry boat transporting several dignitaries from pier 1 to the USS PELELIU. A moving Safety Zone will allow the ferry to make a safe transit through the heavy boating traffic expected that day. Once the dignitaries are aboard the USS PELELIU, the parade of ships and other "Fleetweek" activities can begin. Vessels will not be authorized to enter the established Safety Zone area unless authorized by the Captain of the Port. "Fleetweek" activities are expected to attract a sizable fleet of vessels, and large vessel operators with transits near Fleetweek '90 activities are encouraged to plan such transits well before or after the Safety Zone is in effect. 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, 6.07–6, and 160.5.

2. A new section 165.T1175 is added to read as follows:

§ 165.T1175 Safety Zone, San Francisco Bay Fleetweek Activities.

(a) Location and Effective Dates: The following area is a Safety Zone: The waters surrounding the Red & White Fleet ferry as it leaves pier 1 at approximately 10 a.m. PDT on Saturday October 6, 1990 until it moors to the USS PELELIU anchored in approximate position 37°49'29" N, 122°26'30" W. The Moving Safety Zone Extends 100 yards ahead, 50 yards astern, and 50 yards abeam both sides of the Red & White Fleet ferry boat.

(b) 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, San Francisco Bay, CA.

Dated: September 19, 1990.

T. H. Gilmour,

Commander, U.S. Coast Guard, Alternate Captain of the Port.

[FR Doc. 90–23006 Filed 9–27–90; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1510 and 1552

[FRL–3835–4]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends the EPA Acquisition Regulation (EPAAR) coverage on the submission of contractor information required in monthly progress reports and invoices. This rule affects the preparation of contractor monthly progress reports and invoices. Under this rule, EPA contractors will be required to include cumulative information in monthly progress reports showing total amounts obligated, total costs claimed and remaining available funds for a contract; to identify separately major cost elements on invoices without grouping separate cost elements together; and to differentiate between prime and subcontractor costs on invoices. The intended effect of this action is to enable EPA and its contractors to perform financial monitoring of contractor performance more effectively.

EFFECTIVE DATE: This regulation is effective Septembr 28, 1990.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer at (202) 382–5032 (FTS–382–5032).

SUPPLEMENTARY INFORMATION:

A. Background

Many contractors with cost-reimbursement term form contracts that authorize work by individual work assignments, or with indefinite delivery/indefinite quantity contracts that authorize work by individual delivery orders, report and invoice for costs only at the delivery order or work assignment level. By requiring contractors to include summary information on total obligated amounts, total costs claimed, and available funding remaining under a contract, the EPA and its contractors will perform financial monitoring of contracts more effectively.

This rule requires contractors to identify clearly on invoices separate charges for major cost elements such as travel, equipment, subcontractors, and consultants. Some contractors presently group cost elements such as these together as "other direct costs". It is difficult in these cases for EPA to identify and monitor major cost elements, which may have ceiling amounts in their contracts.

This rule requires contractors to differentiate between prime and subcontractor costs on invoices. Some contractors presently do not distinguish prime and subcontractor costs for certain cost elements, making financial monitoring of contract preformance difficult.

The information requested under this rule represents only the minimal information necessary for monthly progress reports and invoices, and does not preclude additional reporting requirements in Superfund contracts as specified and negotiated under individual solicitations and contracts to assist in cost recovery.

B. Executive Order 12291

OMB Bulletin No. 85–7, dated December 14, 1984, establishes the requirements for the Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 1039.

Public reporting burden for this collection of information is estimated to vary from one (1) to three (3) hours per response, with an average of one and one-half (1.5) 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.

No comments were received on the information collection requirements contained in this proposal.

D. Regulatory Flexibility Act

This rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The information requested for submission to the Government is readily available and will require a minimal effort for contractors to comply. The rule has three purposes: to include cumulative information on monthly progress reports showing total amounts obligated, total costs claimed, and remaining available funds for a contract; to identify separately major cost elements on invoices without grouping separate cost elements together; and to differentiate among prime and subcontractor costs on contractor invoices. Most small entities should presently be compiling this information in their accounting systems in order to monitor financial progress under a contract. Any adjustments to existing accounting systems should require only minimal cost and effort. The EPA certifies that this rule will not exert a significant impact on a substantial number of small entities. Therefore, no regulatory flexibitlity analysis has been proposed.

No comments on the rationale for this certification were received.

E. Public Comments

The rule was published as a proposed rule in the **Federal Register** on June 15, 1990 with public comments due by August 14, 1990. No public comments were received.

List of Subjects in 48 CFR Parts 1510 and 1552

Government Procurement, Specifications, Standards, and other Purchase Descriptions, Solicitation Provisions, and Contract Clauses.

For the reasons set out in the preamble, chapter 15 of title 48 Code of Federal Regulations is amended as set forth below:

PARTS 1510 AND 1552—[AMENDED]

1. The authority citation for parts 1510 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1510.011–73 is revised to read as follows:

§ 1510.011–73 Monthly progress report—time and materials or labor hour contract.

Contracting Officers shall insert the clause at § 1552.210–73 in all time and materials or labor hour contracts for services with a period of performance of six months or longer. The clause may also be used in these contract types when the period of performance is less than six months.

3. Sections 1510.011–74 through 1510.011–77 are redesignated as §§ 1510.011.75 through 1510.011–78 respectively, and a new § 1510.011–74 is added to read as follows:

§ 1510.011–74 Monthly progress report—indefinite delivery/indefinite quantity fixed-rate services contract.

Contracting Officers shall insert the clause at § 1552.210–74 in all indefinite delivery/indefinite quantity contracts for services with a period of performance of six months or longer. The clause may also be used in this contract type when the performance period is less than six months.

4. In § 1552.210–72, the introductory paragraph is revised, the clause is amended by redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a)(2) through (a)(5), adding a new paragraph (a)(1) and revising the first sentence of (a)(2) to read as follows:

§ 1552.210–72 Monthly Progress Report—Cost Type Contract.

As prescribed in § 1510.011–72, insert the following clause:

Monthly Progress Report—Cost Type Contract (Sep 1990)

* * * * *

(a) * * *

(1) Cumulative totals for the contract amounts obligated, amounts claimed, and remaining available funds. Available funds are defined as the total obligated amount less total amounts claimed.

(2) Cumulative labor hours and dollars, broken out by prime and subcontractor labor category, expended from the effective date of the contract through the last day of the current reporting month. * * *

* * * * *

5. Section 1552.210–73, is revised to read as follows:

§ 1552.210–73 Monthly Progress Report—Time and Materials or Labor Hour Contract.

As prescribed in § 1510.011–73, insert the following clause:

Monthly Progress Report—Time and Materials or Labor Hour Contract (Sep 1990)

(a) The contractor shall furnish . . . copies of a combined monthly technical and financial progress report briefly stating the progress made, including the number of hours expended during the reporting period and cumulatively, and the percentage of the project work remaining. Specific discussions shall include difficulties encountered and remedial action taken during the reporting period and anticipated activity during the subsequent reporting period.

(b) The report shall include the following financial information:

(1) Cumulative totals for the contract amounts obligated, amounts claimed, and remaining available funds. Available funds are defined as the total obligated amount less total amount claimed;

(2) Cumulative labor hours and dollars, broken out by prime and subcontractor labor category, expended from the effective date of the contract through the last day of the current reporting period;

(3) Actual costs and labor hours expended during the current month;

(4) Estimated costs and labor hours to be expended during the next reporting period.

(c) The reports shall be submitted to the following addresses on or before the ____ of each month following the first complete calendar month of the contract. Distribute reports as follows:

No. of copies	Addresses
.....	Project Officer.
.....	Contracting Officer.

(End of Clause)

6. Sections 1552.210–74 through 1552.210–77 are redesignated as §§ 1552.210–75 through 1552.210–78 respectively, and a new § 1552.210–74 is added to read as follows:

§ 1552.210–74 Monthly Progress Report—Indefinite Delivery/Indefinite Quantity Fixed-Rate Services Contract.

As prescribed in § 1510.011–74, insert the following clause:

Monthly Progress Report—Indefinite Delivery/Indefinite Quantity Fixed-Rate Services Contract (SEP 1990)

(a) The contractor shall furnish . . . copies of a combined monthly technical and financial progress report briefly stating the progress made, including the percentage of the work ordered and completed during the reporting period. Specific discussions shall include difficulties encountered and remedial action taken during the reporting period and anticipated activity during the subsequent reporting period.

(b) The report shall include the following financial information for each delivery order:

(1) Delivery order number, date and title;

(2) EPA client organization;

(3) Period of performance, including explanations for any extensions that may be needed;

(4) Number of hours, loaded rate applied, and corresponding total dollar amount expended for each employee (by name) within all labor categories employed during the reporting period;

(5) Cumulative number of hours and corresponding dollar amounts expended to date by labor category;

(6) Cumulative listing of all invoices submitted including invoice number, date submitted, period of invoice, total amount of invoice, and amount paid;

(7) Any accumulated charges that have not been invoiced and reasons why they have not been billed;

(8) Estimated costs and labor hours to be expended during the next reporting period.

(c) The reports shall be submitted to the following addresses on or before the ____ of each month following the first complete calendar month of the contract. Distribute reports as follows:

No. of copies	Addresses
.....	Project Officer.
.....	Contracting Officer.

(End of Clause)

7. In § 1552.232–70 the clause is amended by redesignating paragraph (b) as (b)(1), adding new paragraph (b)(2), redesignating paragraph (c) as (c)(1), adding new paragraph (c)(2), and adding to the end of the third sentence of paragraph (d) and to the end of Alternatives I, paragraph (d) and II, paragraph (d) to read as follows:

§ 1552.232–70 Submission of Invoices.

* * * * *

(b) * * *

(2) The invoice for a cost-reimbursement contract shall include current and cumulative charges by major cost element such as direct labor, overhead, travel, equipment, and other direct costs. The charges for subcontracts shall be further detailed in a supporting schedule showing the major cost elements for each subcontract.

(c) * * *

(2) The invoice for an indefinite delivery/indefinite quantity contract shall indicate charges by major categories such as labor, travel, equipment, subcontracts, and consultants. The charges for subcontracts shall be further detailed in a supporting schedule showing the major cost elements for each subcontract.

(d) * * * (separate invoices shall be submitted for each delivery order). * * *

* * * * *

Alternate I (SEP 1990) * * *

(d) * * * (separate invoices shall be submitted for each delivery order). * * *

Alternate II (SEP 1990) * * *

(d) * * * (separate invoices shall be submitted for each delivery order).

Dated: September 13, 1990.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 90-22775 Filed 9-27-90; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 55, No. 189
Friday, September 28, 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 ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-90-201]

Energy Conservation Program for Consumer Products; Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for 9 Types of Consumer Products

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA), the National Appliance Energy Conservation Act (NAECA), and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE) to administer an energy conservation program for these products. Among other things, EPCA, as amended, requires DOE to consider amending the aforesaid energy conservation standards for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters, clothes washers, and fluorescent lamp ballasts; and to consider establishing energy conservation standards for television sets. By means of the instant rulemaking proceeding, DOE intends to discharge the aforesaid statutory responsibilities.

The purposes of this Advance Notice of Proposed Rulemaking (ANOPR) are to: (1) Present for comment the product classes that DOE is planning to analyze; (2) present a detailed discussion of the analytical methodology and analytical models that DOE expects to use in performing analyses in connection with the proposed rule; and (3) facilitate the gathering of information and comments prior to publishing a subsequent notice of proposed rulemaking.

One of the products to be considered herein, namely clothes washers, was the subject of a previously published notice of proposed rulemaking concerning energy conservation standards. (54 FR 32744, Aug. 9, 1989). However, subsequent to the October 10, 1989, close of the comment period in that proceeding, DOE became aware of a clothes washer design option currently in use in Europe which was not included in the notice published by DOE and upon which no comment was received. This design option (horizontal wash tub axis in top-loading washers) appears to have the potential for saving significant amounts of energy and water. Accordingly, DOE has determined to include it in this rulemaking proceeding in order to obtain information as to whether it is economically justifiable. Due to the absence of any comment, the horizontal axis design option will not be addressed in the final rule to be published later this year in the previously commenced rulemaking involving clothes washers and two other types of consumer products.

DATES: Written comments in response to this ANOPR must be received by DOE by December 12, 1990.

ADDRESSES: Written comments are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, Energy Efficiency Standards for Consumer Products, Docket No. CE-RM-90-201, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

a. Authority

Part B of title III of EPCA, Public Law 94-163, as amended by NECPA, Public Law 95-619, NAECA, Public Law 100-12, and NAECA 1988, Public Law 100-357,[1] created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The consumer products subject to the Program (often referred to hereafter as "covered products") are: Refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners and central air conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; fluorescent lamp ballasts;

[1] Part B of title III of EPCA, as amended by NECPA, NAECA, and NAECA 1988, is referred to in this ANOPR as the "Act." Part B of title III is codified at 42 U.S.C. 6291 *et seq.* Part B of title III of EPCA, as amended by NECPA only, is referred to as NECPA.

and pool heaters; as well as any other consumer product classified by the Secretary of Energy (Secretary) (section 322). To date, the Secretary has not so classified any additional products.

Under the Act, the Program consists essentially of three parts: Testing, labeling, and mandatory energy conservation standards. DOE, in consultation with the National Institute of Standards and Technology (NIST), is required to amend or establish new test procedures as appropriate for each of the covered products (section 323). The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products (section 323(b)(3)).

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE (section 324(a)). These rules are to require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product class (section 324(c)(1)). At the present time there are FTC rules requiring labels for the following products: Room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, refrigerators and refrigerator-freezers, central air conditioners and central air conditioning heat pumps and fluorescent lamp ballasts. 44 FR 66475, November 19, 1979; 52 FR 46888, December 10, 1987; and 54 FR 28031, July 5, 1989.

For each of 12 of the covered products, the Act prescribes an initial Federal energy conservation standard (section 325(b)–(h)). The Act establishes effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by DOE within 3 to 10 years, also depending on the product (*Ibid.*). After the specified 3- to 10-year period, DOE may promulgate new standards for each product; however, the Secretary may not prescribe any amended standard that increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product (section 325(l)(1)).

With regard to television sets, the Act allows DOE to prescribe an applicable standard; however, such standard may not become effective before January 1, 1992 (section 325(i)(3)).

Nine products (room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, television sets, pool heaters, clothes wasters, and fluorescent lamp ballasts) are the subject of this rulemaking proceeding. For each of the products, except television sets, clothes washers, and mobile home furnaces, the Act directs DOE to review each legislated standard for possible amendment and to issue final rules no later than January 1, 1992, for units manufactured after January 1, 1995.

For clothes washers, DOE is to issue a final rule no later than five years after the date of publication of the previous final rule. As previously noted, on August 9, 1989, DOE published a proposed rule concerning standards for three types of consumer products, including clothes washers. (54 FR 32744). A final rule for clothes washers is expected to be published early next year. However, subsequent to the October 10, 1989, close of the comment period on that proposed rule, DOE became aware of a clothes washer design option that has the potential of saving significant amounts of energy and water. Because this design option (horizontal wash tub axis in top-loading clothes washers) was not subject to notice and comment in that rulemaking proceeding, it cannot be considered in the final rule. This rulemaking will determine if it is economically justified.

For mobile home furnaces, DOE is to issue a final rule no later than January 1, 1992, for units manufactured after January 1, 1994.

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (section 325(l)(2)(A)).

Section 325(l)(2)(B)(i) provides that before DOE determines whether an energy conservation standard is economically justified, it must first solicit comments on the proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared any increase in the price of, or in the initial charges for, or maintenance expenses of the covered products which are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Act (section 327(a)–(c)). Exceptions to this general rule include the following: (1) State standards prescribed or enacted before January 9, 1987, and applicable to appliances produced before January 3, 1988, may remain in effect until the applicable energy conservation standard begins (section 327(b)(1)); (2) State procurement standards which are more stringent than the applicable Federal standard (section 327 (b)(2) and (e)) and certain building code requirements for new construction, if certain criteria are met, are exempt from Federal preemption (sections 327 (b)(3) and (f)(1)–f(4)); (3) State regulations banning constant burning pilot lights in pool heaters; and (4) State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such products (sections 327 (b)(6) and (c)).

The Act directs DOE to publish an advance notice of proposed rulemaking in advance of DOE consideration of prescribing a new or amended standard.

b. Background

On December 7, 1987, DOE published such a notice with respect to consideration of energy conservation standards for television sets (52 FR 46363). (Hereafter referred to as the December 1987 Notice).

On December 2, 1988, DOE published a notice of proposed rulemaking to determine that an energy conservation standard for television sets would not be economically justified.

On November 17, 1989, DOE published a final rule which, *inter alia*, established an energy conservation standard of 78 percent AFUE for small gas furnaces and amended the standards for refrigerators, refrigerator-freezers, and

freezers. (Hereafter referred to as the November 1989 Final Rule). At the same time, DOE postponed action on a final rule for television sets for a future rulemaking (54 FR 47916). The proposed rulemaking will determine whether conservation standards for television sets are warranted.

This ANOPR is an advance notice for a proposed final rule, which the Act requires be published in the **Federal Register** by January 1, 1992, for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters and fluorescent lamp ballasts. The purpose of the rulemaking proceeding is to review, for possible amendment, the energy conservation standards for room air conditioners, water heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, pool heaters, and fluorescent lamp ballasts that have been established by the Act; to consider amending the energy conservation standards for clothes washers; and to consider energy conservation standards for television sets.

II. Methodology

This section provides a brief description of the analysis of the impact of the standards. It offers an overview of the analytic methodology, and discusses the major components of the analysis: the Engineering Analysis, the Manufacturer Analysis, and the Impact Analysis, which includes the Consumer Analysis. The section also discusses the interrelationships among the components which ensure consistency throughout the analysis.

A later discussion, Models, Data and Assumption, describes the computer models used in the analysis. The models predict the anticipated response of consumers, manufacturers, and utilities to future changes in the economy, including the imposition of energy conservation standards. Quantitative estimates of the impacts of standards will be calculated from the outputs from the models. The models that will be utilized in the analysis are:

- Engineering Performance Models
- Consumer Impact Models
- Manufacturer Impact Models
- Utility Impact Model

The function, data sources, assumptions and validity of the results for each model are discussed below.

The impact of appliance conservation standards will be determined by comparing projections under the base case[2] with the projections under the proposed standards. These projections will first be made for the base case by use of the analytic models described below. The calculations will then be repeated imposing the proposed standard levels.

The differences between the projections of the energy consumption and economic variables in the base and standards cases, respectively, provide quantitative estimates of the impacts of the standards. To evaluate the significance of the differences, a sensitivity analysis will be performed on the key parameters and assumptions.

The economic analysis will be performed in the following areas:

- An Engineering Analysis, which establishes the technical feasibility and product attributes, including costs of design options to improve appliance efficiency. Included in the analysis will be tolerances for engineering assumptions which must be made. These tolerances may be used in establishing standard levels by setting the efficiency at the lower end of the range indicated when the tolerances are considered.
- A Manufacturer Analysis, which provides an estimate of manufacturers' response(s) to the proposed standards. Their responses are quantified by change in several financial performance measures.
- A Consumer Analysis, which forecasts appliance sales, efficiencies, energy use, consumer expenditures, and the national net benefits and costs.
- A separate Life-Cycle Cost Analysis to evaluate the savings in operating expenses relative to increases in purchase price.
- A Utility Analysis that measures the projected impacts of the altered energy-consumption patterns on electric utilities.

Each analysis area will be performed for each of the nine products under consideration. The results of the Engineering Analysis will be reviewed by DOE to determine whether standards for each product could yield measurable energy savings. If standards would not yield energy savings—for example, if there is no combination of design options that would result in improved product efficiency—the analysis will be terminated. If energy savings are possible, then a detailed analysis is performed.

There is interaction among the Engineering, Consumer, Utility and Manufacturer Analyses. The Engineering Analysis examines appliance designs and related attributes such as efficiency and costs. Based on the relationships between the prices and efficiencies of design options, the Consumer Analysis forecasts sales, efficiencies of design options, and efficiencies of new and replacement appliances. These data are used as inputs to the Manufacturer Analysis, which uses them to determine the financial impacts on prototypical firms within the industry. The Consumer Analysis forecasts energy savings and consumer expenditures on the purchase and operation of the appliances. Consumer expenditures (both purchase and operation) are employed in the Life-Cycle Cost Analysis to determine consumer impacts. Changes in sales, revenues, investments, and marginal costs of utilities are calculated from the energy savings in the Utility Analysis.

Two periods of time are considered by the analysis. First, the Consumer Analysis extends over a time period that is generally consistent with the lifetimes of each of the products. Second, the Manufacturer Analysis is performed for a typical year after the standards are assumed to have been imposed. The typical year selected is the fifth, by which time all major impacts of a standard would have occurred. The Engineering Analysis, however, examines the technical feasibility of improving the efficiency of the covered products by analyzing design options available today to improve product efficiency, whether they are commercially available or prototypes.

III. Models, Data and Assumptions

a. Engineering Performance Models and Costing Analysis

The Engineering Analysis addresses two statutory requirements. The first requirement is DOE's evaluation of the maximum improvements in energy efficiency that are technologically feasible. The second relates to the lessening of utility to the consumer of any of the covered products due to the imposition of standards. In addition, the Engineering Analysis provides information on efficiencies, manufacturing costs, and appliance prices to other components of the overall analysis.

The features of appliances that provide utility to the consumer are incorporated into the analysis through the creation of appliance classes. Classes are a subset of appliance types. For example, kitchen ranges and ovens comprise an appliance type, while self-cleaning gas ovens comprise an appliance class. The Engineering Analysis develops cost and efficiency data for a set of design options within each appliance class. These data are the

[2] The base case assumes implementation of the conservation standards that were set by the Act as to all covered products under consideration but clothes washers, and by DOE rulemaking in the case of clothes washers.

output of the engineering performance models and costing analysis discussed in subsection 5–9, below.

1. Appliance classes

The first step in the Engineering Analysis is to segregate product types into separate classes to which different energy conservation standards apply. Classes are differentiated by the type of energy use (oil, natural gas or electricity), or capacity or performance-related features that provide utility to the consumer and affect efficiency. Classes are differentiated in order to ensure that consumer products having different capacities or other performance-related features affecting efficiency and utility remain available to consumers.

For each of the nine appliances, the following are the classes that DOE proposes to consider. DOE welcomes comments, in response to this ANOPR, on whether additional classes are needed.

(i) Room Air Conditioners.

Without reverse cycle and with louvered sides:

Less than 6,000 Btu
6,000 to 7,999 Btu
8,000 to 13,999 Btu
14,000 to 19,999 Btu
20,000 and more Btu

Without reverse cycle and without louvered sides

less than 6,000 Btu
6,000 to 7,999 Btu
8,000 to 13,999 Btu
14,000 to 19,999 Btu
20,000 and more Btu

With reverse cycle and with louvered sides
With reverse cycle, without louvered sides

(ii) Water Heaters

Gas-fired (incl. propane) storage type water heater
Electric resistance storage type water heaters
Oil-fired storage type water heaters
Electric heat pump water heaters
Gas instantaneous water heaters
Electric instantaneous water heaters

(iii) Direct Heating Equipment (Electric, Gas and Oil Powered)

Wall

Fan Type

Up to 42,000 Btu/hour
Over 42,000 Btu/hour

Gravity type

Up to 10,000 Btu/hour
Over 10,000 Btu/hour up to 12,000 Btu/hour
Over 12,000 Btu/hour up to 15,000 Btu/hour
Over 15,000 Btu/hour up to 19,000 Btu/hour
Over 19,000 Btu/hour up to 27,000 Btu/hour
Over 27,000 Btu/hour up to 46,000 Btu/hour
Over 46,000 Btu/hour

Floor

Up to 37,000 Btu/hour
Over 37,000 Btu/hour

Room

Up to 18,000 Btu/hour
Over 18,000 Btu/hour up to 20,000 Btu/hour
Over 20,000 Btu/hour up to 27,000 Btu/hour
Over 27,000 Btu/hour up to 46,000 Btu/hour
Over 46,000 Btu/hour

(iv) Mobile Home Furnaces

Mobile Home Furnaces

(v) Television Sets

Color
Black and White

These classes are distinguished by their ability or inability to reproduce images in color, a performance-related feature that affects utility and efficiency. These classes are the same as proposed in the December 1987 Notice. In the November 1989 Final Rule, DOE postponed action for television sets. The information presented to DOE did not substantiate any specific change to the proposed classes. Absent further information, DOE intends to consider those classes proposed in the December 1987 Notice.

Because of the use of multiple electron guns, color television sets usually consume more energy than comparable monochrome television sets, which use only one electron gun. For this reason, energy efficiency levels achieved by monochrome television sets are not achievable for color television sets. Since color television sets and monochrome television sets offer distinct differences in utility to the consumer, DOE is specifying separate classes for color and monochrome television sets.

(vi) Kitchen Ranges and Ovens

Microwave Oven Products Classes

Single Cavity—Microwave Only
Countertop, Built-in and Wall Ovens
Single Cavity—Microwave and Thermal without Forced Air Movement

Countertop Ovens With Electric Thermal
Built-in and Wall Ovens With Electric Thermal and Without Self-Clean
Built-in and Wall Ovens With Electric Thermal and With Self-Clean
Built-in and Wall Ovens With Gas Thermal and Without Self-Clean
Built-in and Wall Ovens With Gas Thermal and With Self-Clean Free Standing, Drop-in and Slide-in Ranges (with surface units) With Electric Thermal and Without Self-Clean
Free Standing, Drop-in and Slide-in Ranges (with surface units) With Electric Thermal and With Self-Clean
Free Standing, Drop-in and Slide-in Ranges (with surface units) With Gas Thermal and Without Self-Clean
Free Standing, Drop-in and Slide-in Ranges (with surface units) With Gas Thermal and With Self-Clean

Single Cavity—Microwave and Thermal With Forced Air Movement

Countertop Ovens With Electric Thermal
Built-in and Wall Ovens With Electric Thermal and Without Self-Clean
Built-in and Wall Ovens With Electric Thermal and With Self-Clean
Built-in and Wall Ovens With Gas Thermal and Without Self-Clean
Built-in and Wall Ovens With Gas Thermal and With Self-Clean Free Standing, Drop-in and Slide-in Ranges (with surface units) With Electric Thermal and Without Self-Clean
Free Standing, Drop-in and Slide-in Ranges (with surface units) With Electric Thermal and With Self-Clean
Free Standing, Drop-in and Slide-in Ranges (with surface units) with Gas Thermal and Without Self-Clean
Free Standing, Drop-in and Slide-in Ranges (with surface units) With Gas Thermal and With Self-Clean

Range Product Classes
Electrical Top Section Using

Low or High Wattage Open Elements
Solid Disk Elements
Radiant Elements/Under Glass
Induction Elements
Halogen Elements/Under Glass
Grill-With Down Draft Feature
Griddle-With Down Draft Feature

Electric Ovens

Standard Electric Oven With or Without a Catalytic Line Electric Oven—Self-Clean
Forced Convection Oven for Cooking
Forced Convection Oven for Cleaning
Halogen Lamp Oven
Steam Cooking With and Without Pressure
Gas Cooking Tops
Conventional Burner With Electrical Cord
Conventional Burner Without Electrical Cord
Sealed Burners
Radiant Burners

Gas Ovens

Standard Gas Oven With Cord (standard or catalytic finish)
Standard Gas Oven Without Cord (standard or catalytic finish)
Gas Self-Clean Oven
Radiant Burner Gas Oven
Gas Convection Standard Oven
Gas Convection Pyrolytic Oven

(vii) Pool Heaters

Pool Heaters

(viii) Fluorescent Lamp Ballasts

Ballasts designed to operate with:

One F40T12 lamp 120 volt
One F40T12 lamp 277 volt
Two F40T12 lamps 120 volt
Two F40T12 lamps 277 volt
Two F9T12 lamps 120 volt
Two F9T12 lamps 277 volt
Two F96T12HO lamps 120 volt
Two F96T12HO lamps 277 volt

(ix) Clothes Washers

Compact (less than 1.6 ft^3)
Standard (1.6 ft^3 and greater)

Semi-Automatic
Suds Saver

2. Baseline Units

For the purposes of generating a cost/efficiency relationship, the Engineering Analysis needs to define a starting point or baseline. The Engineering Analysis uses information gathered from trade organizations, manufacturers, and consultants with expertise in specific product types to determine a baseline unit. A baseline unit represents a typical model within an appliance class sold during the initial year of the analysis, e.g., a unit that marginally complies with the existing standard. Once identified, each baseline unit is characterized by its efficiency-related design options. DOE requests data on specific units and combinations of design options to be considered as a baseline unit. In addition, DOE requests comments on any other factors to be considered in selecting baseline units.

3. Design Options

The Engineering analysis will identify an individual design option or combinations of design options with a potential for improving energy efficiency. Design options that are currently on the market, that are being developed or that may be on the market by the time standards are effective on January 1, 1995 (for mobile home furnaces, January 1, 1994), will be considered. Furthermore, DOE requests comments on whether the existing test procedures are appropriate for measuring product energy use and efficiency and whether the test procedure can evaluate a particular design option's contribution to the product's energy consumption. For example, the current room air conditioner test procedure, which evaluates energy efficiency on a steady state basis, would not provide credit for design options such as variable speed compressors or electronic expansion valves since both of these designs improve the unit's cyclical performance. Similarly, DOE's microwave oven test procedures are based on International Electrotechnical Commission (IEC) Standard 705 (1975). It is DOE's understanding that this standard was amended by industry in 1988 because manufacturers were experiencing a number of problems conducting the test. To date, DOE has not adopted the new standard and invites comments as to whether it should.

DOE requests comments on both the DOE design options listed below and the applicability of the extant test procedure. The following is a list of design options that will be examined:

(i) Room Air Conditioners

(A) Increased Heat Transfer Surface Area
(B) Improved Fan and Fan Motor Efficiency
(C) Improved Compressor Efficiency
(D) Variable Speed Compressors
(E) Alternative Refrigerants
(F) Electronic Expansion Valves
(G) Thermostatic Cyclic Controls

(ii) Water Heaters

(A) Jacket Insulation
(B) Heat Traps
(C) Reduced Heat Leaks From Fittings
(D) Reduced Pilot Light Input Rate
(E) Automatic Ignition with a Flue Damper
(F) Elimination of Central Flue and Indirect Heating of Water
(G) Increased Flue Baffling with Forced Draft
(H) Multiple Flues
(I) Submerged Combustion Chamber
(J) Use of Pulsed Combustion
(K) Condensation of Flue Gases

For Heat Pump Water Heaters with a Tank

(L) Increased Heat Exchanger Effectiveness
(M) Improved Compressor and Compressor Motor Efficiencies
(N) Improved Fan and Fan Motor Efficiencies

For Heat Pump Water Heaters without a Tank

(O) Increased Heat Exchanger Effectiveness for Evaporator and Condenser
(P) Improved Compressor and Compressor Motor Efficiencies
(Q) Improved Fan and Fan Motor Efficiencies
(R) Improved Water Circulating Pump and Pump Motor Efficiencies
(S) Improved Heat Exchanger Insulation
(T) Improved Connection Hose Insulation

For Instantaneous Water Heaters

(U) Reduced Water in Heater After Each Draw
(V) Reduced Pilot Light Input Rate
(W) Increased Flue Baffling with Forced Draft
(X) Multiple Flues
(Y) Use of Pulsed Combustion and Condensation

(iii) Direct Heating Equipment

(A) Increased Heat Exchanger Surface Area
(B) Intermittent Ignition Device and Vent Damper
(C) Two-stage or Modulating Burner
(D) Improved Blower Motor Efficiency
(E) Power Burner or Induced Draft
(F) Increased Insulation
(G) Condensation of Flue Gases
(H) Pulsed Combustion

(iv) Mobile Home Furnaces

(A) Increased Heat Exchanger Surface Area
(B) Intermittent Ignition Device and Vent Damper
(C) Two-stage or Modulating Burner .
(D) Improved Blower Motor Efficiency
(E) Power Burner or Induced Draft
(F) Increased Insulation
(G) Condensation of Flue Gases
(H) Pulsed Combustion

(v) Television Sets

(A) Remote Control
(B) Electronic Tuning
(C) Automatic Color Control
(D) Vertical Interval Reference
(E) Brightness Sensor
(F) Voltage Regulating Power Source
(G) Display Device
(H) One-Gun Tube

(vi) Kitchen Ranges and Ovens

For Gas Cooktops

(A) Thermostatically Controlled Gas Burners
(B) Insulation/Reflective Surface

For Electric Cooktops

(C) Improved Contact Conductance
(D) Insulation/Reflective Surface

For Ovens (Gas, Electric and Microwave)

(E) Improved Insulation of the Cabinet Envelope
(F) Reduced Vent Size
(G) Reduced Conduction Losses
(H) Insulation with Lower Conductivities
(I) Use of Reflective Surfaces
(J) Reduction of Thermal Mass
(K) Forced Convection During Cleaning
(L) Oven Separator (allowing the user to reduce oven volume when possible)
(M) Improved Magnetrons

(vii) Pool Heaters

(A) Reduced Pilot Light Input Rate
(B) Automatic Ignition with a Flue Damper
(C) Elimination of Central Flue and Indirect Heating of Water
(D) Increased Flue Baffling with Forced Draft
(E) Multiple Flues
(F) Submerged Combustion Chamber
(G) Use of Pulsed Combustion
(H) Condensation of Flue Gases

(viii) Fluorescent Lamp Ballasts

(A) Use of Copper Wire in Coils
(B) Steel Core
(C) High Frequency Operation (electronic ballasts)

(ix) Clothes Washers

(A) Thermostatically Controlled Mixing Valves
(B) Plastic Tubs
(C) Horizontal Axis of Wash Tub

4. Maximum Technologically Feasible Designs

The Act requires that, in considering any new or amended standards, DOE must consider those that "shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." (section 325 (1)(2)(A)). Accordingly, for each class of product that is under consideration in this rulemaking, a maximum technologically feasible level will be identified. The maximum technologically feasible level is one that can be carried out by the addition of design options, both commercially feasible and prototypical, to the baseline units without affecting the product's

utility. DOE believes that the maximum technologically feasible level must be capable of being assembled, but not necessarily manufactured, by the effective date of a standard. In other words, a design must exist in at least a prototype form to be considered maximum technologically feasible.

5. Performance models

In the engineering analysis, DOE's estimate of the efficiency of various design options, and combination of design options, will be based on either computer simulation models or experimental data based on the DOE test procedures. DOE requests test data on the efficiency of the various design options and information on possible simulation models for use in this rulemaking. When test data or simulation models are not available, DOE may attempt to characterize the energy use differences of design options from existing appliances such as by measuring the wattage of televisions sets available at retail outlets with different features.

6. Costing analysis

Manufacturer cost data for baseline units and incremental costs for design improvements are requested. The cost data requested include, for each design option, incremental cost data disaggregated into labor, purchased parts, materials, shipping/packaging and tooling.

7. Price-efficiency relationships

The results of the Engineering Analysis are summarized in the cost-efficiency relationships that show the efficiency, unit energy consumption, and manufacturer cost of each design option and combination of design options, for each appliance class. Manufacturer and dealer markups are applied to the manufacturing costs to determine the purchase price of the appliance. The price-efficiency relationships are a fundamental input to the Consumer Analysis.

8. Data sources

Shipments data, costs of purchased materials and parts and engineering and labor cost data will be based on available information, including information received in comments on this ANOPR and from that collected from industry sources.

9. Outputs from the Engineering Analysis

For each combination of design options considered, the models and data provide:

- Energy efficiency (expressed as the DOE energy factor) [3];
- Annual energy consumption per unit (based on DOE test procedures);
- Increased material, purchased parts, labor, and investment costs for small [4] and large manufacturers by product class;
- The relationship between price and efficiency level by product class; and
- Other information on product characteristics, such as maintenance costs.

b. LBL Residential Energy Model (LBL–REM)

Early energy demand modeling focused on engineering estimates or on the relationship between energy consumption and economic growth. In the 1970's, Oak Ridge National Laboratory (ORNL) developed the first model to integrate these two important aspects, the Engineering-Economic Model of Residential Energy Use (ORNL Model). That model was brought to Lawrence Berkeley Laboratory (LBL) in 1979 and adapted to the analysis of Federal appliance efficiency standards. The ORNL Model has been updated by LBL, resulting in the LBL Residential Energy Model (LBL–REM) which is summarized below.

The LBL–REM forecasts the appliance purchase choices that households make, as well as their subsequent appliance usage behavior and energy consumption. The model uses engineering estimates of the characteristics of particular designs of appliances, and calculates the national impacts of a technology-specific policy on the populations of appliances used in the households. The engineering data provide alternative designs, characterized by purchase price and efficiency, that are available for purchase. The output from LBL–REM provides estimates of energy savings and consumer economic impacts (operating expenses and life-cycle costs).

Engineering, economic, and demographic data are used in the LBL–REM. The engineering data for appliances include the price-efficiency relationships described above. Additional data include information regarding alternative building shell construction measures and costs, unit energy consumption and efficiency of existing appliances, age distribution of existing appliance stock, and retirement functions. Economic data includes projected energy prices [5] and household income, and models of energy investment, appliance purchase and usage behavior, including fuel and technology choice for each end-use. Demographic data includes number of households by type, projected housing starts and demolitions, and initial appliance holdings.

1. Structure of the Model

The LBL–REM segments annual energy consumption into house types, end-uses, and fuel types. The house types are single family, multifamily, and mobile homes. Calculations are performed separately for existing and new housing construction each year over the period, 1980–2015. The end-uses are space heating (including room and central), air conditioning (room, central conventional, and heat pump), water heating, refrigeration, cooking, clothes drying, lighting, clothes washing, dishwashing, and miscellaneous. Up to four fuels are considered, as appropriate to each end use: electricity, natural gas, heating oil, and LPG. The models exists in two versions: national (one region), and regional (10 Federal regions). For those appliances whose usage is not likely to differ by geographic location, i.e., clothes washers, kitchen ranges and ovens, fluorescent lamp ballasts and television sets, the national version will be utilized in this analysis. For room air conditioners, water heaters, pool heaters, mobile home furnaces, and direct heating equipment, DOE will use the regional model (as data allow). DOE requests comments on regional usage on each of the appliances considered in this ANOPR.

The model projects five types of activities: technology/fuel choice; building shell thermal integrity choice; appliance efficiency choice; usage behavior; and turnover of buildings and appliances.

2. Housing Stock Submodel

This submodel prepares data about housing stock projections for the LBL–REM. The number of occupied households, by type, is taken from the 1980 Censuses of Population and Housing. An exogenous projection for housing starts is obtained and estimates

[3] The energy factor is a measurement of energy efficiency derived from the DOE test procedure for that product.

[4] As was the case with previous analyses, small manufacturers will not be analyzed separately. No general manufacturing approach could be identified for these firms because of the wide variability in their approach to manufacturing. Therefore, small manufacturers costs have been assumed to equal those of medium manufacturers. DOE encourages small manufacturers to submit data.

[5] The projections of energy prices will be taken from the most recent *Annual Energy Outlook*, a publication of DOE's Energy Information Administration.

of projected demolition rates by house type are calculated, assuming an exponential function. The housing submodel determines the projected housing stock each year, 1981–2020, by subtracting demolitions from existing stock, then adding starts. The annual demolition rates by house type will be calculated for single family, multifamily, and mobile homes, respectively.

3. Efficiency Choice Algorithm

Historical efficiency data are available for selected years for each class of appliance through at least 1987. The Federal energy conservation standards for new units of these appliances are expected to be met by the effective date of the standard. After that date, future efficiency improvements are assumed to be a function of designs available (according to the engineering analysis) and of relevant energy prices. DOE believes the forecasting algorithm is designed to allow annual average efficiency or shipment-weighted efficiency factors (SWEFs) to increase if either more efficient designs become available at lower prices, or energy prices increase. Conversely, if energy prices decrease, the SWEF may decline, but would have a lower bound at the 1990 Federal standard level.

4. Thermal Integrity

The projection of the level of investment in thermal integrity measures in new houses is based on a life-cycle cost calculation, analogous to that done for equipment efficiencies.[6] Estimates of the incremental costs of thermal integrity measures are used in conjunction with current fuel prices and a discount rate. Estimates of investments in thermal integrity retrofits of existing houses are projected as a function of income and household energy expenditures.[7]

5. Modeling Efficiency Standards

The LBL–REM projects the average efficiency of new products—for example, water heaters—purchased each year, in the absence of additional Federal regulations. A distribution of efficiencies is constructed around the average, based on efficiency distributions observed in the marketplace. This information includes information from industry sources and published data from the industry trade associations. A new Federal standard level eliminates part of the distribution; therefore, a new distribution is constructed. The new shipment-weighted average efficiency then characterizes the efficiency of new units in that year. The same process is applied to all years after implementation of the standard. The model is then run again for the standards case, with the adjusted average efficiencies, to calculate any changes in market shares, usage behavior, or investment in building shell thermal improvements that may occur as a result of standards, and to calculate the net energy savings.

6. Turnover of Appliance Stocks

The initial age distribution of appliances in stock is characterized based on industry data about historical annual shipments. The fraction of each product that retires each year is based on the number of years since purchase of the product. For each year's purchase the model associates an average efficiency, so that when older appliances are retired, they are also recognized as less efficient.[8]

The number of potential purchasers of an appliance in new homes is equal to the number of new homes constructed each year. The number of potential purchasers of appliances in existing houses is equal to the number of retiring appliances, plus a fraction of those households that did not previously own the product.

7. Calculation of Market Shares

Potential purchasers may purchase any competing technology within an end-use, or none. For each end-use, long-term market share elasticities are estimated with respect to equipment price, operating expense, and income, respectively. The effect of standards is expected to be lower operating expense and increased equipment price. The percentage changes in these quantities are used, together with market share elasticities, to determine changes in market share resulting from standards. The model assumes that higher equipment prices will decrease sales volumes, while lower operating expenses will increase them. The net result (predicted market share) depends on the standard level selected, with its associated equipment prices and operating expenses.

8. Usage Behavior

For some products, i.e., room air conditioners, water heaters, direct heating equipment, mobile home furnaces, and pool heaters, changing the operating expense results in changes in usage behavior. These changes are modeled based on usage elasticities in operating expense and income. For kitchen ranges and ovens, clothes washers, fluorescent lamp ballasts, and television sets, these elasticities are expected to be at or near zero; usage behavior is not influenced by the expense of operating the appliance. DOE will appreciate any comments on this assumption.

9. Energy Consumption Calculations

The total energy consumption per house for each end-use and fuel by house type and vintage (existing or new) is the product of the unit energy consumption (accounting for efficiency and capacity changes), and usage factor, e.g., relative hours of operation for room air conditioning. The corresponding annual energy consumption for all households is the annual consumption per household times the number of households of that type and vintage, times the fraction of those households owning that appliance.

Aggregate energy consumption is obtained by summing intermediate results. For example, national electricity consumption for room air conditioners in a particular year is the sum across house types and house vintages of electricity used by room air conditioners. National residential electricity consumption in that year is the sum of all end-uses of electricity consumption in the residential sector.

10. Model Outputs

The principal outputs from the LBL–REM for each year are:

- Energy consumption by end-use and fuel.
- Total residential energy consumption by fuel.
- Per unit equipment price and operating expense by product.
- Projected annual shipments of residential appliances.
- Differences in these quantities between a base and a standards case.

These outputs are provided annually (or for selected years) and cumulatively over a period of time, e.g., 1995–2020. Energy savings are provided annually from implementation of standards to the end of the period. Net present value of standards is evaluated for each regulated product, and for the end-use(s) comprising the regulated and competing products.

[6] The equipment efficiency and thermal integrity decisions are not solved simultaneously, but recursively. For each year analyzed, equipment efficiency is projected and then these results are used to calculate investments in thermal integrity.

[7] Based on E. Hirst, R. Goreltz, and H. Manning, Analysis of Household Retrofit Expenditures, *Energy Systems and Policy*, Vol. 7, No. 4, pages 303–322 (1983).

[8] See Consumer Products Efficiency Standards Economic Analysis Document, DOE/CE–0029, March 1982, pp. 412–13.

Energy savings are calculated as the difference in energy consumption between the base case and standards case. Energy consumption in both the base case and standards case includes building shell improvements, changes in fuel choice, or changes in usage behavior. Therefore, the energy savings capture the net energy savings due to regulation, including the effects induced by shifts in market share or changes in usage behavior.

Net present value, on the other hand, excludes these types of effects.[9] Net present value is calculated from per unit changes in equipment and operating expenses, multiplied by standards case shipments. If the net present value were calculated without normalizing with regard to shipments erroneous results would be obtained: if standards caused decreased purchases of a product, this would appear as an economic benefit, namely, less money spent on purchasing and using appliances;[10] and if standards resulted in increased purchases, this would be incorrectly counted as a cost, when it reflects consumers' preference of the post-standards product.

Base case usage is assumed in calculating the net present value, since any "rebound effect"[11] reflects the consumer's judgment that increased usage is worth more than the direct energy savings associated with keeping usage constant. Therefore, deduction of any foregone energy savings resulting from a possible "rebound effect," prior to calculating the net present value, would result in an underestimate of the true net present value associated with a given efficiency improvement.

[9] Present value is the discounted total value of energy consumption during the appliances' lifetime, plus the discounted equipment costs for those appliances that are purchased during those periods, at alternative standards levels. The difference between each of the two cases is the net present value (NPV) attributable to standards (or amended standards). A positive NPV for an appliance at a given standard level indicates that, if that standard were adopted, consumers of that appliance as a whole would save that much more money in fuel costs, discounted to the present, than they would pay in increased initial price for a more efficient appliance, discounted to the present, compared to the base case.

[10] Without normalization, the greatest economic benefit would be obtained by a standard level that resulted in no future purchases of the product. Then no money would be spent on purchasing the product, or on operating expenses, and the value of the savings would equal the amount of money that would have been spent without the standard. This would clearly be a misrepresentation of the net present value of standards.

[11] The "rebound effect" is the projected energy savings, depending on the appliance, (from an efficiency improvement) that does not occur. This results when purchasers of more energy efficient appliances use them more intensively, thereby saving less energy than the engineering estimates would have indicated. In some instances, the rebound is zero.

11. Other Consumer Impacts

One measure of the effect of standards on consumers is the change in operating expense as compared to the change in purchase price. This is quantified by the difference in life-cycle cost (LCC) between the base and standards case for the appliance classes analyzed. The LCC is the sum of the purchase price and the operating expense discounted over the lifetime of the appliance. It will be calculated at the average efficiency for each class, in the year standards are imposed, with consumer discount rates of 2, 7, and 15 percent. This reflects the range of discount rates that purchasers of appliances experience, depending upon the manner in which they choose to finance the purchase. The purchase price is based on the factory costs in the Engineering Analysis and includes a factory markup plus a distributor and retailer markup. The operating expense is calculated from the unit energy consumption derived in the Engineering Analysis adjusted for differences in usage, i.e., operating load hours, between the test procedure and the LBL–REM. Projected energy efficiencies and usages are taken from the results of LBL–REM.

The analysis will use seven percent both for the calculation of LCC and in the LBL–REM for calculating energy use and NPV. The use of the discount rate in the project of energy use is significant because the LBL–REM projects marketplace demand for more efficient appliances based on the LCC. The LBL–REM assumes that as the price of energy increases, the LCC will increase. This results because the value of the energy consumed is greater which, in turn, causes the marketplace to demand more efficient appliances.

In the November 1989 Final Rule for refrigerators, refrigerator-freezers, freezers, and small gas furnaces (54 FR 47916, 47921, November 17, 1989), DOE selected a seven percent discount rate based on a methodology derived from the Court of Appeals decision, *NRDC* v. *Herrington*, 768 F.2d 1355 (D.C. Cir 1985). As DOE discussed in the November 1989 Final Rule, the applicability of the court decision has changed somewhat with the passage of the Tax Reform Act of 1986 (Pub. L. 99–514). The Tax Reform Act will have phased out the deductibility of interest paid on consumer loans by the time amended standards would be applicable. Based on the revised methodology, DOE calculated a range of discount rates that consumers incur; this range is from less than 1 percent to slightly more than 15 percent. As explained in the November 1989 Final Rule, DOE selected seven percent for the analysis for purposes of that rulemaking proceeding because it was near the mid-point of the potential consumer discount rates. In addition, DOE found that that approach had a reasoned theoretical basis, in that it was related to the opportunity cost of money for purchasing consumer durables. As such, it was justified in terms of alternate consumer investment opportunities that are foregone in order to finance the purchase of appliances.

In this ANOPR DOE is not suggesting a lower consumer rate, based on real after tax rates associated with consumer purchases of appliances, inasmuch as it does not have at this juncture any empirical basis for the recommendation of a rate below seven percent. Therefore, unless and until any broad-based and reliable empirical data can be developed on the methods consumers use to finance purchases of appliances, DOE will continue to use seven percent, for the reason mentioned above. Nevertheless, because the range of real after-tax rates of finance is so broad, DOE has expanded its sensitivity analysis from using 5 and 10 percent rates to using 2 and 15 percent rates. It is believed that this broader range of sensitivities will better reflect the wide variation in actual consumer financing rates, and therefore, better capture the significance of any differences resulting from the range of rates.

Two other measures of economic impact are useful in evaluating the impacts on consumers. The payback period measures the amount of time it takes to recover, through lower operating expenses, the additional expenditure on increased efficiency. Numerically, it is the ratio of the increase in purchase price between the base and standards cases to the decrease in annual operating expenditures. Both the numerator and denominator of this expression are evaluated at the average efficiency in the year standards come into effect and at the energy prices in that year. The cost of conserved energy is the increase in first cost amortized over the lifetime of the appliance at the consumer discount rate divided by the annual energy savings. The consumer will benefit whenever the cost of conserved energy is less than the price of energy for that end use.

c. Commercial Energy Model

For the analysis of fluorescent lamp ballasts, an end-use model of energy consumption in the commercial sector will be used, based on the work performed at Battelle Pacific Northwest

Laboratory for DOE. The model will include a projection of commercial floorspace by building type, and projection of energy consumption by end-use and fuel type. The important interaction between other building characteristics, especially air conditioning energy consumption and lighting energy consumption, will be considered in estimating the energy savings from more efficient fluorescent lamp ballasts.

d. Manufacturer Impact Models

1. Conceptual Approach

The manufacturer impact analysis estimates the overall impact of new or amended standards on an industry's profitability and scale of operation.

2. Measures of Impact

The analysis examines three types of long-run impact: profitability; growth; and competitiveness. Consequently, five measures of impact are reported. They are: Shipments; price; revenues; net income; and return-on-equity (ROE).

ROE is the primary measure of profitability, although gross margin and return-on-assets (ROA) are also reported. Assets and income provide the primary measures of growth, and the impact on competitiveness is analyzed by looking at the relative changes in growth and profitability.

Two short-run impacts are also analyzed. First, the ability for the industry as a whole and for specific segments of the industry to provide the one-time investments required to meet the new standard is examined. Second, if standards result in decreased sales for the particular industry being analyzed, the analysis examines the possibility of price-cutting while the industry is adjusting to a lower sales volume.

3. LBL Manufacturer Impact Model (LBL–MIM)

In order to estimate the impacts of energy efficiency standards, a computer spreadsheet model, the Lawrence Berkeley Laboratory Manufacturer Impact Model (LBL–MIM), was developed.

The LBL–MIM models a "typical year" for the industry, both in the base case and in the new standards case. The year chosen for the model is the fifth year after the imposition of standards. A five-year period is long enough to capture any major impacts from the standard, such as profitability changes or firm entry into, or exit from, the industry.

Ideally, a manufacturer analysis should look at the impact of a proposed regulation on every firm that does business in the industry under question. However, because the industries being analyzed have many manufacturers making a particular product, a firm-by-firm analysis would be a very expensive and not necessarily cost-effective undertaking. In addition, the engineering and financial data for most manufacturing firms are proprietary and are not routinely available for public analysis. Because of these limitations on data and resources, LBL–MIM models a prototypical firm. In many cases this firm represents a division of a larger firm. Therefore, a prototypical firm is a hypothetical firm representative of a portion of the industry. Prototypical firms are defined by parameters that are important for determining the impacts of standards and are consistent with data for the portion of the industry they represent. Important parameters used in the model include the cost structure of the firms, profitability ratios, relative costs of complying with the new standard, and marketing strategies.

A change in standard level affects the analysis in three distinct ways. Increased levels of standards will require additional investment, will raise production costs, and will affect revenue both through price and demand.

The most obvious investment induced by standards is the purchase of new plant and equipment. This cost first is evaluated from engineering data, and then averaged by taking into account the life of the investment, the date on which it is made, tax laws, and the appropriate costs of funds. An additional, and sometimes larger, investment takes place as the old inventory is replaced with more expensive new units. The model assumes previous inventory ratios are maintained. A third form of investment tracked by the model is the change in the transactions demand for cash that accompanies a change in revenues.

Increased costs of production are modeled by coupling engineering data on changes in unit costs caused by standards with data from LBL–REM on the marketplace demand of the product.

Revenue is affected by both price and shipments. Price is determined by computing the markup over long-term marginal costs and then using the markup to determine an optimal price. Demand is determined by price and operating expense elasticities, coupled with the changes in price and operating expenses resulting from the standards.

The LBL–MIM produces several outputs used in analyzing the impact of standards on manufacturers. A simplified pro forma income statement is prepared for each prototypical firm. In addition to the income statement, five main variables—shipments, price, revenue, net income, and ROE—are reported. The results are presented for the without-standards (or without amended standards) case and the with-standards (or with amended standards) case, and the relative difference between the two is also given.

4. Data Sources

The LBL–MIM needs data that characterize both a particular industry and prototypical firms within that industry. Estimates of data are based on information from five general sources: LBL business consultation groups; the Engineering Analysis; the Consumer Analysis, public financial data; and industry profiles.

e. Utility Impact Model

The utility analysis serves several purposes within the overall assessment of the impact of the proposed standards. It contributes to quantifying the energy savings by determining the reduction in fossil fuels used for electricity generation. The reduction in fossil fuel consumption is also an input to the Environmental Assessment. By calculating utility avoided costs, this area of the analysis provides marginal electricity costs. Finally, it examines the impacts on the electric utility industry in terms of changes in investment, revenue requirements, the need for new generating capacity, and residential load factors.

The utility analysis adopts the standard convention that the value of electricity savings can be broken down into energy (or marginal cost) savings and capacity (or reliability) savings. The energy impact measures the production costs avoided by reduced electrical demands, valued at the marginal energy costs of the utility. The capacity impact measures the reliability value of reduced loads during system peak periods, which is, by convention, valued at the cost of a combustion turbine that would have been needed to meet the load. The analysis characterizes these avoided costs per kWh of heating, cooling, and baseload energy saved.[12] These values are used to calculate societal benefits from reduced electricity consumption.

The Utility Impact Model calculates avoided energy costs based on a disaggregation of the generation fuel mix to the National Electric Reliability Council (NERC) regions and a simplified load duration curve for each region.

[12] For the purposes of calculating utility avoided costs, electric heating appliances are defined as electric heat pumps and electric resistance heat, cooling appliances are defined as room and central air conditioners plus heat pumps, and baseload appliances are defined as all other appliances.

First, the model allocates national electricity savings that are forecasted by the LBL–REM to NERC regions in proportion to their current consumption of heating, cooling, and baseload energy. The regional proportions are derived from data on regional appliance saturations, efficiencies, and hours of use. The fraction of the electricity that would have to be generated at the margin from oil and gas is calculated from the total regional oil and gas fraction and the simplified load duration curve. Projected utility natural gas and coal prices, weighted by the oil and gas fraction and the non-oil and gas fraction respectively, are used to calculate utility marginal costs over the forecast period. The marginal costs are adjusted to account for seasonal differences.

The avoided capacity cost calculation in the model is based on conservation load factors (CLFs) for the energy savings attributable to the standards, as well as the capacity value of a combustion turbine. A CLF is defined as the average hourly energy savings of a conservation measure divided by its peak load savings. The CLFs are a way of characterizing the peak demand savings of a conservation measure. They are used to convert the capacity value of the standards into the per kWh values described above. The NERC forecasts of capacity requirements for each region are used to account for regional variations in reserve margin. If NERC forecasts an adequate reserve margin in a region for a given year, no reliability value is given to the capacity savings in the region.

The inputs needed for the Utility Impact Model are CLFs, state-level utility fuel prices, appliance saturations, efficiencies, and hours of use, as well as electricity generation by fuel type and capacity need by NERC region. The outputs of the analysis are the fuel savings, the reduction in the need for new generating capacity, and the avoided energy and capacity costs for heating, cooling, and baseload appliances per million Btu of resource energy.

f. Sensitivity Analyses

Sensitivity studies are performed to determine how changes in technical and operational parameters affect key engineering and economic indicators used in evaluation of appliance standards. This makes it possible to place limits on the overall results of the analysis and to gain an understanding of which variables are most important in producing these results. Sensitivity analyses are developed in a series of distinct steps. For each component analysis in the overall analysis, critical input parameters are identified and reasonable ranges of variation determined. The sensitivity of the model to changes in the value of each important parameter is then estimated by running the model for both the base case and the standards cases. The results of the sensitivity analyses are examined to determine the sensitivity of the forecasts to exogenous variables and assumptions and the sensitivity of the differences between the base and standards cases (impacts of alternative standards).

IV. Comments

a. Questions for Public Comment

DOE is interested in receiving comments and data concerning the accuracy and workability of this methodology. Also, DOE welcomes discussion on improvements or alternatives to this approach. In particular, DOE is interested in gathering data on the following:

- Descriptive and performance characteristics for baseline models of each product class that are the subject of this rulemaking. These models should be those satisfying the appropriate standards;
- Proposed product classes for kitchen ranges and ovens, pool heaters, mobile home furnaces, fluorescent lamp ballasts and any other products in this rulemaking;
- Costs of baseline units and incremental costs of designs improving the energy efficiency of the products that are the subject of this rulemaking;
- Appropriateness of existing test procedures to the proposed design options;
- Data on consumer financing of appliances useful for obtaining a weighted average discount rate;
- Estimates of performance and cost of horizontally rotating top loading clothes washers;
- Appropriate method to incorporate pool heaters into the LBL–REM;
- Usage patterns in commercial applications of fluorescent lamp ballasts, since, to date, the LBL–REM has been limited to residential applications;
- Appropriate methodologies for analyzing standards for room air conditioners, including comments and data on alternatives to CFC–22 (a refrigerant allowed by the Montreal Protocol but included in proposed Congressional legislation to ban additional CFC products);
- Appropriate modifications to the LBL–REM to accommodate adding heat pump water heaters and gas-fired instantaneous water heaters as a new class;
- Impact on efficiency and cost of fluorescent lamp ballasts of limiting harmonic content; and
- Heating efficiency of various types of range and oven elements including open, solid, radiant, induction, halogen, and burners including conventional, sealed, and radiant.

DOE has been unable to identify any small manufacturers. Nevertheless, for purposes of this analysis, small manufacturers' costs are assumed to equal those of medium manufacturers. DOE is especially interested in learning of the existence of such manufacturers, and in obtaining cost data from small manufacturers of the products under consideration.

For the LBL–REM, DOE requests interested parties to provide historical data on shipments and average efficiencies by class for the products subject to the proposed rulemaking. Data on consumer prices and on the installation and maintenance expenses of these appliances are also requested.

The manufacturer analysis needs the financial data from the product division level. All of these data are available at the firm level, but since firms are typically much larger than the relevant division, the firm data may give a misleading indication of the division's finances.

An income statement and balance sheet at the division level would be most helpful. If this is not available, then data on the following variables are considered most essential: net income, revenue, selling and general and administrative costs, engineering costs, costs of goods sold, interest, taxes, debt-to-equity ratio, net depreciable assets, net assets, capital investment, and long-term debt.

DOE also welcomes current data on unit sales and revenues for the industries as a whole.

b. Comment Procedure

Interested persons are invited to submit written comments to the address indicated in the beginning of this notice in the **ADDRESSES** section. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation CE–RM–90–201. Eight copies are to be submitted. All comments received by the date specified at the beginning of this ANOPR and all other relevant information will be considered by DOE before it continues this rulemaking proceeding. Pursuant to 10 CFR 1004.11, any person submitting information which he or she believes to be

confidential and exempt by law from public disclosure should submit one complete copy of the document and seven copies from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and threat it according to its determination.

Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

Issued in Washington, DC, on September 19, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

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BILLING CODE 6450-01-M

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1410

Premiums

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) is proposing regulations concerning the computation and payment of premiums. The Corporation was established on January 6, 1988, the date of enactment of the Agricultural Credit Act of 1987 which amended the Farm Credit Act of 1971 (Act). The Corporation is empowered to prescribe such rules and regulations as it considers necessary to carry out its responsibilities. In the proposed regulations the Corporation interprets the premium calculation formulas included in the Act, clarifies the methodology to be used in calculating premiums to be paid to the Corporation by insured Farm Credit System banks, defines certain terminology, prescribes the form and content of certified statements, and establishes the date and place for filing certified statements and for payment of premiums.

DATES: Comments must be submitted on or before October 29, 1990.

ADDRESSES: Written comments may be mailed (in triplicate) to the Board of Directors, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, VA 22102-0826. Copies of all communications received will be available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, VA.

FOR FURTHER INFORMATION CONTACT:

Bobbie Jean Norris, Project Analyst, Farm Credit System Insurance Corporation, McLean, VA 22102-0826, (703) 883-4367, TDD (703) 883-4444

or

James M. Morris, Attorney, Farm Credit System Insurance Corporation, McLean, VA 22102-0826, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987, Public Law 100-233, amended the Farm Credit Act of 1971 (Act) by adding provisions concerning the Farm Credit System Insurance Corporation (Corporation). One of the purposes for which the Corporation was established is to insure the timely payment of principal and interest on notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 4.2 of the Act on behalf of one or more Farm Credit System banks (System banks). Effective January 6, 1989, each System bank participating in such obligations became an insured System bank.

In order to provide the Corporation with funds to meet its obligations, the Act provided for the transfer, as of January 6, 1989, of all amounts in the revolving fund established by section 4.0 of the Act into the Farm Credit Insurance Fund (Insurance Fund), which served as the initial capital of the Corporation. The Act provides for further funding of the Corporation to come from premium payments by System banks. The Corporation will deposit in the Insurance Fund all premium payments received from System banks.

Premiums are to be paid beginning as soon as practicable after January 1, 1990, and no less frequently than annually thereafter. Except for the premium payment which covers calendar year 1989, section 5.55 of the Act requires that the annual premium due from each System bank for each calendar year be equal to the sum of (1) the annual average principal outstanding for such year on its loans that are in accrual status, excluding the guaranteed portions of certain government-guaranteed loans, multiplied by 0.0015, (2) the annual average principal outstanding for such year on its loans that are in nonaccrual status, multiplied by 0.0025, (3) the annual average principal outstanding for such year on the guaranteed portions of its Federal government-guaranteed loans that are in accrual status, multiplied by 0.00015, and (4) the annual average principal outstanding for such year on the guaranteed portions of its State government-guaranteed loans made by the bank that are in accrual status, multiplied by 0.0003. The premium payment for calendar year 1989 is to be based on the annual average principal outstanding on only the accruing loan volume.

Section 5.55(d) of the Act provides that the principal outstanding on all loans made by a System bank shall be determined based on all loans of any production credit association or other association making direct loans under authority provided under section 7.6 of the Act (direct lending associations), and loans of any bank, company, institution, corporation, union, or association described in section 1.7(b)(1)(B) of the Act (other financing institution) that are able to be made because the direct lending association, or other financing institution is receiving, or has received, funds provided through a System bank, as well as loans of each System bank other than loans made to direct lending associations, and other financing institutions.

Premiums shall continue to be paid according to this formula until such time as the Insurance Fund exceeds the secure base amount. The secure base amount is defined in section 5.55(c) as two percent of the aggregate outstanding insured obligations of all insured System banks at any point in time (adjusted downward by a percentage of the guaranteed portions of the principal outstanding on State and Federal government-guaranteed loans in accrual status), or such other amount as the Corporation, in its sole discretion, determines to be actuarially sound. If the amount in the Insurance Fund exceeds the secure base amount, the Corporation shall reduce the annual premium due from each System bank for

the following calendar year by a percentage determined by the Corporation so that the aggregate of the premiums payable by all of the System banks is sufficient to ensure that the Insurance Fund balance is maintained at no less than the secure base amount.

Definition of Loans

The term "loans" is used, but not defined, in title V, part E, and in section 1.12(b) of the Act. The Corporation is proposing to adopt a definition of loan substantially similar to that used by Farm Credit Administration (FCA) financial reporting regulations (12 CFR Part 621). Adoption of this definition will ensure consistency with FCA financial reporting regulations. 12 CFR 621.2(a)(13) states:

> "Loan" means any extension of credit or lease resulting from direct negotiations between a lender and a borrowing entity that is recorded as an asset of a reporting institution. The term "loan" includes loans, contracts of sale, notes receivable, and other similar obligations and lease financings. The term "loan" includes loans originated through direct negotiations between the reporting institution and a borrowing entity and loans or interests in loans purchased from another lender.

Since these items are considered "loans made under this Act," for purposes of serving as collateral for the insurance of insured obligations under sections 4.2 and 4.3 of the Act, it is appropriate for them to be subject to premiums for insurance of payment of principal and interest on those obligations.

In addition, the Corporation's proposed definition of "loans" would add a category of loans. Some Farm Credit institutions sell loans subject to full or partial recourse, thereby retaining all or a portion of the risk. The Corporation proposes that, for calculation of premiums, such loans should be considered loans of the selling entity to the extent that the seller bears the risk. For example, if the sale is subject to recourse for 50 percent of any loss, 50 percent of the loan shall be considered a loan of the seller. Thus, premiums on these loans will be calculated and paid by the entity bearing the risk. The insurance plan established by the Act partially relates the payment of premiums on the use of the proceeds of insured obligations to the risk posed by such use. Congress initially established different premium rates for accrual and nonaccrual loans, and subsequently amended the Act to provide lower factors for the perceived lower risk of government-guaranteed loans. The goal of relating premiums to the risks inherent in the use of proceeds of insured obligations would be served by requiring that the bank bearing the risk of a loan pay premiums on that loan to the extent of its risk.

The Corporation also proposes adopting a definition of nonaccrual loans parallel to that of the FCA contained in 12 CFR 621.2(a)(15), as well as a rule of aggregation similar to that contained in 12 CFR 621.2(b)(2). Adoption of these criteria will ensure consistency with the FCA's financial reporting requirements.

Computation of Average Principal Outstanding

Section 5.55 of the Act requires that the premiums be based on the annual average principal outstanding on certain categories of loans. The Act does not prescribe the method of determining the average principal outstanding. The proposed regulation would require that the average principal outstanding be calculated using daily balances. The Corporation believes the use of average daily balances will result in the most accurate computation. Additionally, using average daily balances is consistent with requirements of the FCA in its capital regulations (12 CFR 615.5200, *et seq.*).

The Corporation recognizes, however, that not all Farm Credit banks will be able to retroactively calculate average daily balances for calendar year 1989. Therefore, the Corporation is proposing a calculation based on monthend balances for calendar year 1989.

Determination of Principal Outstanding

Section 5.55 of the Act requires that the principal outstanding of System banks be determined based on all loans made by the "production credit associations and any other association making direct loans * * *" in the respective districts and by any other financing institution that is making such loans as a result of "receiving * * * funds provided through the Farm Credit Bank" and by the System bank. More specifically, the premiums are based on the average principal outstanding at the direct lender level.

The annual average principal outstanding for calendar years 1989 and 1990 will be reported as part of the certified statements. For calendar year 1991 and subsequent years, the necessary data to compute premiums will be submitted quarterly to the Corporation, if not available through reports of condition and performance filed by Farm Credit System institutions with the FCA pursuant to 12 CFR part 621.

Certifications of Premiums and Frequency of Payments

Section 5.56 of the Act states that premium payments shall be made "not less frequently" than annually and that the amount of the premium must be established not later than 30 days after filing the certified statement setting forth the amount of the premium. The Corporation proposes that certified statements and the requisite premium payments due to the Corporation for calendar years 1989 and 1990 would have to be received by the Corporation no later than 60 days after the effective date of this regulation or January 31, 1991, whichever is later. Subsequent premiums would be paid annually at the time of submission of the certified statements, but no later than January 31 following the end of the calendar year for which premiums are being paid.

Certified Statements

Section 5.56 of the Act requires each insured institution to file with the Corporation a certified statement in such form and setting forth such supporting information as the Corporation prescribes.

The forms for certified statements, with instructions, referred to in the regulations will be available from the Corporation. The Corporation anticipates two forms of certified statement: (1) Form FCSIC90–001; First Certified Statement, to be used for calendar years 1989 and 1990; and, (2) Form FCSIC 90–002: Certified Statement, to be used for each year beginning with calendar year 1991.

Each Farm Credit bank will be required to maintain adequate documentation supporting the certified statement. Such documentation will be reviewed periodically by the Corporation.

Delinquent Premium Payments and Premium Overpayments

The Corporation proposes to impose an interest charge on delinquent premium payments owed to the Corporation. This will permit the Corporation to obtain interest on delinquent payments so that it does not incur a loss during the delinquency period because the funds are unavailable to it for investment purposes. Interest would be charged on unpaid amounts in situations in which a bank has computed its premium payments correctly and failed to pay the full amount when due as well as situations in which a bank has incorrectly computed its premium payments and either the bank or the

Corporation later determined that the bank has underpaid.

The proposed interest rate would be based on the United States Treasury Department's rate for delinquent payments. This rate, the "Treasury Current Value of Funds Rate" (TFRM rate), is published quarterly in the Federal Register. The Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed Government entities. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by two percentum. The TFRM rate is the governmentwide standard used for delinquent payments to Federal entities.

Under section 5.65(c) of the Act, the Corporation is authorized to levy a penalty of up to $100 per day against any bank which "willfully fails or refuses" to file any certified statement or pay any premiums as required. Additionally, under section 5.57(c) of the Act, all rights, privileges, and franchises of an insured bank granted to it under the Act shall be forfeited if any insured bank fails to file any required certified statement or fails to pay any required premium, if the bank does not correct such failure within 30 days after the Corporation gives written notice to an officer of the bank. This penalty provision and the provision for loss of rights, privileges, and franchises would continue to be options available to the Corporation in appropriate cases in addition to the interest charge and any other rights or remedies available to the Corporation.

The Corporation is also proposing that any overpayments be credited to subsequent premium payments or refunded to the bank that overpaid upon its written request.

Request for Comments

The Corporation proposes these regulations for comment. All comments received will be considered in drafting the final regulations.

List of Subjects in 12 CFR Part 1410

Certified statements, Premiums.

For the reasons set out in the preamble, part 1410 of chapter XIV, title 12 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 1410—PREMIUMS

Sec.
1410.1 Purpose and scope.
1410.2 Definitions.
1410.3 Calculation and reporting of premiums due.
1410.4 Payment of premiums.
1410.5 Delinquent premium payments and premium overpayments.
1410.6 Certified statements.
1410.7 Documentation.

Authority: 12 U.S.C. 2277a–5; 12 U.S.C. 2277a–7.

§ 1410.1 Purpose and scope.

This part sets forth the rules for:

(a) The calculation of premiums;

(b) The time for payment of the premium required by sections 5.55 and 5.56 of the Farm Credit Act of 1971, as amended;

(c) Interest charges on delinquent payments;

(d) The form and content of certified statements; and,

(e) Documentation supporting certified statements.

§ 1410.2 Definitions.

(a) Act means the Farm Credit Act of 1971, as amended.

(b) Average principal outstanding means:

(1) For calendar year 1989, the average annual principal outstanding using balances as of monthend for each of the 13 months beginning with December 1988 and ending with December 1989;

(2) For calendar year 1990 and thereafter, the average annual principal outstanding on a daily basis using balances as of the close of each day. In computing the average annual principal outstanding in this manner, the closing balance of the most recent past business day shall be the closing balance for days when an institution is closed.

(c) *Direct lending association* means any production credit association or any other association making direct loans under authority provided under section 7.6 of the Act, including, without limitation, agricultural credit associations and Federal land credit associations.

(d) *Government-guaranteed loans* means loans or credits, or portions of loans or credits, that are guaranteed:

(1) By the full faith and credit of the United States Government or any State government; or,

(2) By an agency or other entity of the United States Government whose obligations are explicitly guaranteed by the United States Government; or,

(3) By an agency or other entity of a State government whose obligations are explicitly guaranteed by such State government.

(e) *Insured bank* means any Farm Credit bank whose participation in notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 4.2 of the Act is insured under part E of title V of the Act, including, without limitation, the Federal Intermediate Credit Bank of Jackson and banks that are in or are placed in receivership or conservatorship to the extent that those banks' participation in such obligations is insured.

(f) *Loan* means any extension of credit or lease resulting from direct negotiations between a lender and a borrowing entity that is recorded as an asset of an insured bank, a direct lending association, or an other financing institution. The term *loan* includes loans, contracts of sale, notes receivable, and other similar obligations and lease financings. The term *loan* includes loans originated through direct negotiations between the insured bank, direct lending association, or other financing institution and a borrowing entity and loans or interests in loans purchased from another lender. Loans purchased subject to recourse shall be considered loans of the seller to the extent of the recourse.

(g) (1) *Nonaccrual loan* means any loan where—

(i) Any amount of outstanding principal and all past and future interest accruals, considered over the full term of the asset, are determined to be uncollectible for any reason; or,

(ii) It has been classified "loss" as a result of a periodic credit evaluation and has not been charged off; or,

(iii) The loan is severely past due and is not adequately secured, in process of collection, and fully collectible with respect to all principal and interest.

(2) For the purposes of determining whether a loan is considered as accrual or nonaccrual under this part, all loans on which a borrowing entity, or a component of a borrowing entity, is primarily obligated to the institution shall be considered as one loan unless a review of all pertinent facts supports a reasonable determination that a particular loan constitutes an independent credit risk and such determination is adequately documented in the loan file.

(h) *Other financing institution* means any bank, company, institution, corporation, union, or association described in section 1.7(b)(1)(B) of the Act.

§ 1410.3 Calculation and reporting of premiums due.

(a) *Premium base.* For purposes of computing the annual premium, each insured bank shall:

(1) Report its premium base for each category of loan described in paragraph (a)(2) of this section based on the total of the average annual principal balances of:

(i) Loans of each direct lending association that were able to be made because the direct lending association is receiving, or has received, funds provided through the insured bank;

(ii) Loans of each other financing institution that were able to be made because the other financing institution is receiving, or has received, funds provided through the insured bank; and,

(iii) The bank's loans, other than loans made to direct lending associations and other financing institutions.

(2) Segregate the loans of each entity described in paragraph (a) of this section into:

(i) Loans in accrual status, excluding the guaranteed portions of State and Federal government-guaranteed loans;

(ii) The guaranteed portions of State government-guaranteed loans that are in accrual status;

(iii) The guaranteed portions of Federal government-guaranteed loans that are in accrual status; and,

(iv) Nonaccrual loans.

(b) *Calculating the 1989 premium payment.* The 1989 premium payment shall be equal to the sum of:

(1) The total annual average principal outstanding for calendar year 1989 on the loans in accrual status as described in paragraph (a)(2)(i) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0015;

(2) The total annual average principal outstanding for calendar year 1989 on loans in accrual status as described in paragraph (a)(2)(ii) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0003; and,

(3) The total annual average principal outstanding for calendar year 1989 on loans in accrual status as described in paragraph (a)(2)(iii) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.00015.

(c) *Calculating the premium payment for 1990 and subsequent years.* Except as provided in paragraph (d) of this section, the annual premium payment for 1990 and for each subsequent year shall be equal to the sum of:

(1) The total annual average principal outstanding for each calendar year on the loans in accrual status as described in paragraph (a)(2)(i) of this section of each entity described in paragraph (a) of this section multiplied by 0.0015;

(2) The total annual average principal outstanding for each calendar year on the loans in accrual status as described in paragraph (a)(2)(ii) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0003;

(3) The total annual average principal outstanding for each calendar year on the loans in accrual status as described in paragraph (a)(2)(iii) of this section of each entity as described in paragraph (a)(1) of this section multiplied by 0.00015; and,

(4) The total annual average principal outstanding for each calendar year on the nonaccrual loans as described in paragraph (a)(2)(iv) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0025.

(d) *Secure base amount.* Upon reaching the secure base amount determined by the Corporation in accordance with section 5.55 of the Act, the annual premium to be paid by each insured bank, computed in accordance with paragraph (c) of this section, shall be reduced by a percentage determined by the Corporation so that the aggregate of the premiums payable by all of the Farm Credit banks for the following calendar year is sufficient to ensure that the Insurance Fund balance is maintained at not less than the secure base amount. The Corporation shall announce any such percentage no later than December 31 of the year prior to the January in which such premiums are to be paid.

§ 1410.4 Payment of premiums.

(a) *Calendar years 1989 and 1990.* Each insured bank shall pay to the Corporation the amount of the premium due to the Corporation computed in accordance with § 1410.3 of this part, and shown on its certified statement, at the time its certified statement is filed. The certified statement for calendar years 1989 and 1990 must be filed with the Corporation and the premium must be received by the Corporation on or before 60 days after the effective date of this regulation or January 31, 1991, whichever is later.

(b) *Calendar year 1991 and subsequent years.* Each insured bank shall pay to the Corporation the amount of the premium due to the Corporation computed in accordance with § 1410.3 of this part, and shown on its certified statement, at the time the statement is filed. Certified statements shall be considered to have been filed and payments made in a timely manner if they are received on or before January 31 following the end of the calendar year on which the certified statement is based.

(c) *Premiums as obligations of insured banks.* Premiums required to be paid by § 1410.3 are obligations of the insured banks, and are to be paid at the times required by this section, regardless of whether the insured bank has assessed and collected any assessments under section 1.12 of the Act.

§ 1410.5 Delinquent premium payments and premium overpayments.

(a) *Delinquent payments.* Each insured bank shall pay to the Corporation interest on delinquent premium payments. All premiums will be considered delinquent if they are received after the time for payment specified in § 1410.4 of this part, including late payments caused by bank errors in the certified statement. The interest rate will be the United States Treasury Department's current value of funds rate, which is issued under the Treasury Fiscal Requirements Manual (TFRM rate) and published quarterly in the **Federal Register**. The interest rate will be determined as follows:

(1) *Current year.* (i) For delinquent days occuring on or prior to March 31, the rate will be the TFRM rate that is published in the preceding December.

(ii) For delinquent days occuring from April 1 to June 30, the rate will be the TFRM rate that is published in March for the second quarter of the year.

(iii) For delinquent days occurring from July 1 to September 30, the rate will be the TFRM rate that is published in June for the third quarter.

(iv) For delinquent days occurring from October 1 to December 31, the rate will be the TFRM rate that is published in September for the fourth quarter.

(2) *Prior years.* The interest will be calculated quarterly and compounded annually at the rates applicable for each quarter as issued under the TFRM. For the initial year, the rate will be applied to the gross amount of the delinquent payment. For each additional year or portion thereof the rate will be applied to the net amount of the delinquent payment after it has been reduced by any premium credit under paragraph (c) of this section.

(b) *Other rights and remedies.* Payment of the interest specified in paragraph (a) of this section does not affect any other rights and remedies available to the Corporation.

(c) *Overpayments.* To the extent that any payment by a bank exceeds the required amount:

(1) The excess shall be credited against future premium payments by the bank which overpaid; or,

(2) Upon written request to the Corporation by the bank which

overpaid, the excess shall be refunded to the bank.

§ 1410.6 Certified statements.

(a) *Forms.* The certified statements required to be filed by insured banks under the provisions of section 5.56 of the Act shall be filed with the Corporation. The certified statement forms will be furnished to all insured banks by, or may be obtained from, the Corporation. The following forms are available from the Corporation:

(1) *Form FCSIC 90–001: First Certified Statement.* The form shows the premium base for calendar years 1989 and 1990. The premium payment period is from January 1 of each year to December 31 of each year. The form must show the computation of the premium base and the bank's calculation of the premium due the Corporation.

(2) *Form FCSIC 90–002: Certified Statement.* The form shows the total of the premium base reported in the four quarterly periods in the annual premium payment period. The premium payment period is from January 1 of each year to December 31 of each year. The form must show the computation of the premium base and the bank's calculation of the amount of the premium due the Corporation.

(b) *Amendments to certified statements.* In the event of an amendment or correction of a previously submitted certified statement, the amending insured bank shall resubmit to the Corporation the appropriate certified statement along with the letter of explanation regarding the amendment or correction.

§ 1410.7 Documentation.

Each insured bank shall:

(a) Prepare and maintain accurate and complete records as necessary to prepare certified statements, including, but not limited to, records relating to the loans of each direct lending association and other financing institution that are able to make such loans because they are receiving, or have received, funding from the insured bank.

(b) Prepare and maintain its books and records in such a manner as to facilitate reconciliation with reports prepared from them.

(c) Maintain in its books and records documentation supporting its certified statement for a period no less than 5 years following the date of each certified statement.

(d) Make all records and any supporting documentation available, wtihout limitation, to Corporation officials upon request.

Dated: September 24, 1990.

James M. Morris,

Acting Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 90–22941 Filed 9–27–90; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

46 CFR Parts 50, 52, 56, 58, 61, and 111

[CGD 83–043]

RIN 2115–AB41

Incorporation of Amendments to the International Convention for Safety of Life at Sea, 1974

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend 33 CFR Part 164 (Navigation Safety) and 46 CFR subchapter F (Marine Engineering) to incorporate amendments to the International Convention for the Safety of Life at Sea, 1974. This rulemaking is necessary because changes have been made to the 1974 SOLAS Convention and new technology has become available. These amendments will enhance personnel and vessel safety, protect the natural environment, and make the domestic merchant fleet more competitive with the international one.

DATES: Comments must be submitted on or before December 27, 1990.

ADDRESSES: Comments should be mailed to Commandant (G–LRA–2/3314) (CGD 83–043), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001. Comments may also be delivered to, and will be available for inspection and copying at, the Marine Safety Council, Room 3406, at the address above, from 8:00 a.m. to 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Roger M. Dent, Engineering Branch, Office of Marine Safety, Security and Environmental Protection, 202–267–2206.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written comments, including data, views, and arguments. Each comment should bear the name and address of the person submitting it, identify this notice (CGD 83–043) and the specific section of the proposal to which it applies, and state the reasons for it. If you wish acknowledgement of receipt of comments, enclose a stamped, self-addressed postcard or envelope. No public hearing is anticipated, but one may be held if written requests for a hearing are received and if the opportunity to make oral presentations seems beneficial to the rulemaking. The Coast Guard will consider all comments before it proceeds with the rulemaking.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander Peter A. Richardson, Project Manager, and Mr. Patrick J. Murray, Project Counsel, Office of the Chief Counsel.

Background and Purpose

On November 1, 1974, the Assembly of the Inter-Governmental Maritime Consultative Organization (IMCO) adopted the International Convention for the Safety of Life at Sea 1974 (SOLAS 74). In May 1982, IMCO was renamed the International Maritime Organization (IMO). Invoking Article VIII of SOLAS 74, which contained procedures for amending the Convention, it adopted further resolutions; these recommended areas of the Convention in need of improvement. The United States was instrumental in the development of this Convention and its subsequent changes. To date, three sets of amendments have been adopted. The first set of amendments was approved by the Maritime Safety Committee (MSC) of IMO on November 20, 1981, and became effective on September 1, 1984, upon adoption by the IMO Assembly. These amendments deal primarily with subdivision and stability, machinery and electrical installations, periodically unattended machinery spaces, and measures for fire safety. The second set of amendments was approved by the MSC on June 17, 1983, and became effective on July 1, 1986. These amendments deal primarily with appliances and arrangements for lifesaving and with the carriage of dangerous goods. The MSC adopted Resolution MSC.13(57), "Adoption of Amendments to the International Convention for the Safety of Live at Sea, 1974," on April 11, 1989, which becomes effective on February 1, 1992. This Resolution addresses amendments to SOLAS 74, which could not be included in the 1983 SOLAS amendments, and recommends that Contracting Governments to the Convention embody, as interim measures, these proposed amendments in national regulations. Included in this Resolution

are changes to requirements of the bilge system and fuel system for machinery. This rulemaking incorporates the above amendments to chapters II–1, II–2, and V of SOLAS 74.

Since the U.S. is signatory to this international treaty, periodic upgrades of domestic regulations for the safety of vessels inspected by the Coast Guard are necessary to align our law with SOLAS 74, as amended. Through such upgrades, these regulations will come to comprise the international standards for the safety of vessels at large. Generally, the amendments to SOLAS 74 impose higher standards than our current law, and these requirements should lead to fewer vessels suffering casualties. Therefore, the Coast Guard proposes that the amendments to SOLAS 74 apply to all newly inspected vessels subject to subchapter F, regardless of size or type of voyage, except as otherwise specified in this rulemaking.

This proposed rulemaking incorporates requirements from Chapters II–1, II–2, and V of SOLAS 74 contained in the first set of amendments (1981). The second set of amendments (1983) does not contain requirements affecting this rulemaking. When discussing SOLAS 74, as amended, this rulemaking will cite the applicable numbers of paragraph and regulation. For example, SOLAS II–1/29.6 is the reference for Paragraph 6 of Regulation 29 of SOLAS Chapter II–1.

The Coast Guard compared that first set of amendments and Resolution MSC.13(57) with 46 CFR subchapter F, "Marine Engineering", and evaluated the latter against the former. The results appear in the following table. An asterisk (*) in the table means that SOLAS 74, as amended, is not now covered by Subchapter F and is addressed in this rulemaking. Since certain requirements of SOLAS 74, as amended, tabulated below have already been incorporated into 46 CFR Part 62—VITAL SYSTEM AUTOMATION, they do not figure in this rulemaking.

1981 SOLAS Amendments	Corresponding U.S. Regulation (1)
Chapter II–1:	
3	§§ 58.25* 6.230–5
20.2	§ 58.50–85*
21	§§ 56.50–50, 56.50–55, 62.30–5
26.1	§§ 52, 54, 56, 58.01–20, 58.05–1, 62.25–30
26.2	§§ 58.01–35, 62.25–1, 62.30–5
26.3	§§ 52.01–10, 56.50–30, 56.50–35, 56.50–45, 56.50–65, 56.50–80, 58.05–1, 58.01–35, 62.25–1, 62.30–5, 111.10–3, 111.1–10–5, 111.35–1, 112.05–1
26.4	§§ 58.01–35, 62.30–5, 111.10–76
26.5	§§ 52.01–135, 54.10, 56.95, 56.97
26.6	§§ 58.01–40*, 62.20–5, 62.25–30
26.8	§ 58.05–1
27.1	§§ 58.50–1, 58.10–15, 62.25–1, 62.25–15, 111.12–1
27.2	§§ 52.01–120, 54.15, 56.07–10, 58.05–1
27.3	§ 58.05–1
27.4	§ 58.05–1
27.5	§§ 56.50–80, 58.05–1, 58.05–10*, 58.10–15, 62.25–1, 62.25–15, 62.30–5, 62.35–5, 111.12–1
28.1	§ 58.05–5
28.2–28.4	§§ 33 CFR 164.35 & §§ 35.20–40, 78.21, 97.19
29 & 30	§ 58.25,*, 33 CFR 164.11*, 33 CFR 164.39*
31	§§ 61.40–1, 62.01–1, 62.01–3, 62.01–5, 62.20–1, 62.20–3, 62.25–1, 62.25–5, 62.25–10, 62.25–20, 62.30–5, 62.30–15, 62.35–5, 62.35–10, 62.50–1, 62.50–20
32.1	§ 52.01–120
32.2	§§ 62.25–1, 62.35–20
32.3	§ 52.01–110*
32.4	§ 56.50–30
32.5	§§ 52.01–115, 56.50–30
32.6	§ 52.01–110
33.1	§ 56.07–10
33.2	§ 56.50–15*
33.3	§§ 56.07–10, 56.50–10, 56.50–15
34.1	§ 58.30–5
34.2	§§ 58.05–1, 58.30–5
34.3	§ 58.05–1
34.4	§ 58.30–5*
35	§ 58.01–45*
36	§ 58.01–50*
37	§§ 62.35–5, 113.30–5, 113.35–3
38	§ 113.27–1
39	§ 56.50–55
46–54	§§ 61.40–1, 62.01–1, 62.01–3, 62.20–1, 62.20–3, 62.25–1, 62.25–15, 62.25–20, 62.30–1, 62.30–5, 62.30–15, 62.35–5, 62.35–10, 62.50–1, 62.50–20, 62.50–30
Chapter II–2:	
15.1	§§ 58.01–10*, 58.01–15*, 112.50–1
15.2	§§ 56.10, 56.15, 56.20, 56.25, 556.30, 56.50–60*, 56.50–65, 56.50–70, 56.50–75, 56.50–85*, 56.50–90*, 58.01–55*
15.3	§§ 56.50–60*, 56.50–90*, 58.01–55*
15.4	§ 56.50–60*
15.5	§§ 62.35–40, 62.50.30
15.6	33 CFR 155.470
18.2 & 18.2..	§§ 56.50–1, 56.50–5, 56.50–95
51	§ 58.16
54.2.5	§ 56.50–50*
59.1.6	§ 56.50–85*
Chapter V:	
19	§ 58.25–85*

Future amendments	Corresponding U.S. Regulation (1)
Chapter II–1	
21.1.6	§ 56.50–50*
21.2.9	§ 56.50–50*
Chapter II–2:	
15.2.6	§§ 56.50–60*, 56.50–90*
15.3	§§ 56.50–60*, 56.50–90*
Chapter V:	
12	33 CFR 164.35*

(1) Cites to 46 FR, unless otherwise specified.

A recent Final Rule entitled Intervals for Drydocking and Tailshaft Examination on Inspected Vessels (CGD 84–024) went into effect on September 23, 1988. It changed the interval for drydocking vessels from one inspection every two years to inspections in multiples of thirty months (i.e., two inspections within any five-year period, except that no more than three years may elapse between any two inspections). But it left the interval for inspecting major machinery at two years. Because of this continued misalignment of inspection intervals for drydockings and major machinery, that Final Rule causes a hardship for owners of some vessels. The most opportune time for inspecting major machinery—boilers and pressure vessels—is during drydocking, when the machinery is secured. This rulemaking proposes realignment of intervals for inspecting major machinery to coincide with those for drydocking. It will not compromise vessels' safety since it increases the interval by just six months. Machinery whose inspection does not rely upon vessels' being drydocked for inspection will continue to be inspected at previous intervals.

There have been continuing proposals by ship designers, shipyards, and shipowners for the use of nonmetallic piping in concealed spaces on board ship. Coast Guard regulations prohibit this use of nonmetallic piping unless the piping is within trunks completely surrounded by "A" class divisions. SOLAS 74, as amended, does not preclude this use of nonmetallic piping, while classification societies, as well as the International Association of Classification Societies, permit it. Therefore, the Coast Guard proposes to provide alternative requirements for piping in concealed spaces and to permit the installation of nonmetallic piping under certain restrictions. Such a change would reduce the costs of constructing ships and would provide alternatives to domestic regulations that currently exceed those of other maritime nations.

For many years domestic regulations have required individual bilge suctions to be led from manifolds located within the same space as the bilge pump. In the early 1970s, the Coast Guard developed regulations permitting common-rail bilge and ballast systems for cargo spaces on combined ore or oil bulk carrier plying the Great Lakes. Since that time, several ship designers have asked to install common-rail bilge systems on cargo and passenger vessels. The Coast Guard has, as policy, accepted these installations provided they satisfied certain other design restrictions. The main concern with accepting common-rail bilge systems is the risk of losing suction for the entire system if the common line fails or leaks. The additional criteria reduce that risk and make the common-rail bilge system equivalent to the

conventional manifold bilge system. Such a common-rail bilge arrangement would be acceptable under SOLAS 74, as amended. The Coast Guard proposes new regulations to permit common-rail bilge systems on all vessels as an equivalent alternative to the existing requirements for a manifold bilge system.

Coast Guard regulations require, for all vessels subject to 46 CFR subchapter F and not fitted with an auxiliary means of steering, dual-power hydraulic steering apparatus having two independent pumps and connections. Each independent steering gear power unit must be capable of meeting the rudder movement standard of 35° on one side to 30° on the other side in not more than 28 seconds. These regulations are not consistent with the 1981 amendments to SOLAS 74. For passenger vessels without auxiliary steering systems, SOLAS 74, as amended, requires that main steering gear, consisting of two or more identical power units, be capable of meeting the same rudder movement standard with any one unit out of service. For cargo vessels without auxiliary steering systems, SOLAS 74, as amended, requires that main steering gear be capable of meeting the same rudder movement standard with all power units in service. The Coast Guard does not consider the 1981 amendments to SOLAS 74 to compromise the safety of the vessel, and proposes to modify its current requirements for dual-power hydraulic steering apparatus to coincide with these amendments.

Discussion of Proposed Rules

33 CFR Part 164—Navigation Safety Regulations

1. Section 164.11. To incorporate SOLAS II–1/29.6 and II–1/29.15, a revised paragraph (t) would require that, while a vessel is under way in the navigable waters of the U.S., except the St. Lawrence Seaway, enough power units must be in operation to maintain the minimum standard for rudder movement. The existing provision, in practice, applies only to foreign vessels fitted with more than two power units. A combination of these power units must be operated simultaneously to meet the standard for moving the rudder from 35° on one side to 30° on the other side in not more than 28 seconds. Under existing regulations, U.S. domestic vessels do not have to meet this requirement since these vessels are required to have two power units, each able to meet the standard for rudder movement. The proposed provision applies to domestic vessels as well and, consistent with SOLAS 74, as amended, it imposes a standard of performance instead of a specification (and leaves the number of power units to the owner of the vessel).

2. Section 164.35. To incorporate SOLAS V/12(f) and clarify that information must be available at steering stations other than the pilothouse, a new paragraph (o) would require that all vessels have a telephone or other means of communication to provide heading information to the emergency steering station. Also, each vessel of 500 gross tons and over and constructed on or after February 1, 1992, must be provided with arrangements for supplying visual compass readings to the emergency steering station.

3. Section 164.39. The existing section addresses steering gear requirements for both domestic and foreign tank vessels of 10,000 gross tons or more. New paragraph (a) moves steering requirements for domestic tank vessels into 46 CFR subpart 58.25; this places all steering requirements for domestic vessels in one section and leaves this new section applicable only to foreign tankers of 10,000 gross tons or more. New paragraph (b) interprets and clarifies definitions used in SOLAS II–1/29. "Speedily regained", the most contentious of these definitions, describes the acceptable response by the crew, without the use of tools, to correct a steering gear failure. This is a vague term in SOLAS 74, as amended. The Coast Guard has maintained at IMO that 10 minutes is the maximum allowable recovery time; this will preclude the use of tools and multiturn valves. New paragraph (c) specifies requirements for all tankers constructed on or after September 1, 1984, and of 10,000 gross tons or more, and incorporates by reference SOLAS II–1/29 and II–1/30. New paragraph (d) specifies general steering gear requirements for all tankers constructed before September 1, 1984, and of 10,000 gross tons or more, and incorporates by reference SOLAS II–1/29.19. New paragraph (e) specifies alternative steering gear requirements for all tankers constructed before September 1, 1984, and of 40,000 gross tons or more that do not meet the single-failure criterion of SOLAS II–1/29.16, and incorporates by reference SOLAS II–1/29.20. The inclusion of SOLAS II–1/29.20 is to ensure that tankers built before September 1, 1984, meet, as a minimum, the single-failure criterion that rose from the wreck of the AMOCO CADIZ. New paragraph (f) specifies requirements for existing vessels built before September 1, 1984, and incorporates by reference SOLAS II–1/29.15.

46 CFR Subchapter F—Marine Engineering

4. Section 50.10–35. To incorporate SOLAS II–1/1.2 and II–1/1.3, the proposed section defines for the subchapter the term "constructed".

5. Section 52.01–110. To incorporate SOLAS II–1/32.3, proposed paragraph (h) requires high-water-level alarms for watertube boilers in main propulsion. No new steam-powered vessels are being built, and the Coast Guard is not aware of any planned, so paragraph (h) should have a minimal impact on industry.

6. Section 56.50–15. To incorporate SOLAS II–1/33.2, proposed paragraph (k) requires drains in steam piping. Safe practice independently requires that steam piping be designed to minimize the effect of water hammer, and drains are the most economical way to minimize it. Such drains are typically installed in steam piping today. Since this proposal requires the most economical approach to safe practice, and since most steam piping already takes this approach, paragraph (k) will not burden the industry.

7. Section 56.50–50. To incorporate SOLAS II–2/54.2.5, proposed paragraph (a)(4) requires that bilge systems, when they serve enclosed cargo spaces carrying flammable or toxic liquids, be designed to prevent the inadvertent pumping of flammable or toxic liquids through machinery space piping or pumps. To incorporate a future amendment to SOLAS II–1/21.1.6, proposed paragraph (a)(5) requires improved arrangements for drainage of bilges for both passenger and cargo vessels. To incorporate the Coast Guard policy that already allows such a system, new paragraph (c)(4) allows a common-rail bilge system as an alternative to the conventional manifold bilge system required by § 56.50–50(c)(1). This new paragraph specifies the additional criteria that a common-rail system must satisfy to be considered equivalent to a conventional manifold bilge system. The requirement allowing a common line serving the bilge and ballast system for cargo spaces on Great Lakes cargo vessels has been moved from paragraph (h) of this section to locate all common-rail issues together. This new paragraph also requires separation of such a system from a common-rail bilge system serving other spaces; the Coast Guard proposes that the two systems be led separately from a valved manifold located at the common pump. Paragraph (d)

incorporates a new definition for "molded depth" consistent with a future amendment to SOLAS II-1/21.2.9 and is applicable to new passenger vessels on an international voyage. Proposed paragraph (h) is revised to reflect our moving to paragraph (c)(4) of the requirement allowing a common-rail pipe to serve the bilge and ballast spaces on a Great Lakes vessel.

8. Section 56.50-60. To incorporate SOLAS II-2/15.2.1, paragraph (b) is amended by requiring that piping and components of oil systems containing heated oil under pressure be located and illuminated so leaks can be readily observed and that they be designed to prohibit the possibility of heating an oil not requiring heating. The last sentence in § 58.01-15 is being added to revised paragraph (b), to place requirements for the heating of oil in one section. The Coast Guard feels that the hazard involved in undetected leakage of oil and the slight added construction cost justifies applying this requirement to all new vessels covered by subchapter F. This will have a minimal monetary impact on vessel construction since, before construction, the systems can be economically designed to accommodate these requirements. Also, to incorporate part of SOLAS II-2/15.2.5, proposed new paragraph (d)(1)(i) provides for alternative arrangements for remote control of positive shut-off valves for oil tanks when located in a shaft alley, tunnel, or similar space. This should not impose an economic burden on industry, because it provides alternatives to present requirements. To incorporate SOLAS II-2/15.3, new paragraph (m) proposes to apply certain requirements applicable to fuel oil systems to pressurized lubrication systems. Also, to incorporate SOLAS II-2/15.4, new paragraph (n) proposes to apply certain requirements applicable to fuel oil systems to other flammable oils, such as hydraulic fluids and heat-transfer fluids.

9. Sections 56.50-65 and 56.50-70. These sections are amended to make editorial corrections so the reference to "§ 58.01-25(a)" now reads § 58.01-25."

10. Section 56.50-80. To incorporate the future amendment to SOLAS II-2/15.3.1, proposed paragraph (h) requires that sight-flow glasses used in lube oil systems be fire-resistant. Proposed paragraph (h) replaces existing paragraph (h) since the requirement for a shut-off valve on the lube oil tank is now part of § 56.50-60(d).

11. Section 56.50-85. To incorporate part of SOLAS II-1/20.2, proposed paragraph (a)(7) provides efficient, expeditious means of closing tank vents on deck weathertight. The Coast Guard proposes to define what is an acceptable "efficient, expeditious" means of closing a tank vent on deck weathertight. The Coast Guard interprets "efficient, expeditious closure" as a device that, under all conditions, closes automatically when water reaches it, such as a ball check valve or a hinged closure that closes automatically. This reflects current practice of industry and the American Bureau of Shipping (ABS). To incorporate SOLAS II-2/59.1.6 and II-2/15.2.7, the proposed revision to paragraph (a)(11) requires that all tanks be equipped to protect against overpressurization by liquids. Pressurizing a tank above its design pressure may result in a catastrophic failure, so good design practice requires proper venting to prevent overpressurization.

12. Section 56.50-90. To incorporate parts of the amendments to SOLAS II-2/15.2.6 and II-2/15.3 that come into effect on February 1, 1992, proposed paragraph (a) and two new paragraphs (c) and (d) require all cargo tanks and fuel oil tanks to be equipped with devices to indicate liquid level. These devices are intended to reduce the risk of the inadvertent spill of, and then ignition of, the flammable liquid during the sounding of the tank.

13. Section 56.50-105. This section is amended to make an editorial correction so the reference to "Table 56.95-10" now reads "§ 56.95-10."

14. Section 56.60-25. To incorporate current Coast Guard policy, proposed paragraph (a) allows the use of nonmetallic pipe for nonvital fresh water and saltwater service to run in concealed spaces. The Coast Guard has allowed such service, considering further design criteria, such as the fire integrity of bulkheads, the proper maintenance of decks and draft stops, or the installation in the concealed space or an approved smoke detection system. Existing regulations require this piping to be of metallic construction or nonmetallic piping surrounded by "A" class divisions. SOLAS 74, as amended, does not preclude the use of nonmetallic materials for this application.

15. Sections 58.01-10 and 58.01-15. To incorporate SOLAS II-2/15.1, proposed § 58.01-10 outlines under what conditions fuels with flashpoints between 110° F and 140° F may be used. It also gives guidance on acceptance of fuels having flashpoints below 110° F. The requirements governing fuel oil for internal-combustion engines and boilers would all go into one section; therefore, § 58.01-15 is being subsumed by § 58.01-10.

16. Section 58.01-25. This section is amended to make an editorial correction so the reference to "§ 11.50-5(e)" now reads "§ 111.103".

17. Section 58.01-40. To incorporate SOLAS II-1/26.6, proposed new § 58.01-40 requires that propulsion machinery and essential auxiliary machinery be designed to operate within certain angles of inclination. Since classification societies now require as much, the Coast Guard is proposing this for all new vessels subject to subchapter F.

18. Section 58.01-45. To incorporate SOLAS II-1/35, proposed § 58.01-45 requires that machinery spaces be adequately ventilated by systems properly designed to ensure both the safety of the crew and the operation of the machinery. The requirement is intended to prevent machinery failure due to overheating, and to prevent the accumulation of hazardous vapors in machinery spaces. Such a regulation should not affect industry as it just codifies present design practice.

19. Section 58.01-50. To incorporate SOLAS II-1/36, proposed § 58.01-50 requires measures to reduce noise levels to acceptable levels within machinery spaces. On June 2, 1982, the Coast Guard published, in the form of Navigation and Vessel Inspection Circular 12-82 (NVIC 12-82), "Recommendations on Control of Excessive Noise", guidelines for acceptable noise levels. These guidelines implement the IMO Assembly Resolution A.468(XII), "Code of Noise Levels on Board Ships". The Coast Guard will use this NVIC as a guideline in the implementation of this new proposed regulation. The acceptable noise levels proposed for machinery spaces are based on this IMO resolution and are determined by sound-level meters that employ "A-weighting" filters (dB(A)). Since the health hazards associated with excessive noise in the workplace are well documented, these requirements apply to all new vessels. If a vessel cannot be designed to limit the noise levels, the operator must provide hearing protection. The cost of hearing protectors is about $250.00 a vessel.

20. Section 58.01-55. To incorporate paragraphs 2.3 and 2.4 of SOLAS II-2/15, proposed § 58.01-55 specifies fuel tank arrangements to prevent spilled fuel from coming in contact with heated surfaces. This regulation should not impose any burden on industry since the requirements can be incorporated into the initial design of the system.

21. Subpart 58.03. In accordance with present regulatory procedures, this subpart identifies two new standards that will be incorporated by reference into 46 CFR part 58.

22. Section 58.05-1. To clarify the extent of adoption of requirements of

ABS for internal combustion propulsion engines installed aboard vessels inspected by the Coast Guard, proposed paragraph (a) accomplishes an editorial change. The change includes consideration of the arrangement of main propulsion machinery, as well as requires that all auxiliary systems connected to the main propulsion machinery meet or exceed the standards of ABS.

23. Section 58.05–10. To incorporate SOLAS II–1/27.5, paragraph (a) requires automatic shutdown of main propulsion engines upon the loss of lubricating oil. Most engines are already equipped with these shutdowns because of the potential for extensive damage to the engine upon loss of lubricating oil. Similar shutdown requirements are included in 46 CFR subchapter J and 46 CFR part 62 and apply to prime movers for generators, gas turbines, and main propulsion machinery.

24. Subpart 58.25. To incorporate applicable sections of SOLAS II–1/3, II–1/29, and II–1/30, subpart 58.25 is completely rewritten. This subpart was last revised in 1970. Since then, the maritime community has gained substantial domestic and international experience with design and failure of steering gear. By deleting all of the text of existing subpart 58.25 and shifting into new subpart 58.25 both the provisions of existing subpart 111.93, Electric Steering Systems, and those of 33 CFR 164.39, applicable to U.S. vessels on international voyages, this proposed rule collects into one subpart requirements for steering gear applicable to domestic vessels (and, in turn, permits their removal from Subchapter J, Electrical Engineering). A detailed description of each proposed change to subpart 58.25 follows.

25. Section 58.25–1. This proposed section defines the applicability of this revised subpart. Paragraph (a) applies this subpart to all vessels that are contracted for after the effective date of this rulemaking and to existing vessels engaged on international voyages whose steering gear was contracted for between September 1, 1984, and the effective date of this rulemaking. The latter category consists of vessels subject to SOLAS 74, as amended, that already comply with the requirements of SOLAS II–1/29 and II–1/30 for the issuance of a SOLAS certificate. Paragraph (b) permits vessels that are not subject to SOLAS 74, as amended, and that are contracted for before the effective date of this rulemaking, or vessels subject to SOLAS 74, as amended, and contracted for before September 1, 1984, to meet either the requirements of this revised subpart or the requirements in effect at the time their steering gear was installed.

26. Section 58.25–5. Proposed paragraph (a) consolidates some of the definitions concerning steering systems from SOLAS II–1/3 and from existing § 111.93–3. It also clarifies terms used in this subpart that are not adequately defined elsewhere. Proposed paragraph (b) consolidates general requirements from SOLAS II–1/29.1 and from parts of existing §§ 58.25– and 58.25–70 to provide all vessels with main and auxiliary steering systems. Proposed paragraph (c) repeats existing 58.25–1(b), which covers replacement of steering gear on existing vessels. proposed paragraph (d) incorporates part of SOLAS II–1/29.2.1, which requires that all steering gear components and the rudder stock be of sound and reliable construction; it also applies to non-pressure-containing steering gear components and requires that such components be designed at least in accordance with standards of classification societies, such as ABS. Proposed paragraph (e) parallels part of SOLAS II–1/29.2.1 and clarifies the application of the single-failure criterion. Each control system must be functionally independent, as must be the main and auxiliary steering gear. The connections of the control system to the power unit, e.g., control valves and differentials, have been the cause of many casualties, and applying the single-failure criterion to shared components should eliminate failures from common causes. Proposed paragraph (f) is consistent with current Coast Guard policy and aims at preventing the degradation of the safety and reliability of the steering gear by other systems. Proposed paragraph (g) incorporates current policy of the Coast Guard, of not allowing thrusters for the required steering capabilities, and clearly defines the intent of existing regulations. Proposed paragraph (h) restates existing § 58.25–30, requiring means of steadying the rudder in emergencies. Paragraph (i) restates existing § 58.25–15, requiring the submittal of plans for steering arrangements in accordance with subpart 50.20.

These revisions should have little economic impact on the marine industry since they only restate requirements of SOLAS 74, as amended, of existing regulations, and of current policies of the Coast Guard.

27. Section 48.25–10 Paragraph (a) proposes to incorporate the requirements for two separate and independent steering systems outlined in SOLAS II–1/29.1 and II–1/29.9 and in existing §§ 111.93–5, 111.93–7, and 111.93–9(d). Paragraph (b) proposes requirements for the design of rudder stocks from SOLAS II–1/29.3 and resembles existing §§ 58.25–1(a), 58.25–5(b), and 58.25–20(a). Paragraph (c) proposes to incorporate SOLAS II–1/29.4 on sizing of the rudder stock and on rudder performance for auxiliary steering gear and to replace existing §§ 58.25–5(c), 58.25–10(b), and 58.25–20(b). Paragraph (d) proposes to incorporate existing § 58.25–25(c) and to exempt double-ended ferries outfitted with two independent steering gear from the requirements for auxiliary steering gear. Paragraph (e) proposes to incorporate SOLAS II–1/29.6.1, which does not require auxiliary steering gear where there are two or more identical power units. This proposed regulation allows the same alternative steering arrangements that SOLAS 74, as amended, allows, through existing § 58.25–25(a) requires that each of two independent power units must be able to meet the criteria for rudder movement. Paragraph (e) incorporates SOLAS II–1/29.6.1.3 which sets out single-failure criteria for components of piping in steering systems and their power units. However, like SOLAS II–1/29.6.2, paragraph (e)(4) permits the continued use, on vessels with steering gear installed before September 1, 1986, and engaged on international voyages, of steering gear not meeting the single-failure criterion but having a proven record of reliability. Paragraph (f) proposes to incorporate part of SOLAS II–1/29.15, which requires all vessels of over 70,000 gross tons to have steering gear comprised of two or more identical power units.

28. Section 58.25–15. To incorporate SOLAS II–1/29.10 and the intent of existing § 58.25–50(b), proposed § 58.25–15 requires a means of communication between the pilothouse and the steering gear compartment. To meet this requirement, the Coast Guard proposes, as an acceptable means of communication, a sound-powered telephone meeting the requirements of subpart 113.30, which reflects industry practice.

29. Section 58.25–20 proposed paragraph (a) replaces existing § 58.25–70(c) on the design of piping. Proposed paragraph (b), based on SOLAS II–1/29.2.3 and clarifying existing § 58.25–70(b), specifies requirement for relief valves in hydraulic piping of steering systems. Proposed paragraph (c) incorporates SOLAS II–1/29.12.1 and II–1/29.12.3 on storage tanks for hydraulic fluid and on backup of the system. The

Coast Guard proposes to exempt vessels in service on lakes, bays, and sounds from the requirement for a makeup storage tank because of the vessels' proximity to assistance, the delays involved with using the tank, and the overall requirements on steering gear for these vessels contained in this rulemaking. Paragraph (d) proposes to ban the use of split flanges and flareless fittings of the grip or bite type in hydraulic piping of steering system because of (1) the results of a study of failures with split flanges sponsored by the Coast Guard and (2) information on casualties.

30. Section 58.25–25. To incorporate SOLAS II–1/29.11 and the intent of existing §§ 58.25–5(d), 58.25–50(a), and 113.40–5, proposed paragraph (a) requires indication of rudder angle at the steering station in the pilothouse and in the steering gear compartment. Referring to existing §§ 113.40–10(c) and 112.15–5(h), proposed paragraph (b) specifies requirements on the design, performance, and source of power in an emergency for rudder angle indicators. Referring to existing §§ 113.43–3 and 113.43–5, proposed paragraph (c) requires installation, in the pilothouse, of an alarm showing when the angle of the rudder differs more than 5 degrees from the setting of the followup control. To incorporate SOLAS II–1/29.5.2 and II–1/29.8.4 and existing § 111.93–13(b), proposed paragraph (d) requires installation, in the pilothouse, of an alarm showing failure of the power to the main and auxiliary means of steering and their control systems. Also, to incorporate one part of SOLAS II–1/29.12.2, paragraph (d) requires that a low level of hydraulic oil in the reservoir for power-operated steering systems be indicated by alarm in the pilothouse. To incorporate part of SOLAS II–1/30.3 and existing § 111.93–13(c), proposed paragraph (e) requires installation, in the machinery space, of alarms showing failure of the power to electric and electro-hydraulic means of steering. Also, to incorporate another part of SOLAS II–1/29.12.2, paragraph (e) requires that a low level of hydraulic oil in the reservoir for power-operated steering systems be indicated by alarm in the compartment containing main machinery. To incorporate SOLAS II–1/30.1 and existing § 111.93–13(d), paragraph (f) requires installation, in the pilothouse and at the control station for main machinery, of a pilot light—one for each motor serving the main and auxiliary means of steering—showing which steering motor is running.

31. Section 58.25–30. To incorporate SOLAS II–1/29.5.1 and part of existing § 111.70–3(f), this proposed section requires automatic restart of motors for steering gear after a power failure.

32. Section 58.25–35. This proposed section (1) restates from existing §§ 58.25–60 and 58.25–65(b) requirements for arrangement of the steering helm and (2) sets forth human factors that must be considered in the design of the pilothouse.

33. Section 58.25–40. This proposed section incorporates SOLAS II–1/29.13 for handrails and for gratings or other non-slip surfaces in steering gear compartments and incorporates the footnote to existing §111.93–13 for location of the equipment for steering gear in its compartment. Based on experience from casualties, the requirements are necessary for personnel safety; but they will have only minor economic impact on vessels not in international service since they reflect existing practice.

34. Section 58.25–45. To limit shock and meet the intent of SOLAS II–1/29.6.3, this proposed section restates requirements from existing § 58.25–40(a) for buffers to be installed in steering gear other than the hydraulic type. It applies only to vessels in service on oceans, coastwise, or on the Great Lakes and, as it just restates existing requirements, it will not affect industry.

35. Section 58.25–50. This proposed section restates requirements from existing § 58.25–35 for rudder stops and clarifies acceptable arrangements for cutting power to the steering gear before the rudder reaches the stops.

36. Section 58.25–55. This proposed section, addressing protection of the steering systems from overcurrent, only relocates existing requirements and will not burden industry. Paragraphs (a) and (b), drawn from existing §§ 111.93–11 (a) and (b), which reflect interpretation by the Coast Guard of parts of SOLAS II–1/30.2 and SOLAS II–1/30.3, restate them and require protection from overcurrent in feeder circuits of steering gear. Paragraph (c), drawn from existing §111.93–11(c), which reflects interpretation by the Coast Guard of part of SOLAS II–1/30.3, restates it and addresses protection from overload for all motors in steering gear and their control systems. Paragraphs (d) and (e), drawn from existing §§ 111.93–11(d) and 111.93–11(e), which reflects interpretation by the Coast Guard of SOLAS II–1/29.8.5, restate them and require protection from short circuit in circuits serving controllers for motors in steering gear. Paragraph (f), drawn from SOLAS II–1/30.4, permits, for vessels of less than 1,600 gross tons, the installation of one circuit for the main steering gear when a power-driven auxiliary steering gear either is not driven by electric power or is driven by an electric motor primarily intended for other services.

37. Section 58.25–60. To incorporate the intent of SOLAS II–1/29.17, this section proposes acceptance of non-duplicated rudder actuators for certain vessels. SOLAS 74, as amended, specifies design guidelines for non-duplicated rudder actuators installed on tank vessels that are of 10,000 gross tons and over but of less than 100,000 deadweight tons and that are engaged on international voyages. However, SOLAS 74, as amended, does not preclude the installation of these actuators on tankers not within the prescribed limits, nor does it preclude the installation of these actuators on passenger vessels or cargo vessels. Considering the greater impact on the environment and property if a steering system with a non-duplicated rudder actuator failed on a vessel of over 100,000 deadweight tons, the Coast Guard determined to keep such tonnage as the upper limit for these actuators. Acceptance of these actuators, such as rotary-vane actuators, depends primarily on their meeting IMO Assembly Resolution A.467 (XII), entitled "Guidelines for Acceptance of Non-Duplicated Rudder Actuators for Tankers, Chemical Tankers, and Gas Carriers of 10,000 Tons Gross Tonnage and Above But Less Than 100,000 Tons Deadweight". This rulemaking proposes this Resolution for incorporation by reference. This requirement is already in effect for certain vessels subject to SOLAS 74, as amended, and provides an alternative to conventional rudder actuators on other vessels; therefore, this requirement will not have an economic impact on industry.

38. Section 58.25–65. Proposed paragraphs (a) through (d) restate requirements from existing § 111.93–7 that cover feeder circuits serving electric-driven steering power units. This section reflects interpretations by the Coast Guard of applicable requirements in SOLAS II–1/29.14 and II–1/30.2. These proposed requirements do not deviate from existing regulations and so will not increase the burden on industry.

39. Section 58.25–70. This proposed section specifies requirements for steering control systems. Proposed paragraphs (a) through (g) generally derive from existing parts of §§ 58.25–45(a) and 111.93–9 as modified through interpretations by the Coast Guard of applicable parts of SOLAS II–1/29.5.2, II–1/29.8.2., and II–1/29.8.3. Proposed

paragraph (h), derived from parts of existing §§ 58.25–45(a) and 58.25–50(a) and from SOLAS II–1/29.7.1 and II–1/29.7.2, requires two control systems in the pilothouse when there are two or more main steering power units; such controls must be independent of each other and be arranged for full followup. Proposed paragraph (i), combining parts of existing § 58.25–45(a), and of § 58.25–55 (a) and (c), with part of SOLAS II–1/29.7.1, requires that there be two independent steering control systems in the pilothouse when only the main steering gear is power-operated. Proposed paragraph (j) incorporates part of SOLAS II–1/29.7.3, which requires independent control from the pilothouse of power-driven auxiliary steering gear. While this paragraph represents an increase in requirements for vessels not in international service, its economic impact should be nil, since common practice already favors fast recovery from failures of main steering gear. Proposed paragraph (k), based in part on SOLAS II–1/29.7.1 and in part on SOLAS II–1/29.7.3, requires that control of the main and auxiliary steering gear be available in the steering gear compartment. This reflects a change from existing § 58.25–50(a) regarding the alternative steering station. The Coast Guard now proposes that this station be located in the steering gear compartment instead of on the aft weather deck. This arrangement is consistent with SOLAS 74, as amended, and modern designs. Paragraph (k), also based in part on existing § 58.25–50(c), also requires that steering control systems between the pilothouse and steering gear compartment be independent. The other paragraphs pick up existing requirements, and this economic impact likewise should be nil.

40. Section 58.25–75. This proposed section, based on policy of the Coast Guard and on data from casualties, clarifies requirements concerning the acceptable materials for components in steering systems.

41. Section 58.25–80. This proposed section, to incorporate the intent of SOLAS V/19, requires equipment necessary to maintain the integrity of the steering gear when an automatic pilot is used. It is consistent with current policy of the Coast Guard and with various operational requirements, such as those in § 97.16–1(c). It should have no economic impact.

42. Section 58.25–85. This proposed section sets forth special requirements for steering gear and applies only to tank vessels under U.S. flag. Current requirements for such vessels appear in 33 CFR subpart 164.39, "Steering gear: Tankers." To bring all requirements for steering covering domestic vessels into one place, the Coast Guard would move the requirements for domestic vessels from 33 CFR subpart 164.39 into 46 CFR subpart 58.25. Proposed paragraph (a) requires that all tank vessels, regardless of their sizes or their dates of construction, meet the applicable steering gear requirements of §§ 58.25–1 through 58.25–80. To incorporate the intent of SOLAS II–1/29.15, proposed paragraph (b) requires that the main steering gear comprise two or more power-driven steering units for all tank vessels of 10,000 gross tons and over. To incorporate SOLAS II–1/29.16, proposed paragraph (c) specifies requirements for steering gear that apply to all tank vessels of 10,000 gross tons and over and constructed on or after September 1, 1984. To incorporate SOLAS II–1/29.17, proposed paragraph (d) permits, for those tank vessels of over 10,000 gross tons but less than 100,000 deadweight tons, the use of non-duplicated rudder actuators. To incorporate SOLAS II–1/29.18, proposed paragraph (e) permits the continued use, on tank vessels of less than 70,000 deadweight tons and engaged on international voyages and having steering gear installed before September 1, 1986, of steering gear not meeting the single-failure criterion but having a proven record of reliability. To incorporate the intent of SOLAS II–1/29.19, proposed paragraph (f) specifies requirements for steering gear that apply to tank vessels of 10,000 gross tons and over and constructed before September 1, 1984. To incorporate the intent of SOLAS II–1/29.20, proposed paragraph (g) specifies acceptable means of speedily regaining steering capability in case of a single failure in the piping or the power unit. This paragraph applies to tank vessels of over 40,000 gross tons and constructed before September 1, 1986, but not meeting the single-failure criterion of SOLAS II–1/29.16.

43. Section 58.30–5. To incorporate SOLAS II–1/34.4, proposed paragraph (d) requires arrangements to drain liquids from, and minimize contamination by oil of, pneumatic systems. Pneumatic systems must stay dry and free of oil to avoid failure. Most are already designed with drains and oil separators. Thus, this requirement should not burden industry.

44. Part 61. The Coast Guard proposes changes for Table 61.05–10 and §§ 61.05–10, 61.05–15, 61.05–20, 61.10–5, and 61.15–5 to align intervals for inspections and tests of major machinery with new intervals for drydockings of vessels. Generally, existing regulations require inspections of major machinery, such as pressure vessels and boilers, in two-year multiples, to coincide with a vessel's regular inspection for certification. Numerous owners and operators have suggested that such scheduling creates an economic hardship since an inspection for certification is not always the appropriate time for an inspection of a boiler or a pressure vessel. Rather, these owners and operators suggest, the intervals for drydockings are more appropriate for such inspections and tests of major machinery. The Coast Guard agrees and proposes that inspections of major machinery occur at a rate of two inspections in any five-year period, with no more than three years between any two inspections. This interval will coincide with the new one for drydockings. Also, a new Table 61.05–10 collects into a single table the intervals for all inspections and tests of boilers, except of automation controls. Since this should decrease a vessel's time out of service, the owners and operators should recognize economic savings.

Regulatory Evaluation

These proposed regulations are not major under Executive Order 12291 and not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The economic burden on the public as a result of this proposal is so minimal that further evaluation is unnecessary. The net benefits due to savings from these proposed changes should outweigh the burden.

As discussed in *Background and Purpose*, above, the main purpose of this rulemaking is to incorporate SOLAS amendments addressing issues on marine engineering into existing Coast Guard regulations. U.S.-flag cargo and tank vessels of 500 gross tons and more, and passenger vessels carrying more than twelve passengers and engaged on international voyages, already must comply with SOLAS 74, as amended. Thus, this rulemaking will have no economic impact on these vessels. This rulemaking does, however, affect non-SOLAS vessels since the Coast Guard, in general, proposes to apply regulations of SOLAS 74, as amended, to all new U.S. vessels subject to subchapter F.

Although some of the proposed changes will result in minor cost increases, others will result in savings that more than offset these costs. Many of the proposed changes reflect current industry practice or can be incorporated readily into the design of the vessel before construction and will have no direct burden on the marine industry.

The changes that would have the greatest economic burden upon the industry affect steering gear. However, the increase in cost associated with meeting the proposed changes represents a small fraction of the total cost for a steering system and should be offset by the savings anticipated from the reduction in number of and cost of casualties.

The remaining part of this rulemaking addresses non-SOLAS changes, i.e., proposals that allow greater application of common-rail bilge systems, an increase in the inspection interval for major machinery, and greater application of plastic pipe in concealed spaces. These changes will bring only savings to the marine industry. The proposals on the bilge system and on plastic pipe permit, without reducing safety, attractive alternatives to the expensive means required by the existing regulations. Also, the proposal on increasing the inspection interval of major machinery to coincide with the vessel's drydocking would reduce the number of inspections over a vessel's life and reduce the vessel's time out of service, all resulting in long-term savings to the owner.

Regulatory Flexibility Act

These proposed regulations would apply to owners and operators of commercial vessels registered in the U.S. Few of these, if any, qualify as small entities. Again, the economic impact of these proposed rules on individual owners and operators should be minimal. Therefore, the Coast Guard certifies that these rules, if adopted, will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rulemaking imposes on the public no new or added requirements for collecting information or recordkeeping. In particular, it does not change any such requirements in 33 CFR part 164 or CFR parts 52, 56, 58, 61, or 111.

Environmental Assessment

The Coast Guard has considered the environmental impact of the proposed regulations and concluded that, under section 2.B.2.c of Commandant Instruction M16475.1B, these proposals are categorically excluded from further treatment in environmental documents.

Federalism

The Coast Guard has analyzed the proposed regulations in accordance with the principles and criteria of Executive Order 12612 and has determined that this rulemaking does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

List of Subjects

33 CFR Part 164

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 52

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 56

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 58

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 111

Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend title 33, part 164, and title 46, parts 50, 52, 56, 58, 61, and 111, of the Code of Federal Regulations as follows:

Title 33—[Amended]

PART 164—NAVIGATION SAFETY REGULATIONS

1. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1223, 46 U.S.C. 3703. Sec. 164.61 also issued under 46 U.S.C. 6101; 49 CFR 1.46(n).

2. Section 164.03 is amended by revising paragraph (b) to read as follows:

§ 164.03 Incorporation by reference.

* * * * *

(b) The materials approved for incorporation by reference in this part, and the sections affected, are:

International Maritime Organization, 4 Albert Embankment, London SE1 7SR England
International Convention for the Safety of Life at Sea (SOLAS), Consolidated Text of the 1974 SOLAS Convention, the 1978 SOLAS Protocol, and the 1981 and 1983 SOLAS Amendments, 1986—164.39
Radio Technical Commission for Marine Services, P.O. Box 19087, Washington, DC 20036
Paper 12/78/DO-100 Minimum Performance Standards, Loran C Receiving Equipment, 1977—164.41

3. Section 164.11 is amended by revising paragraph (t) to read as follows:

§ 164.11 Navigation underway: General.

* * * * *

(t) The necessary number of steering gear power units required to move a rudder from 35 degrees on either side to 30 degrees on the other in not more than 28 seconds, must be in simultaneous operation, except when the vessel is operating on the Great Lakes and their connecting tributary waters.

4. Section 164.35 is amended by adding a new paragraph (o) to read as follows:

§ 164.35 Equipment: All vessels.

* * * * *

(o) A telephone or other means of communication for relaying heading information to the emergency steering station. Also, each vessel of 500 gross tons and over and constructed on or after February 1, 1992, must be provided with arrangements for supplying visual compass readings to the emergency steering station.

5. Section 164.39 is revised to read as follows:

§ 164.39 Steering gear; Foreign tankers.

(a) This section applies to each foreign tanker of 10,000 gross tons or more, except a public vessel, that—

(1) Transfers oil at a port or place subject to the jurisdiction of the United States; or

(2) Otherwise enters or operates in the navigable waters of the United States, except vessels described in § 164.02 of this part.

(b) *Definitions.* The terms used in this section and in regulations of SOLAS 74, as amended, referred to are as follows:

(1) *Tanker* means a self-propelled vessel defined as a tanker by 46 U.S.C. 2101(38) or as tank vessel by 46 U.S.C. 2101(39).

(2) *SOLAS* refers to the International Convention for the Safety of Life at Sea, 1974, as modified by the 1981 and 1983 Amendments.

(3) *Constructed* has the same meaning as provided in Chapter II–1, Regulations 1.1.2. and 1.1.3.1, of SOLAS.

(4) *Public vessel, oil, hazardous materials,* and *foreign vessel* have the same meanings as provided for these terms in Section 5 of the Port and Tanker Safety Act of 1978 as amended and codified (46 U.S.C. 2101).

(5) *Speedily regained,* refers to the time it takes one qualified crewmember, after arriving in the steering gear compartment and without the use of tools, to respond to a steering gear failure and take the necessary corrective action. This time must not exceed 10 minutes.

(6) *Steering capability* means steering equivalent to that required of the auxiliary steering gear by Chapter II–1, Regulation 29.4.2, of SOLAS.

(7) *Steering gear control system, main steering gear, steering gear power unit, auxiliary steering gear, power actuating system,* and *maximum ahead service speed* have the same meanings as provided in Chapter II–1, Regulation 3, of SOLAS.

(8) *Existing tanker* means a tanker—

(i) For which the building contract is placed after June 1, 1979;

(ii) In the absence of a building contract, the keel of which is laid or which is at a similar stage of construction after January 1, 1980;

(iii) The delivery of which is after June 1, 1982; or

(iv) Which has undergone a major conversion contracted for after June 1, 1979; or construction of which was begun after January 1, 1980, or completed after June 1, 1982.

(c) Each tanker constructed on or after September 1, 1984, must meet the applicable requirements of Chapter II–1, Regulations 29 and 30, of SOLAS.

(d) Each tanker constructed before September 1, 1984, must meet the requirements of Chapter II–1, Regulation 29.19, of SOLAS, including the requirements referred to therein.

(e) Each tanker of 40,000 gross tons or more and constructed before September 1, 1984, that does not meet the single-failure criterion of Chapter II–1, Regulation 29.16, of SOLAS must meet the requirements of Chapter II–1, Regulations 29.20, of SOLAS.

(f) Each existing tanker constructed before September 1, 1984, must meet the applicable requirements of Chapter II–1 Regulations 29.14 and 29.15, of SOLAS.

Title 46—[Amended]

PART 50—GENERAL PROVISIONS

6. The authority citation for part 50 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; section 50.01–20 also issued under the authority of 44 U.S.C. 3507.

7. Subpart 50.10 is amended by adding new § 50.10–35 to read as follows:

§ 50.10–35 Constructed.

The term "constructed" means keel laid or, for vessels with no keel, assembly of at least 50 tons or 1% of the estimated mass of all structural material, whichever is less, has been completed.

PART 52—POWER BOILERS

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

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

9. Section 52.01–110 is amended by adding a new paragraph (h) to read as follows:

§ 52.01–110 Water level indicators, water columns, gage glass connections, gage cocks, and pressure gages (modifies PG–60).

* * * * *

(h) *High-water-level alarm.* Each water tube boiler for propulsion must have an audible and visual high-water-level alarm. The alarm indicators must be located where the boilers are controlled.

PART 56—PIPING SYSTEMS AND APPURTENANCES

10. The authority citation for part 56 continues to read as follows:

Authority. 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5515; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

11. Section 56.30–25 is amended by adding a note after paragraph (f)(2) to read as follows:

§ 56.30–25 Flared, flareless, and compression joints.

* * * * *

Note.—See § 56.25–20(d) of this subchapter for limitations on the use of compression fittings in hydraulic systems for steering gear.

12. Section 56.50–15 is amended by adding a new paragraph (k) to read as follows:

§ 56.50–15 Steam and exhaust piping.

* * * * *

(k) Steam piping must be provided with suitable drains to prevent water hammer.

13. Section 56.50–50 is amended by adding a new paragraphs (a)(4), (a)(5), and (c)(4), revising paragraph (c)(1) and the definition for "D" in paragraph (d)(2), and revising the last sentence of paragraph (h) to read as follows:

§ 56.50–50 Bilge and ballast piping.

(a) * * *

(4) Where the vessel is to carry Class 3 flammable liquids or Class 6, Division 6.1, poisonous liquids as defined in 49 CFR part 173 in enclosed cargo spaces, the bilge pumping system must be designed to ensure against inadvertent pumping of such liquids through machinery space piping or pumps.

(5) For each vessel constructed on or after February 1, 1992, and on an international voyage, arrangements must be made to drain enclosed cargo spaces situated on the bulkhead deck of a passenger vessel and on the freeboard deck of a cargo vessel.

(i) Where the deck edge, located at the bulkhead deck for passenger vessels or the freeboard deck for cargo vessels, is immersed when the ship heels more than 5°, the drainage of the enclosed cargo spaces must be by means of a sufficient number of scuppers discharging overboard. The installation of scuppers must comply with the requirements of § 42.15–60 of this chapter.

(ii) Where the deck edge, located at the bulkhead deck for passenger vessels or the freeboard deck for cargo vessels, is immersed when the ship heels 5° or less, the drainage of the enclosed cargo spaces must discharge to a space, or spaces, of adequate capacity, each of which has a high-water-level alarm and a means to discharge overboard. The number, size, and arrangement of the scuppers must prevent unreasonable accumulation of water. The pumping arrangements must take into account the requirements for any fixed manual or automatic sprinkling system. In enclosed cargo spaces fitted with carbon dioxide extinguishing systems, the deck scuppers must have traps or other means to prevent escape of the smothering gas. The enclosed cargo spaces must not drain to machinery spaces or other spaces where sources of ignition may be present if water may be contaminated with Class 3 flammable liquids or Class 6, Division 6.1, poisonous liquids.

* * * * *

(c)(1) Bilge suctions must lead from manifolds except as otherwise approved by the Commanding Officer, Marine Safety Center. As far as practicable, manifolds must be in, or be capable of remote operation from, the same space as the bilge pump that normally takes suction on the manifold. In either case, the manifolds must be capable of being locally controlled from above the floorplates and must be easily accessible at all times. As far as practicable, overboard-discharge valves for bilge systems must comply with the requirements governing location and accessibility for suction manifolds. Except as otherwise permitted by paragraph (c)(4) of this section for a vessel employing a common-rail bilge system, bilge-manifold valves controlling bilge suctions from various compartments must be of the stop-check type.

* * * * *

(4) A common-rail bilge system may be installed as an acceptable alternative to the requirements in paragraph (c)(1)

of this section, provided it satisfies all of the following criteria:

(i) The common-rail main runs inboard at least one-fifth the maximum beam of the vessel;

(ii) A stop-check valve or both a stop valve and a check valve are provided in each branch line and located inboard at least one-fifth the maximum beam of the vessel;

(iii) The stop valve or the stop-check valve is power-driven, is capable of remote operation from the space where the pump is, and, regardless of the status of the power system, is capable of manual operation to both open and close the valve;

(iv) The stop valve or the stock-check valve is accessible for both manual operation and repair under all operating conditions, and the space used for access does not contain expansion joints or flexible couplings that, upon failure, would cause flooding and prevent access to the valve;

(v) Port and starboard suctions serve each space protected unless, under the worst conditions of list and trim and with liquid remaining after pumping, the vessel's stability remains acceptable, in accordance with subchapter of this chapter;

(vi) For combination ore and bulk oil carriers, the bilge pumps and piping are not located in machinery spaces other than cargo pump rooms, and liquid and other cargoes are not carried simultaneously; and

(vii) For cargo vessels in Great Lakes service, a common-rail pipe for the bilge and ballast system serving cargo spaces, if installed and if connected to a dedicated common-rail bilge system, must be led separately from a valved manifold located at the pump.

* * * * *

(d) * * *

D = Molded depth (in feet) to the bulkhead deck. (6)

* * * * *

Note 6.—For a passenger vessel constructed on or after February 1, 1992, and on an international voyage and having an enclosed cargo space on the bulkhead deck that is internally drained in accordance with paragraph (a)(4) of this section and that extends the full length of the vessel, D must be measured to the next deck above the bulkhead deck. Where the enclosed cargo space extends a lesser length, D must be taken as the sum of the molded depth (in feet) to the bulkhead deck plus lh/L where l and h are the aggregate length and height (in feet), respectively, of the enclosed cargo space.

* * * * *

(h) Except as allowed by paragraph (c)(4)(vii) of this section, pipes for draining cargo holds or machinery spaces must be separate from pipes used for filling or emptying tanks where water or oil is carried. Bilge and ballast piping systems must be so arranged as to prevent oil or water from the sea or ballast spaces from passing into cargo holds or machinery spaces, or from passing from one compartment to another, regardless of the source, by the appropriate installation of stop and non-return valves. The bilge and ballast mains must be fitted with separate control valves at the pumps.

* * * * *

14. Section 56.50–60 is amended by revising paragraph (b) and by adding new paragraphs (d)(1)(i), (m), and (n) to read as follows:

§ 56.50–60 Systems containing oil.

* * * * *

(b)(1) When oil needs to be heated to facilitate its transfer, heating coils must be properly installed in the tanks. The drains from the heating coils as well as the drains from oil heaters in the service system must be run to an open inspection tank or other suitable oil detector before being returned to the feed system.

(2) As far as practicable, parts of the fuel oil system containing heated oil under pressure exceeding 26 psi must not be so placed in a concealed position that defects and leakage cannot be readily observed. The machinery spaces in way of such parts must be adequately illuminated.

(3) Piping for fuel oil transfer or service systems conveying oil that does not need to be heated for service must not have fuel oil heaters installed and must not be so interconnected that the oil can be heated in other fuel systems.

* * * * *

(d) * * *

(1) * * *

(i) In the special case of a deep tank situated in any shaft or pipe tunnel or similar space, valves must be fitted on the tank, but control in the event of fire may be effected by means of an additional valve on the pipe or pipes outside the space. If an additional control valve is located in the machinery space, it must be capable of being operated from a position outside this space.

* * * * *

(m) The arrangements for the storage, distribution, and utilization of oil used in pressure lubrication systems must—

(1) In addition to the requirements of § 56.50–80 of this part, be such as to ensure the safety of the ship and persons on board; and

(2) In machinery spaces, comply with the applicable requirements of § 56.50–60 (b)(2) and (d), § 56.50–85(a)(11), § 56.50–90 (c) and (d), and § 58.01–55(f) of this subchapter. The arrangements need not meet the requirements of § 56.50–90 (c)(1) and (c)(3) of this subchapter if the sounding pipe is fitted with an effective means of closure, such as a threaded pipe cap or plug or other means acceptable to the Officer in Charge, Marine Inspection. The use of flexible pipe or hose is permitted in accordance with the applicable requirements in § 56.35–10, § 56.35–15, and § 56.60–25(c) of this part.

(n) The arrangements for the storage, distribution, and utilization of other flammable oils employed under pressure in power transmission systems, control and activating systems, and heating systems must be such as to ensure the safety of the ship and persons on board by—

(1) Meeting the requirements of subpart 58.30 of this subchapter, and

(2) In locations where means of ignition are present, complying with the applicable requirements of § 56.50–85(a)(11), § 56.50–90 (c) and (d), and § 58.01–55(f) of this subchapter. Pipes and their valves and fittings must be of steel or other approved material, except that the use of flexible pipe or hose is permitted in accordance with the applicable requirements in § 56.35–10, § 56.35–15, and § 56.60–25(c) of this part.

15. Section 56.50–65 is amended by revising the reference "§ 58.01–25(a)" to "§ 58.01–25" in paragraph (h), to read as follows:

§ 56.50–65 Burner fuel oil service systems.

* * * * *

(h) Fuel oil service pumps must be equipped with controls to comply with § 58.01–25 of this subchapter.

16. Section 56.50–70 is amended by revising the reference "§ 58.01–25(a)" to "§ 58.01–25" in paragraph (j), to read as follows:

§ 56.50–70 Gasoline fuel systems.

* * * * *

(j) *Fuel pumps.* Fuel pumps must be equipped with controls to comply with § 58.01–25 of this subchapter.

17. Section 56.50–80 is amended by revising paragraph (h) to read as follows:

§ 56.50–80 Lubricating oil system.

* * * * *

(h) Sight-flow glasses may be used in lubricating oil systems provided it has been demonstrated, to the satisfaction of the Commanding Officer, Marine Safety Center, that they can withstand exposure to a flame at a temperature of

1700 degrees F. for a period of one hour, without failure or appreciable leakage.

18. Section 56.50–85 is amended by removing paragraphs (a)(7)(iii) and (a)(7)(iv), by redesignating paragraph (a)(7)(v) as (a)(7)(iii), and by revising paragraph (a)(7)(ii), newly redesignated paragraph (a)(7)(iii), and paragraph (a)(11) to read as follows:

§ 56.50–85 Tank vent piping.

(a) * * *

(7) * * *

(ii) A hinged closure normally open on the outlet of the return bend, which must close automatically by the force of a submerging wave; or

(iii) Other suitable devices acceptable to the Commanding Officer, Marine Safety Center.

* * * * *

(11)(i) Where a tank may be filled by a pressure head exceeding that for which the tank is designed, the aggregate area of the vents in each tank must be at least equal to the area of the filling line unless the tank is protected by overflows, in which case the aggregate area of the overflows must not be less than that of the filling line.

(ii) Provision must be made to guard against liquid's rising in the venting system to a height which would exceed the design head of a cargo or fuel oil tank. It may be made by high-level alarms or overflow control systems or other equivalent means, together with gauging devices and procedures for filling cargo tanks.

* * * * *

19. Section 56.50–90 is amended by revising paragraph (a), redesignating existing paragraphs (c) and (d) as paragraph (e) and (f), and adding new paragraphs (c) and (d) to read as follows:

§ 56.50–90 Sounding devices.

(a) All tanks must be provided with a suitable means of determining liquid level. Except for main cargo tanks on tank vessels, all integral hull tanks and compartments, unless at all times accessible under service conditions, must be fitted with sounding pipes.

* * * * *

(c) Except as allowed in this paragraph, on each vessel constructed on or after February 1, 1992, where sounding pipes are used in fuel oil tanks, the sounding pipes must not terminate in any space where the risk of ignition of spillage from the sounding pipe might arise. They must not terminate in passenger or crew spaces. Where practicable, they must not terminate in machinery spaces. Where the Commanding Officer, Marine Safety Center, determines it impracticable to avoid terminating sounding pipes in machinery spaces, they may be terminated in these spaces if all the following requirements are met:

(1) In addition to the sounding pipe, there is provided an oil-level gauge meeting the requirements of paragraph (d) of this section;

(2) The sounding pipe terminates in a location remote from ignition hazards unless precautions are taken such as fitting of an effective screen (shield) to prevent the fuel oil, in the case of spillage through the termination of the sounding pipe, from coming into contact with a source of ignition; and

(3) The termination of the sounding pipe is fitted with a self-closing blanking device and a small-diameter self-closing control cock located below the blanking device for the propose of ascertaining before the blanking device is opened that fuel oil is not present. Provision must be made to ensure that any spillage of fuel oil through the control cock involves no ignition hazard.

(d) On each vessel constructed on or after February 1, 1992, other oil-level gauges may be used in place of sounding pipes. Such gauges are subject to the following conditions:

(1) In passenger ships, such gauges must not require penetration below the top of the tank, and neither their failure nor an overfilling of the tank may permit release of fuel; and

(2) In cargo ships, neither the failure of such gauges nor an overfilling of the tank may permit release of fuel. The use of cylindrical gauge glasses is prohibited. The use of oil-level gauges with flat glasses and self-closing valves between the gauges and fuel tanks is acceptable.

* * * * *

20. Section 56.50–105 is amended by revising the reference cite "Table 56.95–10" to "§ 56.95–10" in paragraphs (a)(5) and (b)(5), to read as follows:

§ 56.50–105 Low temperature piping.

(a) * * *

(5) *Other requirements.* All other requirements contained in this part for Class I piping apply to Class I–L piping. Pressure testing must comply with subpart 56.97 of this part, and nondestructive testing of circumferentially welded joints must comply with § 56.95–10 of this part. Seamless grade tubular products must be used except that, when the service pressure does not exceed 250 p.s.i., the Commanding Officer, Marine Safety Center, may give special consideration to appropriate grades of pipe and tubing that are welded without the addition of filler metal in the root pass. Production procedures and quality-control programs for welded products must be acceptable to the Officer in Charge, Marine Inspection.

(b) * * *

(5) Pressure testing must comply with Subpart 56.97 of this part, and nondestructive testing of welded joints just comply with § 56.95–10 of this part.

* * * * *

21. Section 56.60–25 is amended by revising paragraph (a)(3) and by adding new paragraph (a)(11) to read as follows:

§ 56.60–25 Nonmetallic materials.

(a) * * *

(3) The use of plastic pipe within a concealed space in an accommodation or service area is not permitted unless:

(i) Such pipe is within ducts or trunks completely surrounded by "A" class divisions; or

(ii) An approved smoke detection system is fitted in the concealed space, and all penetrations of bulkheads and decks, and the installation of draft stops, are made in accordance with paragraph (a)(2) of this section to maintain the integrity of fire divisions.

* * * * *

(11) Plastic pipe intended for an accommodation area, a service area, or a control station must exhibit minimum flame spread and smoke properties specifically acceptable to the Commandant (G–MTH).

* * * * *

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

(22) The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980, Comp., p. 277; 49 CFR 1.46.

23. Section 58.01–10 is revised to read as follows:

§ 58.01–10 Fuel oil.

(a) The following limitations apply to the use of oil as fuel:

(1) Except as otherwise permitted by this section, no fuel oil with a flashpoint of less than 140°F (60°C) may be used;

(2) Fuel oil with a flashpoint of not less than 110°F (43°C) may be used in emergency generators, except as otherwise prohibited by § 58.50–1(b) of this part;

(3) Subject to such additional precautions as are considered necessary by the Commanding Officer, Marine Safety Center, and on condition that the ambient temperature of the space in which such fuel oil is stored or used not rise to within 18°F (10°C) below the

flashpoint of the fuel oil, the general use of fuel oil having a flashpoint of less than 140°F (60°C) but not less than 110°F (43°C) is permitted; and

(4) In cargo ships, the use of fuel having a lower flashpoint than otherwise specified in this section, for example crude oil, may be permitted provided such fuel is not stored in any machinery space and subject to the approval by the Commanding Officer, Marine Safety Center, of the complete installation.

(b) The flashpoint of oil must be determined by the Pensky-Martens Closed Cup Method, ASTM–D93.

§ 58.01–15 [Removed]

24. Section 58.01–15 is removed.

25. Section 58.01–25 is revised to read as follows:

§ 58.01–25 Means of stopping machinery.

Machinery driving forced and induced draft fans, fuel oil transfer pumps, fuel oil unit and service pumps, and similar fuel oil pumps, must be fitted with remote controls from a readily accessible position outside of the space concerned so that the machinery or pumps may be stopped in the event of fire in the compartment in which they are located. The controls must be suitably protected against accidental operation and against tampering and must be suitably marked. Refer to Subpart 111.103 of this chapter for electric motors driving such fans and pumps.

26. New § 58.01–40, 58.01–45, 58.01–50, and 58.01–55 are added to read as follows:

§ 58.01–40 Machinery, angles of inclination.

(a) Propulsion machinery and all auxiliary machinery essential to the propulsion and safety of the vessel must be designed to operate when the vessel is upright, when the vessel is inclined under static conditions at any angle of list up to and including 15°, and when the vessel is inclined under dynamic conditions (rolling) at any angle of list up to and including 22.5° and, simultaneously, at any angle of trim (pitching) up to and including 7.5° by bow or stern.

(b) Deviations from these angles of inclination may be permitted by the Commanding Officer, Marine Safety Center, considering the type, size, and service of the vessel.

§ 58.01–45 Machinery space ventilation.

Each machinery space must be ventilated to ensure that, when machinery or boilers are operating at full power in all weather including heavy weather, an adequate supply of air is maintained for the operation of the machinery and for the safety and comfort of the crew.

§ 58.01–50 Machinery space, noise levels.

(a) Each machinery space must be designed to minimize the noise to which personnel are exposed. A crewmember must not encounter a 24-hour effective exposure level greater than 82 dB(A) when noise is measured using a sound level meter and an A-weighting filter.

(b) No machinery space may exceed the following noise levels except as allowed by paragraph (c) of this section:

(1) Machinery control room.....75 dB(A)
(2) Manned machinery space.....90 dB(A)
(3) Unmanned machinery space....110 dB(A)
(4) Periodically unattended machinery space.....110 dB(A)
(5) Workshop.....85 dB(A)
(6) Any other machinery work space.....90 dB(A)

(c) If inclusion of a noise source would cause a machinery space to exceed the permissible level, the source of excessive noise must be suitably insulated or isolated or, if the space is required to be manned, a refuge from noise must be provided.

(d) Ear protection must be provided for any personnel required to enter any space where the noise level exceeds 85 dB(A).

(e) Each entrance to a machinery space with a noise level greater than 85 dB(A) must have a warning sign stating that ear protection must be used by personnel entering the space.

§ 58.01–55 Tanks for flammable and combustible oil.

(a) For the purposes of this section, a machinery space of category A is a space that contains any of the following:

(1) Internal-combustion machinery used for main propulsion;

(2) Internal-combustion machinery used for other than main propulsion and whose power output is greater than or equal to 500 HP (375 kw);

(3) Any oil fired boiler; or

(4) Any equipment used for the preparation of fuel oil for delivery to an oil fired boiler, or equipment used for the preparation for delivery of heated oil to an internal-combustion engine, including any oil pressure pumps, filters, and heaters dealing with oil pressures above 26 psi.

(b) As far as practicable, each fuel oil tank must be part of the ship's structure and be located outside a machinery space of category A.

(c) Where a fuel oil tank, other than a double bottom tank, is necessarily located adjacent to or within a machinery space of category A—

(1) At least one of its vertical sides must be contiguous to the machinery space boundary;

(2) The tank must have a common boundary with the double bottom tanks; and

(3) The area of the tank boundary common with the machinery spaces must be kept to a minimum.

(d) Where a fuel oil tank is situated within the boundaries of a machinery space of category A, it must not contain fuel oil with a flashpoint of less than 140°F (60°C).

(e) In general, the use of a free-standing fuel oil tank must be avoided. Where permitted by the Commanding Officer, Marine Safety Center, in addition to meeting the requirements in Subpart 58.50, the tank must be placed in an oil-tight spill tray of ample size having a suitable drain pipe leading to a suitably sized spill oil tank. When such free-standing tanks are employed, their use is prohibited in a machinery space of category A on passenger ships.

(f) No fuel oil tank must be situated where spillage or leakage from it can constitute a hazard by falling on heated surfaces. Precautions must be taken to prevent any oil that may escape under pressure from any pump, filter, or heater from coming into contact with heated surfaces.

27. Subpart 58.03 is amended by revising its heading to read as follows:

Subpart 58.03—Incorporation by reference

27.1 A new § 58.03–40 is added to read as follows:

§ 58.03–40 International Maritime Organization (IMO).

The materials approved for incorporation by reference in this part, and the sections affected, are:

International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, England:

A.467(XII), Guidelines for Acceptance of Non-Duplicated Rudder Actuators for Tankers, Chemical Tankers and Gas Carriers of 10,000 Tons Gross Tonnage and Above But Less Than 100,000 Tonnes Deadweight.....58.25–60
A.468(XII), Code on Noise Levels on Board Ships.....58.01–50

28. Subpart 58.05 is amended by revising paragraph (a) of section 58.05–1 and adding new § 58.05–10 to read as follows:

Subpart 58.05—Main Propulsion Machinery

§ 58.05-1 Material, design, and construction.

(a) The material, design, construction, workmanship, and arrangement of main propulsion machinery and of each auxiliary, directly connected to the engine and supplied as such, must be at least equivalent to the standards established by the American Bureau of Shipping or other recognized classification society, except as provided otherwise by this subchapter.

* * * * *

§ 58.05-10 Automatic shut-off

Main propulsion machinery must be provided with automatic shut-off arrangements that satisfy Part 62 of this subchapter. These controls must shut down main propulsion machinery in the case of a failure, such as failure of the lubricating oil supply, which could lead rapidly to complete breakdown, serious damage, or explosion.

29. Section 58.10-15 is amended by removing paragraph (e) and by redesignating paragraphs (f), (g), (h), (i), and (j), respectively, as (e), (f), (g), (h), and (i).

29.1 Subpart 58.25 is amended by revising its table of contents to read as follows:

Subpart 58.25—Steering Apparatus

30. Subpart 58.25 is revised to read as follows:

Subpart 58.25—Steering Apparatus

§ 58.25-1 Applicability.

(a) Except as specified otherwise, this subpart applies to:

(1) Each vessel or installation of steering gear contracted for on or after [*Insert the effective date of this rulemaking*]; *and*

(2) Each vessel on an international voyage with an installation of steering gear contracted for on or after September 1, 1984.

(b) Each vessel not on an international voyage with an installation of steering gear contracted for before [*Insert the effective date of this rulemaking*], and each vessel on an international voyage with an installation contracted for before September 1, 1984, may meet either the requirements of this subpart or those in effect on the date of the installation.

§ 58.25-5 General.

(a) *Definitions.—(1) Control system* means the equipment by which orders for rudder movement are transmitted from the pilothouse to the steering gear power units. Control systems for steering gear include, but are not limited to:

(i) Transmitters;

(ii) Receivers;

(iii) Feedback devices;

(iv) Hydraulic servo-control pumps, with associated motors and motor controllers;

(v) Differential units, hunting gear, and similar devices;

(vi) All gearing, piping, shafting, cables, circuitry, and ancillary devices for controlling power unit output; and

(vii) Means of bringing steering gear power units into operation.

(2) *Steering gear power unit means:*

(i) In the case of electric steering gear, an electric motor and its associated electrical equipment, including motor controller, disconnect switch, and feeder circuit;

(ii) In the case of an electro-hydraulic steering gear, an electric motor, connected pump, and associated electrical equipment such as the motor controller, disconnect switch, and feeder circuit; and

(iii) In the case of hydraulic steering gear, the pump and its prime mover.

(3) *Followup control* means closed-loop (feedback) control that relates the position of the helm to a specific rudder angle by transmitting the helm angle order to the power actuating system and, by means of a feedback arrangement, automatically stopping the rudder when the angle selected by the helm is reached.

(4) *Steering gear* means the machinery, including power actuating systems, control systems, and ancillary equipment, necessary for moving the rudder to steer the vessel.

(5) *Main steering gear* means the machinery, including power actuating systems, and the means of applying torque to the rudder stock, such as a tiller or quadrant, necessary for moving the rudder to steer the vessel in normal service.

(6) *Auxiliary steering gear* means the equipment, other than any part of the main steering gear, necessary to steer the vessel in case of failure of the main steering gear, not including a tiller, quadrant, or other component serving the same purpose.

(7) *Ancillary steering equipment* means steering equipment, other than the required control systems and power actuating systems, that either is not required, such as automatic pilot or non-followup control from the pilothouse, or is necessary to perform a specific required function, such as he automatic detection and isolation of a defective section of a tanker's hydraulic steering system.

(8) *Maximum ahead service speed* means the greatest speed that a vessel is designed to maintain in service at sea at the deepest loadline draft.

(9) *Maximum astern speed* means the speed which it is estimated the vessel can attain at the designed maximum power astern at the deepest loadline draft.

(10) *Power actuating system* means the hydraulic equipment for applying torque to the rudder stock. It includes, but is not limited to:

(i) Rudder actuator;

(ii) Steering gear power units; and

(iii) Pipes, valves, fittings, linkages, and cables for transmitting power from the power units to the rudder actuator or actuators.

(11) *Steering capability* means steering equivalent to that required of auxiliary steering gear by § 58.25-10(c)(2) of this subpart.

(12) *Tank vessel*, as used in this subpart, means a self-propelled vessel, including a chemical tanker and a gas carrier, defined a tanker by 46 U.S.C. 2101(38) or defined as a tank vessel by 46 U.S.C. 2101(39).

(13) *Speedily regained*, as used in this subpart, refers to the time it takes one qualified crewmember, after arriving in the steering gear compartment, and without the use of tools, to respond to a steering gear failure and take the necessary corrective action. This time must not exceed ten minutes.

(14) *Fast-acting valve*, as used in this subpart, means a ball, plug, spool, or similar valve with a handle connected for quick manual operation.

(b) Unless it otherwise satisfies this subpart, each self-propelled vessel must be provided with a main steering gear and an auxiliary steering gear. These gear must be so arranged that:

(1) The failure of one of them will not render the other one inoperative; and

(2) Transfer from the main to the auxiliary can be effected quickly.

(c) Substantial replacements of steering apparatus on an existing vessel must comply with the requirements of this subpart for new installations to the satisfaction of the cognizant Officer in Charge, Marine Inspection.

(d) Each non-pressure-containing steering gear component and rudder stock must be of sound and reliable construction, meet the minimum material requirements of § 58.25–75 of this subpart, and be designed to standards at least equal to those established by the American Bureau of Shipping or other recognized classification society.

(e) The suitability of any essential component not duplicated must be specifically approved by the Commanding Officer, Marine Safety Center. Where a steering gear component is shared by—

(1) A control system (e.g., a control system transfer switch located in the steering gear compartment);

(2) The main and auxiliary steering gear (e.g., isolation valves); or

(3) A power actuating system and its control system (e.g., directional control valves)—the requirements for both systems will apply, to provide the safest and most reliable arrangement.

(f) Steering gear must be separate and independent of all other shipboard systems, except—

(1) Electrical switchboards from which they are powered;

(2) Automatic pilots and similar navigational equipment; and

(3) Propulsion machinery for an integrated system of propulsion and steering.

(g) Except on a vessel with an integrated system of propulsion and steering, a thruster must not be considered in the evaluation of a vessel's required steering capability.

(h) Except for a tank vessel subject to § 58.25–85(e) of this subpart, each oceangoing vessel requiring power-operated steering gear must be provided with arrangements for steadying the rudder both in an emergency and during a shift from one steering gear to another. On hydraulic-type steering gear, a suitable arrangement of stop valves in the main piping is an acceptable means of steadying the rudder.

(i) General arrangement plans for the main and auxiliary steering gear and piping systems must be submitted for approval in accordance with subpart 50.20 of this subchapter.

§ 58.25–10 Main and auxiliary steering gear.

(a) Power-operated main and auxiliary steering gear must be two separate systems. The two systems must be separate and independent, as by being separated port and starboard, throughout their length. Other steering gear systems and arrangements may be acceptable to the Commanding Officer, Marine Safety Center, if they meet or exceed the requirements of this subpart.

(b) The main steering gear and rudder stock must be:

(1) Of adequate strength for and capable of steering the vessel at maximum ahead service speed, which must be demonstrated to the satisfaction of the cognizant Officer in Charge, Marine Inspection;

(2) Capable of moving the rudder from 35 degrees on either side to 35 degrees on the other with the vessel at its deepest loadline draft and running at maximum ahead service speed, and from 35 degrees on either side to 30 degrees on the other in not more than 28 seconds under the same conditions;

(3) Operated by power where necessary to meet the requirements of paragraph (b)(2) of this section or when the diameter of the rudder stock is over 120 mm (4.7 inches) in way of the tiller, excluding strengthening for navigation in ice; and

(4) So designed that they will not be damaged at maximum astern speed; however, this requirement need not be proven by trials at maximum astern speed and maximum rudder angle.

(c) The auxiliary steering gear must be—

(1) Of adequate strength for and capable of steering the vessel at navigable speed and of being brought speedily into action in an emergency;

(2) Capable of moving the rudder from 15 degrees on either side to 15 degrees on the other in not more than 60 seconds with the vessel at its deepest loadline draft and running at one-half maximum ahead service speed or 7 knots, whichever is greater; and

(3) Operated by power where necessary to meet the requirements of paragraph (c)(2) of this section or when the diameter of the rudder stock is over 230 mm (9 inches) in way of the tiller, excluding strengthening for navigation in ice.

(d) An auxiliary means of steering is not required on a double-ended ferryboat with independent main steering gear fitted at each end of the vessel.

(e) Where the main steering gear includes two or more identical power units, an auxiliary steering gear need not be fitted, if—

(1) In a passenger vessel, the main steering gear is capable of moving the rudder as required by paragraph (b)(2) of this section while any one of the power units is not operating;

(2) In a cargo vessel, the main steering gear is capable of moving the rudder as required by paragraph (b)(2) of this section while all the power units are operating; and either—

(3) In a vessel with an installation completed after September 1, 1984, and on an international voyage, and in any other vessel with an installation completed after [*Insert the effective date of this rulemaking*], the main steering gear is so arranged that, after a single failure in its piping system, if hydraulic, or in one of the power units, the defect can be isolated so that steering capability can be maintained or speedily regained; or

(4) In a vessel with an installation completed before September 1, 1986, and on an international voyage, with steering gear not meeting the requirements of paragraph (e)(3) of this section, the installed steering gear has a proven record of reliability and is in good repair.

Note.—Connection of isolation valves to the piping system, as by a flange, constitutes a single-failure point. The valve itself need not constitute a single-failure point if it has a double seal to prevent substantial loss of fluid under pressure. Means to purge air that enters the system as a result of the piping failure must be provided, if necessary, so that steering capability can be maintained or speedily regained.

(f) In each vessel of 70,000 gross tons and over the main steering gear must have two or more identical power units complying with paragraph (e) of this section.

§ 58.25–15 Voice communications.

Each vessel must be provided with a sound-powered telephone system, meeting the requirements of subpart 113.30 of this chapter, to communicate between the pilothouse and the steering gear compartment, unless an alternative means of communication between them has been approved by the Commanding Officer, Marine Safety Center.

§ 58.25–20 Piping for steering gear.

(a) Pressure piping must meet the requirements of Subpart 58.30 of this part.

(b) Relief valves must be fitted in any part of a hydraulic system which can be isolated and in which pressure can be generated from the power units or from external forces such as wave action. The valves must be of adequate size and set to limit the maximum pressure to which

the system may be exposed in accordance with § 56.07–10(b) of this subchapter.

(c) Each hydraulic system must be provided with—

(1) Arrangements to maintain the cleanliness of the hydraulic fluid, appropriate to the type and design of the hydraulic system; and

(2) For a vessel on an ocean, coastwise, or Great Lakes voyage, a fixed storage tank having sufficient capacity to recharge at least one power actuating system including the reservoir. The storage tank must be permanently connected by piping so that the hydraulic system can be readily recharged from within the steering gear compartment and must be fitted with a device to indicate liquid level that meets the requirements of § 56.50–90 of this subchapter.

(d) Split flanges and flareless fittings of the grip or bite type addressed by § 56.30–25 of this subchapter must not be used in hydraulic piping for steering gear.

§ 58.25–25 Indicating and alarm systems.

(a) Indication of the rudder angle must be provided both at the main steering station in the pilothouse and in the steering gear compartment. The rudder angle indicator must be independent of control systems for steering gear.

(b) Each electric-type rudder angle indicator must meet § 113.40–10 of this chapter and, as required by § 112.15–5(h) of this chapter, draw its power from the source of emergency power.

(c) On each vessel of 1,600 gross tons and over, a steering failure alarm system must be provided in the pilothouse in accordance with §§ 113.43–3 and 113.43–5 of this chapter.

(d) Visual and audible alarms must activate in the pilothouse upon failure of the electric power supply to the control system of any steering gear, upon failure of the power supply to the power unit of any steering gear, and upon a low oil level in each oil reservoir of a hydraulic power-operated steering system.

(e) Visual and audible alarms must activate in the machinery space upon failure of any phase of a three-phase power supply, upon overload of any motor described in § 58.25–55(c) of this subpart, and upon a low oil level in each oil reservoir of a hydraulic power-operated steering system.

Note: See § 62.50–30(f) of this subchapter regarding extension of alarms to the navigating bridge on vessels with periodically unattended machinery spaces.

(f) Each power motor for the main and auxiliary steering gear that controls the rudder must have a pilot light that activates in the pilothouse and in the machinery space when the motor is energized.

§ 58.25–30 Automatic restart.

Each control system for main and auxiliary steering gear and each power actuating system must re-start automatically when electrical power is restored after it has failed.

§ 58.25–35 Helm arrangements.

(a) The arrangement of each steering station, other than in the steering gear room, must be such that the helmsman is abaft the wheel. The rim of the wheel must be plainly marked with arrows and lettering for right and left rudder, or a suitable notice indicating these directions must be posted directly in the helmsman's line of sight.

(b) Each steering wheel must turn clockwise for "right rudder" and counterclockwise for "left rudder." When the vessel is running ahead, the vessel's heading must change to the right, following clockwise movement of the wheel.

(c) When a lever-type control is provided, it must be installed and marked so its movement clearly indicates both the direction of the rudder's movement and, in the case of followup control, the amount of the rudder's movement.

(d) Markings in the pilothouse must be clearly visible at night, but must not interfere with the helmsman's vision.

Note: See § 113.40–10 of this chapter for the arrangement of rudder angle indicators at steering stations.

§ 58.25–40 Arrangement of the steering gear compartment.

(a) The steering gear compartment must—

(1) Be readily accessible and, as far as practicable, separated from any machinery space; and

(2) Ensure working access to machinery and controls in the steering gear compartment. It must include handrails and either gratings or other non-slip surfaces to ensure a safe working environment in the event of hydraulic fluid leakage.

Note: Where size of configuration of the vessel will not allow all of the steering gear equipment to be located in the steering gear compartment, the remaining equipment may be located in an adjacent space.

§ 58.25–45 Buffers.

For each vessel on an ocean, coastwise, or Great Lakes voyage, steering gear other than the hydraulic type must be designed with suitable buffer arrangements to relieve the gear from shocks to the rudder.

§ 58.25–50 Rudder stops.

(a) Power-operated steering gear must have arrangements for stopping power to the gear before the rudder reaches the stops. These arrangements must be synchronized with the rudder stock or the position of the gear itself rather than be within the steering gear control system, and must work by limit switches that interrupt control system output or by other means acceptable to the Commanding Officer, Marine Safety Center.

(b) Strong and effective rudder stops must be fitted except that, where adequate positive stops are provided within the steering gear, structural stops need not be fitted.

§ 58.25–55 Overcurrent protection for steering systems.

(a) Each feeder circuit for steering must be protected by a circuit breaker on the switchboard that supplies it and must have an instantaneous trip set at a current of at least—

(1) 300 percent and not more than 375 percent of the rated full-load current of one steering gear motor for a direct-current steering gear motor; or

(2) 175 percent and not more than 200 percent of the locked-rotor current of one steering gear main motor for an alternating-current steering gear motor.

(b) No feeder circuit for steering may have any overcurrent protection, except that required by paragraph (a) of this section.

(c) Neither a main or an auxiliary steering gear motor, nor a motor for a steering control system, may be protected by an overload protective device. The motor must have a device that activates an audible and visual alarm at the main machinery control station if there is an overload that would cause overheating of the motor.

(d) No control circuit of a motor controller, steering control system, or indicating or alarm system may have overcurrent protection except short-circuit protection that is instantaneous and rated at 400 to 500 percent of:

(1) The current-carrying capacity of the conductor; or

(2) The normal load of the system.

(e) The short-circuit protective device for each steering control system must be in the steering gear compartment and in the control circuit immediately following the disconnect switch for the system.

(f) When in a vessel of less than 1,600 gross tons, an auxiliary steering gear, which is required by § 58.25–10(c)(3) of this subpart to be operated by power, is not operated by electric power or is operated by an electric motor primarily intended for other service, the main

steering gear may be fed by one circuit from the main switchboard. When such an electric motor is arranged to operate an auxiliary steering gear, the requirements of paragraphs (a) through (c) of this section and § 58.25–25(e) of this subpart need not be met if both the overcurrent protection arrangement and compliance with the requirements of §§ 58.25–25(d), 58.25–30, and 58.25–70 (j) and (k) of this subpart satisfy the Commanding Officer, Marine Safety Center.

§ 58.25–60 Non-duplicated hydraulic rudder actuators.

(a) Non-duplicated hydraulic rudder actuators may be installed in the steering systems of each vessel of less than 100,000 deadweight tons. These actuators must meet IMO Assembly Resolution A.467(XII), "Guidelines for Acceptance of Non-Duplicated Rudder Actuators for Tankers, Chemical Tankers, and Gas Carriers of 10,000 Tons Gross Tonnage and Above But Less Than 100,000 Tons Deadweight", and be acceptable to the Commanding Officer, Marine Safety Center. Also, the piping for the main gear must meet the single-failure criterion in § 58.25–10(e)(3) of this subpart.

§ 58.25–65 Feeder circuits.

(a) Each vessel with one or more electric-driven steering power units must have at least two feeder circuits, which must be separated as widely as practicable. One or more of these circuits must be supplied from the ship's service switchboard. On a vessel where the rudder stock is over 230 millimeters (9 inches) in diameter in way of the tiller, excluding strengthening for navigation in ice, and where a final source of emergency power is required by § 112.05–5(a) of this chapter, one or more of these circuits must be supplied from the emergency switchboard, or from an alternative source of power that—

(1) Is available automatically within 45 seconds of loss of power from the ship's service switchboard;

(2) Is from an independent source of power in the steering gear compartment;

(3) Is used for no other purpose; and

(4) Has a capacity for one-half hour of continuous operation, to move the rudder from 15 degrees on either side to 15 degrees on the other in not more than 60 seconds with the vessel at its deepest loadline draft and running at one-half maximum ahead service speed or 7 knots, whichever is greater.

(b) Each vessel that has a steering gear with multiple electric-driven power units must be arranged so that each power unit is supplied by a separate feeder.

(c) Each feeder circuit must have a disconnect switch in the steering gear compartment.

(d) Each feeder circuit must have a current-carrying capacity of:

(1) 125 percent of the full-load current rating of the electric steering gear motor or power unit; and

(2) 100 percent of the normal current of one steering control system including all associated motors.

§ 58.25–70 Steering control systems.

(a) Each power-driven steering system must be provided with at least one steering control system.

(b) The main steering gear must be operable by controls from the pilothouse by mechanical, hydraulic, electrical, or other means acceptable to the Commanding Officer, Marine Safety Center. This gear and its components must provide full followup control of the rudder. Supplementary steering control not employing full followup may also be provided from the pilothouse.

(c) Each steering control system must have in the pilothouse a switch arranged so that one action of the switch's lever automatically supplies power to a complete steering control system and its associated power unit or units. This switch must be—

(1) Operated by one lever;

(2) Arrange so that not more than one steering control system and its associated power unit or units can be energized from the pilothouse at any one time;

(3) Arranged so that the lever passes through an "off" position when transferring control from one steering control system to another; and

(4) Arranged so that the switches for each system are in separate enclosures or are separated by fire-resistant barriers.

(d) Each steering control system must receive its power from—

(1) The feeder circuit supplying power to its steering power unit or units in the steering gear compartment; or

(2) A direct connection to the bushbars supplying the circuit for its steering gear power unit or units from a point on the switchboard adjacent to that supply.

(e) Each steering control system must have a switch that—

(1) Is in the steering gear compartment; and

(2) Disconnects the steering control system from its power source and from the steering gear that the system serves.

(f) Each motor controller for a steering gear must be in the steering gear compartment.

(g) A means of starting and stopping each motor for a steering gear must be in the steering gear compartment.

(h) Where the main steering gear is arranged in accordance with § 58.25–10(e) of this subpart, two separate and independent followup control systems must be provided in the pilothouse; except that—

(1) The steering wheel or lever need not be duplicated; and

(2) Where the control system consists of a hydraulic telemotor, a second separate and independent system need not be provided, except on tank vessels subject to § 58.25–85 of this subpart.

(i) Where only the main steering gear is power-driven, two separate and independent followup control systems must be provided in the pilothouse, except that the steering wheel or lever need not be duplicated.

(j) Where the auxiliary steering gear is power-driven, a steering control system must be provided in the pilothouse that is separate and independent from the main steering gear control systems, except that the steering wheel or lever need not be duplicated.

(k) On a vessel of 500 gross tons and above, each main steering gear and auxiliary steering gear must be arranged so that its power unit or units are operable by controls from the steering gear compartment. These controls must not be rendered inoperable by failure of the controls in the pilothouse.

§ 58.25–75 Materials.

(a) Materials used for the mechanical or hydraulic transmission of power to the rudder stock must have an elongation of at least 15% in 2 inches; otherwise, components used for this purpose must be shock-tested in accordance with subpart 58.30 of this part.

(b) Materials, including aluminum and non-metallic seals, with low melting-points must not be used in steering gear control systems or power actuating systems unless—

(1) The materials are within a compartment having little or no risk of fire;

(2) Because of redundancy in the system, damage by fire to any component would not prevent immediate restoration of steering capability; or

(3) The materials are within a steering gear power actuating system.

§ 58.25–80 Automatic pilots and ancillary steering equipment.

(a) Automatic pilots and similar navigational equipment must be arranged to allow immediate resumption

of manual operation of steering gear controls required in the pilothouse. A switch must be provided, at the primary steering position in the pilothouse, to completely disconnect the automatic equipment from the steering control systems.

(b) Automatic pilots and ancillary steering equipment must be arranged so that no single failure affects proper operation and independence of the main and auxilliary steering gears, required controls, rudder angle indicators, or steering failure alarm.

§ 58.25–85 Special requirements for tank vessels.

(a) Each tank vessel must meet the applicable requirements of §§ 58.25–1 through 58.25–80 of this subpart.

(b) On each tank vessel of 10,000 gross tons and over, the main steering gear must comprise two or more identical power units that meet the requirements of § 58.25–10(e)(2) of this subpart.

(c) Each tank vessel of 10,000 gross tons and over constructed on or after September 1, 1984, must comply with the following:

(1) The main steering gear must be arranged so that, in the event of loss of steering capability due to a single failure in any part of the power actuating system of the main steering gear, excluding seizure of a rudder actuator or failure of the tiller, quadrant or components serving the same purpose, steering capability can be regained not more than 45 seconds after the loss of one power actuating system;

(2) The main steering gear must include either:

(i) Two independent and separate power actuating systems, each meeting the requirements of § 58.25–10(b)(2) of this subpart, or

(ii) At least two identical power actuating systems which, acting simultaneously in normal operation, must meet the requirements of § 58.25–10(b)(2) of this subpart. Where necessary to comply with this requirement, interconnection of hydraulic power actuating systems must be provided. Loss of hydraulic fluid from one system must be capable of being detected, and the defective system automatically isolated, so the other actuating system or systems remain fully operational;

(3) Steering gear, other than the hydraulic type, must achieve equivalent standards to the satisfaction of the Commanding Officer, Marine Safety Center.

(d) On each tank vessel of 10,000 gross tons and over, but less than 100,000 deadweight tons, the main steering gear need not meet the single-failure criterion in paragraph (c) of this section if the rudder actuator or actuators installed are non-duplicated hydraulic and if—

(1) The actuators meet the requirements of § 58.25–60 of this part; and

(2) In the event of loss of steering capability due to a single failure either of any part of the piping systems or in one of the power units, steering capability can be regained in not more than 45 seconds.

(e) On each tank vessel of less than 70,000 deadweight tons and constructed before, and with a steering gear installation before, September 1, 1986, and on an international voyage, the steering gear not meeting the requirements of paragraph (c) (1), (2), or (3) of this section, as applicable, may continue in service if the steering gear has a proven record of reliability and is in good repair.

(f) Each tank vessel of 10,000 gross tons and over, constructed before, and with a steering gear installation before, September 1, 1984, must—

(1) Meet the applicable requirements in § 58.25–15, § 58.25–20(c), § 58.25–25 (a), (d), and (e), and § 58.25–70 (e), (h), (i), and (j) of this part;

(2) Ensure working access to machinery and controls in the steering gear compartment. It must include handrails and either gratings or other non-slip surfaces to ensure a safe working environment in the event of hydraulic fluid leakage;

(3) Have two independent steering gear control systems, each of which can be operated from the pilothouse, except that it need not have separate steering wheels or steering levers;

(4) Arrange each remote steering gear control system required by paragraph (f)(3) of this section so that, if the system in operation fails, the other system can be brought into immediate operation from the pilothouse; and

(5) Supply each remote steering gear control system required by paragraph (f)(3) of this section, if electric, with power by a circuit that is—

(i) Used for no other purpose; and either—

(ii) Connected in the steering gear compartment to the circuit supplying power to the power unit or units operated by that control system; or

(iii) Connected directly to the busbars supplying the circuit for its steering gear power unit at a point on the switchboard adjacent to that supply.

(g) Each tank vessel of 40,000 gross tons and over, constructed before, and with a steering gear installation before, September 1, 1984, and on an international voyage, must have the steering gear arranged so that, in the event of a single failure of the piping or of one of the power units, either steering capability, equivalent to that required of the auxiliary steering gear by § 58.25–10(c)(2) of this subpart, can be maintained or the rudder's movement can be limited so that steering capability can be speedily regained. This arrangement must be achieved by one of the following:

(1) An independent means of restraining the rudder;

(2) Fast-acting valves that may be manually operated to isolate the actuator or actuators from the external hydraulic piping, together with a means of directly refilling the actuators by a fixed independent power-operated pump and piping; or

(3) An arrangement such that, where hydraulic power systems are interconnected, loss of hydraulic fluid from one system must be detected and the defective system isolated either automatically or from within the pilothouse so that the other system remains fully operational.

Note.—The term "piping or * * * one of the power units" in paragraph (g) of this section refers to the pressure-containing components in hydraulic or electro-hydraulic steering gear. It does not include rudder actuators or hydraulic control servo piping and pumps used to stroke the power unit pump or valves, unless their failure would result in failure of the power unit or piping to the rudder actuator.

31. Section 58.30–5 is amended by adding a new paragraph (d) to read as follows:

§ 58.30–5 Design requirements.

* * * * *

(d) Each pneumatic system must minimize the entry of oil into the system and must drain the system of liquids.

PART 61—PERIODIC TESTS AND INSPECTIONS

32. The authority citation for part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

33. Section 61.05–10 is amended by revising paragraphs (a) and (b), removing existing Table 61.05–10, and adding a new Table 61.05–10 after existing paragraph (g) to read as follows:

§ 61.05–10 Boilers in service.

(a) Each boiler, including superheater, reheater, economizer, auxiliary boiler, low-pressure heating boiler, and unfired steam boiler, must be examined by the marine inspector at intervals specified

in Table 61.05–10, and more often if necessary, to determine that the complete unit is in a safe and satisfactory condition. Where a hydrostatic test is required, the marine inspector shall examine all accessible parts of the boiler while it is under pressure.

(b) The owner, master, or person in charge of the vessel shall give advance notice to the cognizant Officer in Charge, Marine Inspection, so that a marine inspector may be scheduled to witness the tests and to make the required inspections.

* * * * *

(g) * * *

TABLE 61.05–10.—INSPECTION INTERVALS FOR BOILERS [1,2,3]

	Firetube boiler >150 p.s.i.	Watertube boiler	Any firetube boiler for propulsion	Firetube boiler <150 p.s.i.
Hydro Test:				
Passenger Vessel	2.5	2.5	1	2.5
Other Vessel	2.5	5	1	5
Fireside Inspection	1	2.5	1	2.5
Waterside Inspection	1	2.5	1	2.5
Boiler Safety Valve Test	1	COI	1	1
Valves Inspection	5	5	5	5
Studs & Bolts Inspection	10	10	10	10
Mountings Inspection	10	10	10	10
Steam Gage Test	COI	COI	COI	COI
Fusible Plug Inspection	2.5	—	COI	2.5

Notes:
[1] All intervals are in years and, where COI is used, the intervals coincide with the applicable vessel's inspection for certification.
[2] Where the 2.5-year interval is indicated: two tests or inspections must occur within any five-year period, and no more than three years may elapse between any two tests or inspections.
[3] Intervals for hybrid boilers are the same as for firetube boilers.

34. Section 61.05–15 is amended by revising paragraphs (a), (b), (c)(1), (f), and (g) to read as follows:

§ 61.05–15 Boiler mountings and attachments.

(a) Each valve must be opened and examined by the marine inspector at intervals specified in Table 61.05–10.

(b) Each stud or bolt for each boiler mounting must be examined by the marine inspector at intervals specified in Table 61.05–10. Each must be removed for examination from each mounting that is required to be removed by paragraph (c) of this section.

(c)(1) Each boiler mounting must be removed from the boiler and be examined by the marine inspector at intervals specified in Table 61.05–10 where any of the following conditions exist:

* * * * *

(f) Each steam gage for a boiler or a main steam line must be examined and checked for accuracy by the marine inspector at intervals specified in Table 61.05–10.

(g) Each fusible plug must be examined by the marine inspector at intervals specified in Table 61.05–10.

35. Section 61.05–20 is revised to read as follows:

§ 61.05–20 Boiler safety valves.

Each safety valve for a boiler drum, superheater, or reheater must be tested and resealed in the presence of the marine inspector at intervals specified in Table 61.05–10.

36. Section 61.10–5 is amended by revising the heading and paragraphs (a), (b), (d), and (g) to read as follows:

§ 61.10–5 Pressure vessels in service.

(a) *Basic requirement.* The marine inspector shall test or examine each pressure vessel twice within any five-year period, except that no more than three years may elapse between any two tests or inspections. The extent of the test or examination must be that necessary to determine that the pressure vessel's condition is satisfactory and that the pressure vessel is fit for the service intended.

(b) *Internal and external tests and inspections.* Each pressure vessel stamped with the Coast Guard symbol, and each pressure vessel in a system regulated under subpart 58.60 of this subchapter that is fitted with a manhole or other inspection opening so it can be satisfactorily examined internally, must be opened twice within any five-year period, except that no more than three years may elapse between any two inspections. Each pressure vessel must be thoroughly examined internally and externally. Each pressure vessel is not required to be hydrostatically tested unless defects are found that, in the marine inspector's opinion, may impair its safety; but, where such defects are found, the pressure vessel must be hydrostatically tested at a pressure of 1¼ times the maximum allowable working pressure.

* * * * *

(d) *Hydrostatic pressure tests.* Each pressure vessel, other than one exempted by the provisions of this section, must be subjected to a hydrostatic test pressure of 1¼ times the maximum allowable working pressure twice within any five-year period, except that no more than three years may elapse between any two tests.

* * * * *

(g) *Bulk storage tanks.* Each bulk storage tank containing refrigerated liquefied CO_2 gas for use on board a vessel as a fire-extinguishing agent must be subjected to a hydrostatic test of 1½ times the maximum allowable working pressure on the tenth year of the installation and at ten-year intervals thereafter. After the test, the tank must be drained and an internal examination made. Parts of the jacket and lagging on the underside of the tank designated by the marine inspector must be removed at the time of the test so the marine inspector may determine the external condition of the tank.

* * * * *

37. Section 61.15–5 is amended by revising paragraph (b) to read as follows:

§ 61.15–5 Steam piping.

* * * * *

(b) All steam piping subject to main boiler pressure must be subjected to a hydrostatic test at a pressure of 1¼ times the maximum allowable working pressure of the boiler after each five

years of service except as otherwise provided for in paragraph (a) of this section. If the covering of the piping is not removed, the test pressure must be maintained on the piping for ten minutes. If any evidence of moisture or leakage is detected, the covering must be removed and the piping thoroughly examined. No piping with a nominal size of 3 inches or less need by hydrostatically tested.

* * * * *

PART 111—ELECTRIC SYSTEMS—GENERAL REQUIREMENTS

38. The authority citation for part 111 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; 49 CFR 1.46.

Subpart 111.93—[Removed]

39. Subpart 111.93, consisting of §§ 111.93–1—111.93–13, is removed.

Dated: September 4, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–3836–9]

Connecticut; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Connecticut for final authorization, public hearing and public comment period.

SUMMARY: The State of Connecticut has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (EPA or Agency) has reviewed Connecticut's initial and revised applications and has made the tentative decision that Connecticut's hazardous waste program presently does not satisfy all of the requirements necessary to qualify for final RCRA authorization. However, EPA may revise its tentative decision if Connecticut can meet a set of conditions by November 15, 1990 requiring the State to make substantial improvements in its permits and enforcement programs, and fill staff and management vacancies, thereby establishing a quality program. If the State remedies the deficiencies identified below, and if no significant new issues are raised during the public comment period, EPA intends to grant the State final authorization without publishing another tentative decision in the **Federal Register**. EPA will publish the final decision in the **Federal Register** in December, 1990.

Connecticut's application for final authorization is available for public review and comment, and a public hearing will be scheduled to solicit comments on the application. EPA documents, such as State program reviews, that are referenced in this **Federal Register** Notice can be found in the Administrative Record.

DATES: A public hearing will be held if sufficient interest is expressed. It is tentatively scheduled for Thursday, November 1, 1990 at 10:30 a.m. in Hartford, CT. EPA reserves the right to cancel the public hearing if sufficient public interest in holding a hearing is not communicated to EPA by telephone or in writing by 5 p.m. on October 24, 1990 to the address listed in the CONTACTS section below. The State will participate in the public hearing held by EPA on this subject. All comments on this tentative determination and the Connecticut final authorization application must be received by the close of business on Wednesday, October 31, 1990 unless a public hearing is held. If a hearing is held, the public comment period will be extended until close of business on Thursday, November 1, 1990. For information on whether or not EPA will hold a public hearing on the Connecticut application, write or telephone the contact person listed below after October 24, 1990.

ADDRESSES: Copies of the Connecticut final authorization application are available during normal business hours at the following addresses for inspection and copying: Connecticut Department of Environmental Protection, Waste Engineering and Enforcement Division, 20 Trinity Street, 2nd Floor, Hartford, CT 06106, Phone: (203) 566–8843; U.S. EPA Headquarters, Library, Rm 211A, 401 M Street, SW., Washington, DC 20460, Phone: (202) 382–5926; U.S. EPA Region I, Library, One Congress Street, 11th Floor, Boston, MA 02203, Phone: (617) 565–3300. Written comments should be sent to Stephen Yee, CT Waste Regulation Section (Mail Code: HEE–CAN6), Waste Management Division, U.S. EPA, Region I, J.F.K. Federal Building, Boston, MA 02203–2211, Phone: (617) 573–9644. If there is sufficient interest, EPA will hold the public hearing on Thursday, November 1, 1990, 10:30 a.m. at the Hartford Holiday Inn, 50 Morgan Street, Hartford, CT. For information on whether or not EPA will hold a public hearing on the Connecticut application, write or telephone the contact person listed below after October 24, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen Yee, CT Waste Regulation Section (Mail Code: HEE–CAN6), Waste Management Division, U.S. EPA, Region I, J.F.K. Federal Building, Boston, MA 02203–2211, Phone: (617) 573–9644.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616) (HSWA). The State's application and this background discussion are directed towards the pre-HSWA program requirements.

Two types of authorization have been established. The first type, known as "interim authorization," was a temporary authorization which was granted prior to January, 1986 if EPA determined that the State program was "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6926(c)). EPA's implementing regulations at 40 CFR 271.121 through 271.137 established a phased approach to interim authorization: Phase I covered EPA regulations in 40 CFR parts 260 through 263 and 265 (universe of hazardous wastes, generator standards, transporter standards, and standards for interim status facilities), and Phase II covered EPA regulations in 40 CFR parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, had three components. Phase IIA covered general permitting procedures and technical standards for containers and tanks, Phase IIB covered permitting of incinerator facilities, and Phase IIC addressed the permitting of landfills, surface impoundments, waste piles, and land treatment facilities. By statute, interim authorization expired on January 31, 1986. Responsibility for the hazardous waste program reverted to EPA if a State with interim authorization had not received final authorization by that date, as described below.

The second type of authorization is "final" authorization. It is granted by EPA when the Agency determines that the State program (1) is "equivalent" to and no less "stringent" than the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement of compliance with RCRA requirements (Section 3006(b), 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for interim and final State authorization appear at 40 CFR part 271.

B. Connecticut

1. Consistency with the Federal Program

Section 22a–454(b) of the Connecticut General Statutes currently prohibits the land disposal of hazardous wastes other than metal hydroxide sludges, residue from recycling operations, residue from waste-to-energy facilities, hazardous waste spills, fly ash, and municipal wastewater treatment sludges. The statute acts as a partial ban on the land disposal of hazardous waste. Therefore, EPA requested a demonstration from Connecticut, pursuant to 40 CFR 271.4, that this partial ban was not inconsistent with the federal hazardous waste program.

On May 2, 1990, Connecticut submitted a demonstration to EPA justifying the partial land disposal ban. EPA reviewed the demonstration and provided the state with comments, to which the state satisfactorily responded on August 29, 1990. In EPA's view, the partial land disposal ban does not render the Connecticut hazardous waste program inconsistent with RCRA requirements. However, EPA solicits comment on the overall concept of the partial ban.

2. History of State Program Application

Connecticut was granted Phase I interim authorization on April 21, 1982 (47 FR 17055) and Phase II interim authorization (Components A, B, and C) on June 29, 1983 (48 FR 29864). Connecticut submitted an official application for final authorization on July 31, 1985. Prior to submission of the final application, Connecticut solicited public comment on the draft application. The State held a public hearing and did not receive oral or written comments. However, EPA had comments on the application and had concerns about the capability of the State to implement the RCRA program. As a result, the State did not obtain final authorization by the statutory deadline of January 31, 1986.

On January 31, 1986, a **Federal Register** notice (51 FR 4128) was published, announcing the expiration of interim authorization as required by law and identifying Connecticut as being a State in which the authority to implement RCRA had reverted to EPA. There were substantive problems with the Connecticut program at the time of program reversion. The three major programmatic issues were: inadequate enforcement; improper closure of regulated hazardous waste units; and improper implementation of the ground water monitoring program.

During the program reversion period and while Connecticut's application has been pending, from January 1986 to the present, the State has continued to implement and enforce its own regulations and to perform inspections and other agreed-upon tasks under a Cooperative Agreement between the State and EPA.

On April 17, 1989, Connecticut submitted a revised application for review by EPA. EPA reviewed the application and found deficiencies which the State was required to correct. The deficiencies were in components of the State's application including the Program Description, Attorney General's Statement, Memorandum of Agreement, Connecticut Regulations, Showing of Public Participation, and the adoption of the requirements of non-HSWA Clusters I, II, and III. (A regulatory "cluster" consists of all changes made to existing regulations and all new regulations promulgated under applicable provisions of the RCRA statute in a given year.) Non-HSWA Clusters I, II, and III consists of all changes and/or regulations adopted under applicable provisions of the RCRA statute not promulgated under HSWA amendments from July 1, 1984–June 30, 1985, July 1, 1985–June 30, 1986, and July 1, 1986–June 30, 1987, respectively.

As a result of these deficiencies and the expanded requirements of RCRA, Connecticut decided to further revise the application with the inclusion of non-HSWA Clusters IV and V, portions of HSWA CLusters I and II, and the incorporation of the federal regulations by reference (except in specific areas where the State program is broader-in-scope or more stringent than the Federal program).

On February 6, 1990, Connecticut issued a public notice of its intent to revise and update its hazardous waste management regulations. A public hearing was held on the proposed regulations on March 12, 1990. The State received written and oral comments. A summary of the comments and the State's response, along with copies of the written comments, can be found in the "Showing of Public Participation" section of the final application.

On May 29, 1990, Connecticut submitted a revision to the original draft final application to EPA. The revised application provided for further public comment in accordance with 40 CFR 271.20(b). As part of its application submission, Connecticut is seeking authorization for program revisions enacted since November, 1984 in accordance with 40 CFR 271.21(e).

On August 1, 1990, Connecticut submitted an official application for final authorization to EPA. Prior to submitting its official application, Connecticut held a public hearing on June 29, 1990 to solicit public comment on its draft application. Connecticut is seeking final authorization for the base RCRA program, non-HSWA Clusters I through V, and portions of HSWA Clusters I and II. These statutory and regulatory provisions, with the analogous federal authority, are set forth below.

The State will be given a compliance schedule to meet the remaining requirements of HSWA Cluster I. This approach is used to require states to adopt regulations. The compliance schedule requiring that an application be submitted to EPA by December 30, 1990 will be a condition of the State RCRA program grant. EPA is concerned that the State may not be able to meet this deadline and is seeking public comment on this issue.

Federal requirement	State authority
I. Base RCRA Requirements	
● 40 CFR Part 260—Hazardous Waste Management System	CT. Gen. Stat. § 22a–449(c); RCSA: 22a–449(c)–100(b)(1).
40 CFR 260.1(a)	RCSA: 22a–449(c)–100(b)(2)(A).
40 CFR 260.10	RCSA: 22a–449(c)–100(b)(1)(A); RCSA: 22a–449(c)–100(b)(1)(B); RCSA: 22a–449(c)–100(c).
40 CFR 260.40	RCSA: 22a–449(c)–101(c)(5).
40 CFR 260.41	RCSA: 22a–449(c)–101(c)(5).
● 40 CFR Part 261—Identification and Listing of Hazardous Waste	CT. Gen. Stat. § 22a–449(c); RCSA: 22a–449(c)–101(a)(1).

Federal requirement	State authority
40 CFR 261.1(a)	RCSA: 22a-449(c)-101(a)(2)(A).
40 CFR 261.2(c) Table 1	RCSA: 22a-449(c)-101(a)(2)(B).
40 CFR 261.3(c)(2)(i)	RCSA: 22a-449(c)-101(a)(2)(C).
40 CFR 261.5(a)	RCSA: 22a-449(c)-101(a)(2)(D); RCSA: 22a-449(c)-101(a)(3); RCSA: 22a-449(c)-101(b).
40 CFR 261.5(e)(2)	RCSA: 22a-449(c)-101(a)(2)(E); RCSA: 22a-449(c)-101(a)(3); RCSA: 22a-449(c)-101(b).
40 CFR 261.5(f)(3)(iv)	RCSA: 22a-449(c)-101(a)(2)(F); RCSA: 22a-449(c)-101(a)(3); RCSA: 22a-449(c)-101(b).
40 CFR 261.5(g)(3)(iv)	RCSA: 22a-449(c)-101(a)(2)(G); RCSA: 22a-449(c)-101(a)(3); RCSA: 22a-449(c)-101(b).
40 CFR 261.5(h)	RCSA: 22a-449(c)-101(a)(2)(H); RCSA: 22a-449(c)-101(a)(3); RCSA: 22a-449(c)-101(b).
40 CFR 261.5(i)	RCSA: 22a-449(c)-101(a)(2)(I); RCSA: 22a-449(c)-101(a)(3); RCSA: 22a-449(c)-101(b).
40 CFR 261.6(a)(3)(iv)	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(2)(J); RCSA: 22a-449(c)-101(c).
● 40 CFR Part 262—Standards Applicable to Generators of Hazardous Waste.	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-102(a)(1).
40 CFR 262.10(e)	RCSA: 22a-449(c)-102(a)(2)(A).
40 CFR 262.22	RCSA: 22a-449(c)-102(b)(3).
40 CFR 262.23	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(b)(3).
40 CFR 262.34(a)(1)	RCSA: 22a-449(c)-102(a)(2)(B).
40 CFR 262.34(a)(3)	RCSA: 22a-449(c)-102(a)(2)(C).
40 CFR 262.34(a)(4)	RCSA: 22a-449(c)-102(a)(2)(D).
40 CFR 262.34(c)(1)(ii)	RCSA: 22a-449(c)-102(a)(2)(E).
40 CFR 262.34(d)(1)	RCSA: 22a-449(c)-102(a)(2)(F).
40 CFR 262.34(f)	RCSA: 22a-449(c)-102(a)(2)(G).
40 CFR 262.41(a)	RCSA: 22a-449(c)-102(a)(2)(H).
40 CFR 262.44	RCSA: 22a-449(c)-102(a)(2)(I).
40 CFR 262.70	RCSA: 22a-449(c)-102(a)(2)(J).
40 CFR 262 Appendix—Form 8700-22	RCSA: 22a-449(c)-102(a)(2)(K).
40 CFR 262 Appendix—Form 8700-22, Instructions, Item 20	RCSA: 22a-449(c)-102(a)(2)(L).
● 40 CFR Part 263—Standards Applicable to Transporters of Hazardous Waste.	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-103(a).
40 CFR 263.20(g)(4)	RCSA: 22a-449(c)-103(a)(2)(A).
40 CFR 263.30(b)	RCSA: 22a-449(c)-103(a)(2)(B).
40 CFR 263.30(c)(1)	RCSA: 22a-449(c)-103(a)(2)(C).
40 CFR 263.31	RCSA: 22a-449(c)-103(a)(2)(D).
● 40 CFR Part 264—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-104(a)(1).
40 CFR 264.13(a)(4)	RCSA: 22a-449(c)-104(a)(2)(A).
40 CFR 264.71(a)(4)	RCSA: 22a-449(c)-104(a)(2)(B).
40 CFR 264.71(b)(4)	RCSA: 22a-449(c)-104(a)(2)(C).
40 CFR 264.75	RCSA: 22a-449(c)-104(a)(2)(D).
40 CFR 264.142	RCSA: 22a-449(c)-104(b).
40 CFR 264.144	RCSA: 22a-449(c)-104(b).
40 CFR 264.192(d)	RCSA: 22-449(c)-104(a)(2)(E).
40 CFR 264.193(c)	RCSA: 22a-449(c)-104(a)(2)(F).
40 CFR 264.196(b)(1)	RCSA: 22a-449(c)-104(a)(2)(G).
40 CFR 264.196(d)(1)	RCSA: 22a-449(c)-104(a)(2)(H).
40 CFR 264.272(a)	RCSA: 22a-449(c)-104(a)(2)(I).
40 CFR 264.272(c)(3)	RCSA: 22a-449(c)-104(a)(2)(J).
● 40 CFR Part 265—Interim Status Standards for Owner and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-105(a)(1).
40 CFR 265.13(a)(4)	RCSA: 22a-449(c)-105(a)(2)(A).
40 CFR 265.71(a)(4)	RCSA: 22a-449(c)-105(a)(2)(B).
40 CFR 265.71(b)(4)	RCSA: 22a-449(c)-105(a)(2)(C).
40 CFR 265.75	RCSA: 22a-449(c)-105(a)(2)(D).
40 CFR 265.192(d)	RCSA: 22a-449(c)-105(a)(2)(E).
40 CFR 265.193(c)	RCSA: 22a-449(c)-105(a)(2)(F).
40 CFR 265.196(b)(1)	RCSA: 22a-449(c)-105(a)(2)(G).
40 CFR 265.196(d)(1)	RCSA: 22a-449(c)-105(a)(2)(H).
40 CFR 265.201(a)	RCSA: 22a-449(c)-105(a)(2)(I).
40 CFR 265.222(b)	RCSA: 22a-449(c)-105(a)(2)(J).
40 CFR 265.229(b)(2)	RCSA: 22a-449(c)-105(a)(2)(K).
40 CFR 265.229(b)(3)	RCSA: 22a-449(c)-105(a)(2)(L).
40 CFR 265.272(a)	RCSA: 22a-449(c)-105(a)(2)(M).
40 CFR 265.375(c)	RCSA: 22a-449(c)-105(a)(2)(N).
● 40 CFR Part 266—Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-106(a).
40 CFR 266.43	RCSA: 22a-449(c)-106(b).
40 CFR 266.80(a)	RCSA: 22a-449(c)-106(a)(1).
● 40 CFR Part 268—Land Disposal Restrictions	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-108(a)(1).
● 40 CFR Part 270—EPA Administered Permits Program: The Hazardous Waste Permit Program.	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-110(a).
● 40 CFR Part 124—Procedures for Decisionmaking	CT. Gen. Stat. § 22a-449(c); RCSA: 22a-449(c)-110(a).
II. Non-HSWA Requirements prior to non-HSWS Cluster I	CT. Gen. Stat. § 22a-449(c).
● Biennial Report, 48 FR 3977, January 28, 1983	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(c)(5); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(D); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(D); RCSA: 22a-449(c)-110(a).
● Permit Rules: Settlement Agreement, 48 FR 39611, September 1, 1983	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
● Interim Status Standards—Applicability, 48 FR 52718, November 22, 1983	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-105(a)(1).

Federal requirement	State authority
● Chlorinated Aliphatic Hydrocarbon Listing (F024), 49 FR 5308, February 10, 1984.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● National Uniform Manifest, 49 FR 10490, March 20, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(A); RCSA: 22a-449(c)-102(a)(2)(K); RCSA: 22a-449(c)-102(a)(2)(L).
● Permit Rules: Settlement Agreement, 49 FR 17716, April 24, 1984	RCSA: 22a-449(c)-110(a).
● Warfarin & Zinc Phosphide Listing, 49 FR 19922, May 10, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● Lime Stabilized Pickle Liquor Sludge, 49 FR 23284, June 5, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
III. Non-HSWA Cluster I	CT Gen. Stat. §§ 1-19(b); 1-21(i); Public Act 90-307.
● § 3006(f), State Availability of Information, 40 CFR Part 2, Subpart A, 5 U.S.C. 552, November 8, 1984.	Attorney General's Statement dated July 27, 1990, Memorandum of Agreement dated July 30, 1990, CT Public Act 90-307 dated June 12, 1990.
● Household Waste, 49 FR 44978, November 13, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● Interim Status Standards—Applicability, 49 FR 46094, November 21, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-105(a)(1).
● Corrections to Test Methods Manual, 49 FR 47390, December 20, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(b)(2).
● Satellite Accumulation, 49 FR 49568, December 20, 1984	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(E).
● Definition of Solid Waste, 50 FR 614, January 4, 1985 [Definition of Solid Waste; Correction, 50 FR 14216, April 11, 1985, Definition of Solid Waste; Correction, 50 FR 33541, August 20, 1985].	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-100(a)(2); RCSA: 22a-449(c)-101(c)(5); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-106(a)(1).
● Interim Status Standards for Treatment, Storage, and Disposal Facilities, 50 FR 16044, April 23, 1985.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(J); RCSA: 22a-449(c)-105(a)(2)(K); RCSA: 22a-449(c)-105(a)(2)(L); RCSA: 22a-449(c)-105(a)(2)(M).
IV. Non-HSWA Cluster II	CT. Gen. Stat. § 22a-449(c).
● Financial Responsibility: Settlement Agreement, 51 FR 16422, May 2, 1986	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-110(a).
● Listing of Spent Pickle Liquor (K062), 51 FR 19320, May 28, 1986	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a).
V. Non-HSWA Cluster III	CT. Gen. Stat. § 22a-449(c).
● Radioactive Mixed Waste 51 FR 24504, 51 FR 24504, July 3, 1986	CT. Gen. Stat. § 22a-449(c).
● Liability Coverage-Corporate Guarantee, 51 FR 25350, July 11, 1986	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1).
● Standards for Hazardous Waste Storage and Treatment Tank Systems [Certain sections superseded by 53 FR 34079], 51 FR 25422, July 14, 1986.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(B); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(E); RCSA: 22a-449(c)-104(a)(2)(F); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(E); RCSA: 22a-449(c)-105(a)(2)(F); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-110(a).
● Correction to Listing of Commercial Chemical Products and Appendix VIII Constituents [Superseded by 53 FR 13382], 51 28296, August 6, 1986.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● [Standards for Hazardous Waste Storage and Treatment Tank Systems; Correction], 51 FR 29430, August 15, 1986.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-102(a)(1) RCSA: 22a-449(c)-102(a)(2)(B); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(E); RCSA: 22a-449(c)-104(a)(2)(F); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(E); RCSA: 22a-449(c)-105(a)(2)(F); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-110(a).
● [Listing of Spent Pickle Liquor; Correction], 51 FR 33612, Septembver 22, 1986.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● Revised Manual SW-846; Amended Incorporation by Reference, 52 FR 8072, March 16, 1987.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c).
● Closure/Post-closure Care for Interim Status Surface Impoundments, 52 FR 8704, March 19, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-105(a)(1).
● Definition of Solid Waste; Technical Correction, 52 FR 21306, June 5, 1987	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-106(a)(1).
● Amendments to Part B Information Requirements for Land Disposal Facilities, 52 FR 23447, June 22, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
● Technical Correction; Identification and Listing of Hazardous Waste [Supersedes 51 FR 28296, August 6, 1986], 53 FR 13382, April 22, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
VI. Non-HSWA Cluster	CT. Gen. Stat. § 22a-449(c).
● List (Phase I) of Hazardous Constituents for Ground-Water Monitoring, 52 FR 25942, July 9, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(a)(1).
● Identification and Listing of Hazardous Waste, 52 FR 25942, July 10, 1987	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(a)(1).
● [Listing of Spent Pickle Liquor; Clarification], 52 FR 28697, August 3, 1987	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(a)(1).
● [Development of Corrective Action Programs After Permitting Hazardous Waste Land Disposal Facilities; Corrections], 52 FR 33936, September 9, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(a).
● Liability Requirements for Hazardous Waste Facilities; Corporate Guarantees, 52 FR 44314, November 18, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1).
● Hazardous Waste Miscellaneous Units, 52 FR 46946, December 10, 1987	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-110(a).
● [Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Closure/Post-Closure and Financial Responsibility Requirements], 53 FR 7740, March 10, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-110(a).
● [Technical Correction; Identification and Listing of Hazardous Waste], 53 FR 13382, April 22, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
● Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators [correction to 52 FR 46946], 54 FR 615, January 9, 1989.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
VII. Non-HSWA Cluster V	CT. Gen. Stat. § 22a-449(c).
● Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption, 53 FR 27290, July 19, 1988.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).

Federal requirement	State authority
• Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 FR 34079, September 2, 1988.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-105(a)(2)(H).
• Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification, 53 FR 35412, September 13, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
• Permit Modifications for Hazardous Waste Management Facilities, 53 FR 37912, September 28, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-110(a).
• Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities, 53 FR 39720, October 11, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1).
• Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes, 53 FR 43878, October 31, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
• Identification and Listing of Hazardous Waste; Removal of Strontium from the List of Hazardous Wastes, 53 FR 43881, October 31, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
• Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4286, January 30, 1989.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
• Changes to Interim Status Facilities For Hazardous Waste Management Permits; Modifications of Hazardous Wastes Management Permits; Procedures for Post-Closure Permitting, 54 FR 9596, March 7, 1989.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
VIII. HSWA Cluster I—52 FR 28702, July 15, 1985	CT. Gen. Stat. § 22a-449(c).
• Delisting, 54 FR 27114, November 6, 1984	RCSA: 22a-449(c)-100(c).
• Household Waste Exclusion	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1).
• Waste Minimization	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(K); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-110(a).
• Liquids in Landfills	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-110(a).
• Double Liners	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1).
• Ground-Water Monitoring	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1).
• Pre-Construction Ban	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
• Interim Status	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
• Research and Development Permits	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
• Exposure Information	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
• Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces, 50 FR 49164, November 29, 1985, amended by 51 FR 41900, November 19, 1986 and by 52 FR 11819, April 13, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-106(a)(1).
• Generators of 100 to 1,000 kg Hazardous Waste; Technical correction, 53 FR 27162, July 19, 1988.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-101(a)(2)(A); RCSA: 22a-449(c)-101(a)(2)(D); RCSA: 22a-449(c)-101(a)(2)(E); RCSA: 22a-449(c)-101(a)(2)(F); RCSA: 22a-449(c)-101(a)(2)(G); RCSA: 22a-449(c)-101(a)(2)(H); RCSA: 22a-449(c)-101(a)(2)(I); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(B); RCSA: 22a-449(c)-102(a)(2)(C); RCSA: 22a-449(c)-102(a)(2)(D); RCSA: 22a-449(c)-102(a)(2)(F); RCSA: 22a-449(c)-102(a)(2)(G).
• Identification and Listing of Hazardous Waste; Technical Correction, 53 FR 27162, July 19, 1988.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(2)(E); RCSA: 22a-449(c)-101(a)(2)(F).
• Standards for Hazardous Wastes Storage and Tank Systems, 51 FR 25422, July 14, 1986, amended by 53 FR 34079, September 2, 1988.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(B); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(E); RCSA: 22a-449(c)-104(a)(2)(F); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(E); RCSA: 22a-449(c)-105(a)(2)(F); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-110(a)(1).
IX. HSWA Cluster II	CT. Gen. Stat. § 22a-449(c).
• Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 FR 35894, September 23, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(I).
• Post-Closure Permits, HSWA Codification Rule, 52 FR 45788, December 1, 1987.	RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a).
• Hazardous Waste Management; Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 FR 34079.	RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-105(a)(2)(H).

On August 22, 1990, EPA transmitted comments on the official supplemental application to the State. On August 31, 1990 the State satisfactorily responded to the comments and now has submitted a complete application.

3. State Program Capability

EPA requires that an assessment of State capability to manage its hazardous waste program be completed prior to making a tentative determination. For several years, EPA Region I has reviewed and evaluated the Connecticut Department of Environmental Protection's (CTDEP) program to determine the State's capability to implement a quality hazardous waste management program. These reviews placed particular emphasis on the evaluation of the State's compliance and enforcement program and the closure and permit programs because these are the program elements that past reviews indicated needed improvement. This assessment is a necessary component of the final authorization decision process and is based on the State's performance as noted during the FY'88, FY'89, and FY'90 program reviews. EPA believes that an evaluation over this time period will give a representative assessment of the State's program quality. Reports of these reviews are included as part of the administrative record. Also included as part of this assessment and the administrative record is the State capability checklist.

EPA reviews of the Connecticut RCRA program found that the program was severely understaffed which negatively impacted the State's ability to implement the permitting, closure, and compliance programs at levels acceptable to EPA. The State's enforcement program was also found to be inadequate. An unacceptable percentage of State enforcement actions was found to be inconsistent with the

State's Enforcement Response Policy (ERP) regarding timely and appropriate enforcement actions. As a result, in January 1990, EPA Region I and Connecticut agreed in an Authorization Action Plan (AAP) that Connecticut would take remedial measures and demonstrate its capability to administer a quality program by: (1) Fulfilling the FY'90 RCRA program grant commitments (for permits, closure plans, and inspections); (2) incorporating by reference the Base RCRA regulations and non-HSWA Clusters I–IV (with the State retaining the right to develop regulations that are broader in scope and/or more stringent than the federal regulations); (3) submitting an updated draft application to EPA for review by May 1, 1990; and, (4) developing a management plan for the permits program by January 15, 1990. The AAP also specified that all other program elements could not fall below their then current level. The AAP is included in the administrative record.

EPA Region I conducted an evaluation of the State's compliance with the Authorization Action Plan in May, 1990 and found the following. The FY'90 grant work plan commitments for permits, closure plan approvals, and inspections were not being completed on schedule and likely would not be achieved by September 30, 1990, the last day of FY'90. Only forty-seven of seventy inspections had been completed. Closure plan reviews and approvals were below targeted outputs, with the State anticipating that two out of five approvals would be completed by the end of the fiscal year. Permit targets were also behind, with no permits being issued by the date of the EPA evaluation. The same EPA review revealed that Connecticut was not bringing all enforcement actions in a timely and/or appropriate manner, consistent with the requirements of the Connecticut Enforcement Response Policy. The State was proceeding to incorporate by reference the Base RCRA regulations and non-HSWA Clusters I–IV and the revised regulations would be effective and enforceable in August, 1990. Based upon the progress made in upgrading the program and the incorporation of federal regulations, EPA decided to proceed with the authorization decision process. EPA received the State's draft appliction on May 29, 1990, and the State submitted the management plan for the permits program on January 15, 1990.

EPA has continued to assess the capability of the State program and believes that the State is currently not capable of administering a quality RCRA program. The State program continues to be significantly understaffed. As of July 1, 1990, the vacancy rate was 25% for federally funded RCRA positions. The understaffing results in a continuing inability of the State to issue quality permits, process closure plans, and implement a quality compliance program at levels acceptable to EPA.

Despite these continuing problems, this year the State has evidenced a firm resolve to trying to obtain RCRA authorization by making necessary changes to its program. The State has begun devoting priority management attention to the program and has committed resources to addressing the existing impediments to a positive capability assessment. In addition, EPA has determined that the State staff has the technical and regulatory expertise to run a quality program if given training and resource support. Based upon a series of meetings and other communications since the middle of this year, EPA has become convinced of Connecticut's resolve to run a quality RCRA program.

Therefore, EPA has imposed a set of specific conditions, described below, that addresses the underlying problem of staffing levels as well as requiring output commitments to demonstrate technical capability. EPA is also requiring that the State follow its Enforcement Response Policy for all enforcement actions. In order for EPA to reverse its decision to deny final authorization to Connecticut, the State must implement and maintain these conditions.

4. Conditions

In recent years, the performance of Connecticut's RCRA program has not satisfied the requirements for capability to administer the federal program. EPA believes that the deficiencies in program implementation have resulted in large measure from two causes: (1) Chronic understaffing; and, (2) the State's philosophical approach regarding some elements of the RCRA program. High turn-over and vacancy rates have resulted in the inability of the State to maintain adequate permit, closure, and inspection outputs. Understaffing has also contributed to the State's inability to provide adequate enforcement support to the RCRA program. Current on-board staff, however, has demonstrated adequate technical abilities.

Specific program elements in which the State's approach has resulted in program implementation deficiencies included the closure program, the groundwater monitoring program, and the enforcement program. Historically, for example, the State has not pursued an enforcement program which relied on assessment of penalties against violators to the same extent as federal policy. The State has adopted its own enforcement response policy, which is consistent with the federal policy, and has committed to implement it. In the closure and groundwater areas, the State has changed its approach and is now implementing a program consistent with federal requirements.

To allow Connecticut the opportunity to resolve the above concerns and to demonstrate its capability through actual program performance, EPA decided to develop a list of conditions for authorization which, if fully satisfied, will indicate the State's ability to administer a quality RCRA program. In preparing this list of conditions for the State, EPA considered the full list of deficiencies in recent performance and drafted conditions to address each problem area. For instance, based upon the overriding problem of inadequate staffing, the conditions set explicit commitments for filling both management and staff positions. Similarly, EPA has drafted specific conditions for Connecticut to meet to demonstrate its capability in making permitting and closure decisions. In the enforcement area, the conditions require a specified number of inspections and require all state enforcement actions to be consistent with the appropriateness criteria in the State's Enforcement Response Policy.

EPA included the conditions in correspondence dated August 10, 1990 to the Commissioner of CTDEP. In the letter, EPA explained to the State that if all the conditions are met and the State maintains a capable program, then EPA will change the negative tentative determination that is discussed in this **Federal Register** Notice to a positive final determination for the authorization of the Base RCRA program without a reproposal in the **Federal Register**.

The full text of the conditions in the August 10 letter is as follows:

I. General Conditions

1. All of the specific conditions must be met, as specified, to attain a positive final determination.

2. The specific conditions will not be subject to change or modification.

II. Specific Conditions

1. The two (2) vacant RCRA management positions, which represent all vacancies and departures through July 1, 1990, must be filled on a

permanent basis on or before November 15, 1990.

2. Bona fide offers to fill nine (9) vacant RCRA staff positions that have been authorized per the FY'90 RCRA Subtitle C Grant which represent all vacancies and departures through July 1, 1990, must be made. In addition, eight (8) of the nine (9) above-mentioned positions must be filled on a permanent basis by November 15, 1990. The overall staff levels must be maintained at a 90% level.

3. The following closure commitments will be accomplished by Septembert 30, 1990: One (1) Land Disposal Facility approval, two (2) Land Disposal Facility Notices of Deficiency, and one (1) Incinerator approval. The facilities that these activities may be credited against are identified in the FY'90 RCRA program grant as amended.

4. The following permit commitments will be accomplished by September 30, 1990: Two (2) final permit decisions, two (2) draft permit decisions, and the initiation of closure for MacDermott—Freight Street, the facility that had withdrawn its application. The facilities that these activities may be credited against are identified in the FY'90 RCRA program grant as amended.

5. The permits and closure decisions must be technically sound and enforceable. The decisions will be subject to an analysis by EPA which will be based upon the review of NODs or related correspondence, draft decisions, and fulfillment of regulatory requirements. Additional criteria will include: actions are timely, documents are technically sound, permits are enforceable, and public participation requirements are met.

6. To meet the inspectin grant commitments for FY'90, CTDEP will conclude by September 30, 1990, one hundred sixty-eight (168) inspections, conducted by qualified inspectors. A qualified inspector shall be defined as a person who has sufficient training and/or experience to conduct a RCRA inspection to the satisfaction of EPA. Based upon the correspondence of July 23, 1990, from Pat Bowe of CTDEP to Stephen Yee of EPA, a copy of which can be found in the Administrative Record, personnel who have not conducted independent RCRA inspections within the past six (6) months must be provided with training as specified in the correspondence. In addition, the personnel shall be given training on the classification of violations in the State's Enforcement Response Policy (ERP). The RCRA Inspection Manual (OSWER Directive 9938–2A, March, 1988, as amended May, 1989) should be used as a training reference.

EPA will conduct twelve (12) inspections which will result in a total of one hunderd eighty (180) inspections.

7. All State enforcement actions initiated since June 1, 1990 must be consistent with the appropriateness criteria established by the State's Enforcement Response Policy.

Since EPA fashioned these conditions, EPA staff has been closely monitoring Connecticut's progress in meeting the conditions. EPA will present its assessment of the State's response to these conditions in the final rulemaking.

By requiring the State to fill vacancies and maintain, at a minimum, a 90% staffing level, EPA believes that CTDEP can implement a capable program as demonstrated by the ability of the current staff to meet the outputs in the above conditions. Further to assure long-term compliance with the staffing condition, EPA will include conditions in the State RCRA program grant indicating that if staffing levels are not maintained, EPA will invoke grant sanctions reducing federal grant monies to the State. This combination of the State's priority management attention to administering a capable program, demonstrated performance to satisfy conditions designed to address specific program deficiencies, and continued EPA oversight of the State will provide EPA with evidence adequate to change today's tentative negative determination to a positive determination.

5. Summary

EPA has reviewed Connecticut's application and tentatively determined that the State's program does not meet all of the requirements necessary to qualify for final authorization. If the State remedies the deficiencies identified above, and if no significant new issues are raised during the public comment period, EPA intends to grant the State final authorization without publishing another tentative determination in the **Federal Register**. If the State does not implement a program that fully satisfies the conditions noted above, EPA intends to deny the State's application for final authorization. If final authorization is not granted, the State will continue to implement and enforce its own regulations and is expected to perform inspections and other agreed-upon tasks under a Cooperative Agreement between the State and EPA as amended by the RCRA program grant. The final rulemaking will be published in the **Federal Register** in December, 1990.

In accordance with section 3006 of RCRA and 40 CFR 271.20(d)(1), the Agency may hold a public hearing on its tentative decision on Thursday, November 1, 1990 at 10:30 a.m. at the Hartford Holiday Inn, 50 Morgan Street, Hartford, CT. The public may also submit written comments on this determination up to the close of business on Wednesday, October 31, 1990 unless a public hearing is held. If a hearing is held, the public comment period will remain open until close of business Thursday, November 1, 1990. For information on whether or not EPA will hold a public hearing on the Connecticut application, write or telephone the contact person listed above after October 24, 1990. Copies of Connecticut's application are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

In making its final determination, EPA will consider the measures the State has taken to correct the problems discussed above and all public comments on the tentative determination. EPA will give notice of its final decision on whether or not to approve Connecticut's program in the **Federal Register** in December, 1990.

C. Effect of HSWA on Connecticut's Authorization if Final Authorization is Granted

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with Final Authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in an authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program

in Connecticut if final RCRA authorization is granted. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce these portions of the HSWA in Connecticut until the State receives authorization to do so. Among other things, EPA will issue Federal RCRA permits for those areas in which the State is not yet authorized.

Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

The final determination will include authorization for some of the HSWA requirements which have been identified above. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755 (July 15, 1985).

Compliance with Executive Order 12291

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

Certification under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The denial of authorization effectively continues the applicability of certain Federal regulations in Connecticut. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 217

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 12, 1990.

Julie Belaga,

Regional Administrator.

[FR Doc. 90- 22979 Filed 9-27-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[GEN Docket No. 90-413; FCC 90-307]

Authorization of Central Processing Units Used in Digital Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposal responds to petitions for reconsideration of the First Report and Order in GEN Docket No. 87-389, 54 FR 17710, April 25, 1989, filed by the International Business Machines Corporation and the Computer and Business Equipment Manufacturers Association, requesting the Commission to require circuit boards containing the central processing unit (CPU) used in personal computers and other digital devices to comply with the Commission's standards and equipment authorization procedures. This action will facilitate the marketing of computers that are capable of being used with different CPU boards.

DATES: Comments must be submitted on or before December 13, 1990 and reply comments on or before January 14, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 653-7313.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in GEN Docket No. 90-413, FCC 90-307, adopted September 4, 1990 and released September 24, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision 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.

Summary of the Notice of Proposed Rule Making

1. In the Notice of Proposed Rule Making in this proceeding, the Commission proposes to amend part 15 of its rules to require the authorization of central processing unit (CPU) boards designed to be used in personal computers and other digital devices. These proposed changes will allow manufacturers and system integrators to vary the CPU boards used in personal computers without obtaining an FCC authorization for each specific combination of computer and CPU board marketed.

2. Part 15 governs the operation and regulation of non-licensed radio frequency (RF) devices. Digital devices, including computers and peripheral devices, generate and use RF energy and are subject to the standards and other provisions in part 15 for unintentional radiators. Under the current rules, computers must comply with the standards and authorization procedures, and each specific configuration of the basic computer must be individually tested and authorized. However, a CPU board, currently defined as a subassembly, may be used in several different computers, and a computer may be marketed with several different CPU boards. The requirement to test and authorize every possible combination that may be marketed is expensive and time consuming and may limit equipment design flexibility by discouraging manufacturers from introducing new products.

3. The International Business Machines Corporation (IBM) and the Computer and Business Equipment Manufacturers Association (CBEMA) petitioned the Commission to amend its rules, placing CPU boards under the standards and equipment authorization requirements in part 15. CBEMA also petitioned the Commission to modify the definition of a peripheral device by removing the reference to control cards. While the petitions from IBM and CBEMA were filed as reconsiderations of the First Report and Order in GEN Docket No. 87-389, 54 FR 17710, April 25, 1989, the issues raised by IBM and CBEMA were not addressed in that proceeding. Thus, these changes cannot be implemented through reconsideration and must be addressed in a rule making proposal.

4. We are proposing to implement the changes sought by IBM and CBEMA by including CPU boards under the definition of a peripheral device, thereby making CPU boards subject to the same testing, authorization, labelling and other requirements applicable to part 15 digital devices. By treating a CPU boards as peripheral devices, we would allow anyone to install or replace the CPU board in a certified computer

system, provided the board is replaced with a CPU board that has been certified and labelled as a peripheral device. The modified computers would not be subject to further testing, certification or labelling requirements. Separate authorization of the CPU board would be required only if the CPU board is to be marketed as a stand-alone device. Further, as with other part 15 devices, the sale or lease of a CPU board to a second party for further manufacture would not be subject to our marketing rules or authorization requirements. This proposal is expected to provide substantial benefits to manufacturers, system integrators and consumers by providing them the flexibility to configure a computer system to the user's needs without unnecessary and burdensome testing, certification and labelling requirements.

5. We recognize that the ability of a computer to comply with our limits is dependent upon a complex interaction between both the CPU board and the basic computer in which it is installed. Accordingly, we request comments on whether the treatment of a CPU board as a peripheral device is likely to result in an increased risk of non-compliance by personal computers and/or an increase in the interference potential of these systems. Parties that believe more stringent regulation is needed should provide supporting information and suggest alternatives. We may adopt different approaches to the testing and authorization of CPU boards if the record indicates that our proposal is not workable.

6. Several manufacturers already have expressed an interest in introducing modular computer systems. Further, users are replacing CPU boards in existing computers that may cause the system to interfere with other radio frequency operations. Thus, we believe that any changes to the rules resulting from this proposal need to be implemented as soon as possible. We propose to require all digital devices manufactured, imported or marketed on or after six months from the date final regulations are published in the **Federal Register** to comply with the new rules. Comments are due on or before December 13, 1990, and reply comments are due on or before January 14, 1990.

List of Subjects in 47 CFR Part 15

Communications equipment, Computer technology.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-22932 Filed 9-27-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AB52

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for 26 Plants From the Waianae Mountains, Island of Oahu, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 26 plants: *Abutilon sandwicense* (no common name (NCN)), *Alsinidendron obovatum* (NCN), *Alsinidendron trinerve* (NCN), *Centaurium sebaeoides* ('awiwi), *Chamaesyce celastroides* var. *kaenana* ('akoko), *Chamaesyce kuwaleana* ('akoko), *Cyanea pinnatifida* (haha), *Diellia falcata, Dubautia herbstobatae* (na' ena' e), *Gouania meyenii* (NCN), *Hedyotis dengeneri* (NCN), *Hedyotis parvula* (NCN), *Hesperomannia arbuscula* (NCN), *Lipochaeta lobata* var. *leptophylla* (nehe), *Lipochaeta tenuifolia* (nehe), *Lobelia niihauensis* (NCN), *Neraudia angulata* (NCN), *Nototrichium humile* (kulu'i), *Phyllostegia mollis* (NCN), *Sanicula mariversa* (NCN), *Schiedea kaalae* (NCN), *Silene perlmanii* (NCN), *Tetramolopium filiforme* (NCN), *Tetramolopium lepidotum* ssp. *lepidotum* (NCN), *Urera kaalae* (opuhe), and *Viola chamissoniana* ssp. *chamissoniana* (pamakani). These species are known primarily from the Waianae Mountain Range, located on the island of Ohau, Hawaii. Eight of these species have been collected from one or more sites on the islands of Kauai, Molokai, West Maui, Niihau, East Maui, Moku Mano, or the Koolau Mountains on Oahu. The 26 plant species and their habitats have been adversely threatened in various degrees by one or more of the following: Trampling and predation by feral animals (pigs, cattle, goats); habitat degradation and competition for space, light, water, and nutrients by naturalized, alien vegetation; and habitat loss from fires. A few of these species may have been subjected to overcollection, primarily for scientific purposes, and are subject to trampling by human beings along trails. Because of the depauperate number of extant individuals and severely restricted distributions, populations of these species are subject to an increased likelihood of extinction from stochastic events. A determination that these 26 species 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 November 27, 1990. Public hearing requests must be received by November 13, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to Ernest F. Kosaka, Field Office 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: Derral R. Herbst, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Abutilon sandwicense, Alsinidendron obovatum, Alsinidendron trinerve, Chamaesyce celastroides var. *kaenana, Chamaesyce kuwaleana, Cyanea pinnatifida, Diellia falcata, Dubautia herbstobatae, Gouania meyenii, Hedyotis degeneri, Hedyotis parvula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Neraudia angulata, Phyllostegia mollis, Sanicula mariversa, Schiedea kaalae, Silene perlmanii, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Urera kaalae,* and *Viola chamissoniana* ssp. *chamissoniana* are either endemic to, or have their largest or best known populations in, the Waianae Mountain Range on the western side of the island of Oahu, Hawaii. *Centaurium sebaeoides* is also known from the islands of Kauai, Molokai, and West Maui, and from the Koolau Mountains on Oahu; *Hesperomannia arbuscula* is known from West Maui; *Lobelia niihauensis* is known from Niihau and Kauai; *Nototrichium humile* is known from East Maui; *Chamaesyce kuwaleana* is also known from Moku Mano Island off the coast of Oahu; *Diellia falcata* is known from both the Waianae and Koolau Mountain ranges; *Phyllostegia mollis* is known from Molokai and East Maui as well as the Koolau Mountains of Oahu; and *Tetramolopium lepidotum* ssp. *lepidotum* has been collected on the island of Lanai in the past.

The island of Oahu is formed from the remnants of two large shield volcanoes, the older Waianae volcano on the west

and the younger Koolau volcano on the east. Their original shield volcano shape has been lost as a result of extensive erosion, and today these volcanoes are called "mountains" or "ranges," and consist of long, narrow ridges. The Waianae Mountains were built by eruptions that took place primarily along three rift zones. The two principal rift zones run in a northwestward and south-southeastward direction from the summit, and a lesser one runs to the northeast. The range is approximately 40 miles (mi) (64 kilometers (km)) long. The caldera lies between the north side of Makaha Valley and the head of Nanakuli Valley (MacDonald *et al.* 1983). The Waianae Mountains are in the rain shadow of the parallel Koolau Mountains and except for Mt. Kaala, the highest point on Oahu (4,020 feet (ft) (1,225 meters (m))), receive much less rainfall (Wagner *et al.* 1990). The median annual rainfall for the Waianae Mountains varies from 20 to 75 inches (in) (51 to 191 centimeters (cm)), with only the small summit area of Mt. Kaala receiving the highest amount.

Two of the species, *Chamaesyce celastroides* var. *kaenana* and *Centaurium sebaeoides*, are members of the 'Ilima Shrubland Community of the Coastal Dry Shrublands Vegetation type which occurs on sand dunes and poorly consolidated volcanic soils near shore environments with high exposure to salt-laden winds. Coastal Dry Shrublands occur on all of the islands of the Northwestern Hawaiian Islands and along the coastlines of all of the main islands, extending up to about 1,000 ft (300 m) in elevation. Because of the effects of rain shadows, these communities are most extensively developed on the leeward sides of the higher islands. Annual rainfall is less than 45 in (120 cm), and occurs primarily during the winter months of October to April; much of the vegetation dies back during a prolonged drought that lasts most of the rest of the year (Gagne and Cuddihy 1990).

Lowland Dry Vegetation includes several plant communities and occurs on the leeward sides of all the main Hawaiian islands at an elevation of 15 to 2,000 ft (5 to 610 m). The climate of this vegetation type is distinctly seasonal with hot, dry summers and winter rainfall, usually less than 40 in (100 cm), but ranging up to 80 in (200 cm) annually. The soils range from weathered silty loams to stony clay, and rocky ledges with very shallow soil and recent, little-weathered lava are present (Cuddihy and Stone 1990, Gagne and Cuddihy 1990). The following species proposed herein are members of several communities of this vegetation type: *Dubautia herbstobatae, Lipochaeta lobata* var. *leptophylla, Sanicula mariversa, Tetramolopium filiforme, Chamaesyce kuwaleana, Hedyotis parvula,* and *Lobelia niihauensis.*

The remaining 17 species included in this proposed rule are members of the Diverse Mesic Forest Community, one of the lowland Mesic Forest Vegetation community types. These communities occur on most of the main islands between 100 and 5,300 ft (30 to 1,600 m) in elevation. The annual rainfall is 45 to 150 in (120 to 380 cm), falling mostly during the winter months. This community grows on diverse, well-weathered, and well-drained substrates ranging from rocky, shallow, organic muck soils to steep, rocky talus slopes, shallow soil over weathered rock in steep gulches, or deep soil over soft weathered rock and gravelly alluvium. In the Waianae Mountains, this vegetation community is found in sheltered areas and comprises a rich diversity of native plants with no clearly dominant species (Cuddihy and Stone 1990, Gagne and Cuddihy 1990). Four of the 17 taxa that are components of the Diverse Mesic Forest Community grow primarily in the wetter parts of this vegetation type or may cross into a wet forest community: these are *Alsinidendron trinverve, Hesperomannia arbuscula, Phyllostegia mollis,* and *Schiedea kaalae.*

The land that supports these 26 plant species is owned by the State of Hawaii (including land classified as Department of Hawaiian Homelands, Natural Area Reserve System, Forest Reserve, and City and County of Honolulu land), Federal government, and private parties. Plants on Federal land are located on portions of Schofield Barracks and Makua Military Reservation, both under the jurisdiction of the U.S. Army.

Discussion of the 26 Taxa Proposed for Listing

In 1932, Otto Degener (1932a, 1932b) discovered and described what is now called *Abutilon sandwicense,* naming it *Arbortopetalum sandwicense* for the Sandwich Islands, an earlier name for the Hawaiian Islands. Degener's new genus, *Abortopetalum,* was based primarily on its spatula-shaped, "abortive" petals. Erling Christophersen (1934) transferred the species to the genus *Abutilon* because none of the characters of the genus *Abortopetalum* made it distinctive from the generally accepted definition of *Abutilon.* In the same publication, Christophersen (1934) described variety *welchii* from Lualualei Valley, but the most recent treatment of the genus (Bates 1990) considers the differences cited by Christophersen to be within the normal range of variation of the species.

Abutilon sandwicense, of the mallow family (Malvaceae), is a shrub that grows to 10 ft (3 m) tall and is covered with short glandular hairs. Leaves are light green, heart-shaped, and 3 to 9 in (8 to 22 cm) long. A single pendulous flower grows from the leaf axil (the point between the leaf and the stem). The flowers have pale, greenish-yellow, hairy, glandular sepals and bright green, often reddish-brown tipped petals up to 2 in (5 cm) long. A greenish-yellow staminal column with about 350 stamens near its tip protrudes from the flower. The fruit is a capsule up to 1 in (2.5 cm) long, which breaks into 8 to 10 parts, each enclosing 3 or more seeds. Seeds are brown, up to 0.1 in (3 millimeters (mm)) long, and slightly hairy. This species is distinguished from others in the genus by the green or reddish-brown tipped petals which extend beyond the sepals (Bates 1990, Degener 1932b, St. John 1981b).

Historically, *Abutilon sandwicense* was known from nearly the entire length of the Waianae Mountains, from Makaleha Valley to Nanakuli Valley (Bates 1990). This species is now known from Kaawa Gulch, Kaimuhole Gulch, Makaha Valley, Makaha-Waianae Kai Ridge, Makaleha Valley, Manuwai Gulch, and Nanakuli Valley on State-owned land (Hawaii Heritage Program (HHP) 1990a1 to 1990a7). The 7 known populations, which extend over a distance of about 5 by 2.5 mi (8 by 4 km), contain an estimated 300 to 400 individuals (HHP 1990a1 to 1990a7). *Abutilon sandwicense* typically grows on steep slopes or gulches in dry to mesic lowland forest at an elevation of 1,000 to 2,000 ft (300 to 600 m) (Bates 1990, HHP 1990a8). Associated species include *Aleurites moluccana* (kukui), *Caesalpinia kavaiensis* (uhiuhi), *Diospyros* (lama), *Sapindus oahuensis* (aulu), and *Schinus terebinthifolius* (Christmasberry) (HHP 1990a1, 1990a3). The major threats to *Abutilon sandwicense* are competition from alien plant species (Christmasberry, *Clidemia hirta* (Koster's curse), *Melinus minutiflora* (molasses grass), and *Passiflora suberosa* (huehue haole)), fire, and trampling by feral cattle.

Earl Edward Sherff (1951b) first described *Alsinidendron obovatum* based on specimens collected by Charles Noyes Forbes in 1911, choosing a specific epithet describing the shape of the leaves. In the same publication (Sherff 1951b), Degener and Sherff described var. *parvifolium* based on its small leaves. The most recent treatment

of the genus (Wagner *et al.* 1990) does not recognize any varieties in this taxon.

Alsinidendron obovatum, a member of the pink family (Caryophyllaceae), is a branching subshrub growing to 3 ft (1 m) tall. The leaves are thick, somewhat fleshy, elliptic shaped, 1.6 to 4.3 in (4 to 11 cm) long, and up to 2.4 in (6 cm) wide, with 3 or 5 large veins. The inflorescence comprises 7 to 12 flowers arranged in a congested cluster. The flowers lack petals, but usually have 5 sepals which are white inside and green or green-veined on the outside (Wagner *et al.* 1990). In fruit, the sepals become fleshy and purple and enclose the capsule, forming a structure similar to a berry in appearance and perhaps attractive to birds, which would aid in dispersal (Carlquist 1980). Seeds are black and about 0.04 in (1 mm) long. This and the following species can be distinguished from other members of the genus by their shrubby habit and fleshy purple sepals surrounding the capsule (Wagner *et al.*1990).

Historically, *Alsinidendron obovatum* was known from the northern and southern end of the Waianae range (Wagner *et al.* 1990). This species remains in Kapuna and Pahole gulches on State-owned land (HHP 1990b1, 1990b2). The 2 known populations, which are about 0.5 mi (0.8 km) apart, contain about 100 individuals (HHP 1990b1, 1990b2). *Alsinidendron obovatum* typically grows on ridges and slopes in lowland diverse mesic forest dominated by *Acacia koa* (koa) and *Metrosideros polymorpha* ('ohi'a) at an elevation of 1,850 to 2,500 ft (560 to 760 m) (HHP 1990b3, Hawaii Plant Conservation Center (HPCC) 1990a, Wagner *et al.* 1990). Associated species include *Bidens* (ko'oko'olau) and *Syzygium cumini* (Java plum) (HHP 1990b1, 1990b2). The major threats to *Alsinidendron obovatum* are competition from the aggressive alien plant species, molasses grass; habitat degradation by feral pigs; collection or trampling by humans; and the small number of populations.

Alsinidendron trinerve was first collected by Louis Charles Adelbert von Chamisso in 1816 or 1823 (Kimura and Nagata 1980). Horace Mann, Jr. (1866) described the genus *Alsinidendron* based on a specimen he collected with William Tufts Brigham. As it is a shrub related to and resembling chickweed, he named it after the Greek for chickweed (*alsine*) and tree (*dendron*). The specific epithet refers to the three-veined leaves. Wilhelm Hillebrand (1888) amended the description of the genus to include information about the floral structures he called "staminodia," although they currently are believed to more likely represent nectaries or vestigial petals (Wagner *et al.* 1990). Ferdinand Pax and K. Hoffman (1934) transferred the species to *Schiedea*, a course not followed by other botanists who have studied the taxon.

Alsinidendron trinerve is very similar in appearance to *A. obovatum* but differs in that it has a more open inflorescence with peduncles more than 0.8 in (2 cm) long, sepals with an acute tip, and usually is found in wet forests above 3,000 ft (900 m) in elevation. *Alsinidendron obovatum* has a congested inflorescence with peduncles less than 0.8 in (2 cm) long, sepals with a rounded tip, and usually grows in mesic forests 1,800 to 2,600 ft (550 to 800 m) in elevation (Degener 1937a, Wagner *et al.* 1990).

Historically, *Alsinidendron trinerve* was known from the north-central and southern Waianae Mountains. This species is known to be extant on Mt. Kaala and Mt. Kalena on Federally-owned land (HHP 1990c1, 1990c2). The 2 known populations, which are about 1 mi (2 km) apart, contain about 13 individuals (HHP 1990c1, 1990c2). *Alsinidendron trinerve* typically grows on slopes in wet forest or the wetter portions of diverse mesic forest dominated by 'ohi'a and *Ilex anomala* (kawa'u) at an elevation of 3,000 to 4,000 ft (900 to 1,200 m) (HHP 1990c2, Wagner *et al.* 1990). Associated species include *Coprosma ochracea* (pilo), *Gunnera* ('ape'ape), and *Melicope sandwicensis* (alani) (HHP 1990c1). The major threats to *Alsinidendron trinerve* are competition from the aggressive alien plant species, *Rubus argutus* (blackberry); habitat degradation by feral pigs; trampling or collection by humans along trails; and the small number of extant individuals.

On the basis of a collection of specimens by Berthold Carl Seeman of what is now called *Centaurium sebaeoides*, August Grisebach (1853) named a new genus of plants, *Schenkia*, and gave it the specific epithet of *sebaeoides*, indicating its resemblance to a species of *Sebaea*, a genus in the gentian family. The taxon was transferred to the genus *Erythraea* in 1862 by Asa Gray (1862), and later by G. Claridge Druce to the genus *Centaurium* (Druce 1917).

Centaurium sebaeoides is the only species of the gentian family (Gentianaceae) native to the Hawaiian Islands. It is an annual herb about 2.4 to 8 in (6 to 20 cm) tall. Leaves are rather fleshy, inversely ovate or elliptic, and 0.3 to 1.3 in (0.7 to 3.2 cm) long by less than 1 in (2 cm) wide. Flowers are stalkless and are arranged along the stems near their ends. The fused sepals are 0.3 in (8 mm) long and are divided into uneven lobes. The white or pale pink petals are fused into a tube up to 0.4 in (10 mm) long, with lobes up to 0.2 in (4.5 mm) long. The cylindrical capsules are up to 0.4 in (9.5 mm) long and contain numerous tiny brown seeds. This species is distinguished from *C. erythraea*, which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Degener 1934, Degener and Degener 1960, Wagner *et al.* 1990).

Historically, *Centaurium sebaeoides* was known from scattered localities on the islands of Kauai, Oahu, Molokai, and Maui (Wagner *et al.* 1990). This species remains in the Awaawapuhi Valley on Kauai, at Kaena on Oahu, near Hoolehua on Molokai, and on West Maui, all on State-owned land (HHP 1990d1, 1990d2, 1990d4, 1990d5). Two known populations, about 4 mi (6 km) apart, remain on Kauai; and one population each exists on the other three islands. These 5 populations contain fewer than an estimated 1,000 individuals (HHP 1990d1, 1990d2, 1990d4, 1990d5; HPCC 1990b). *Centaurium sebaeoides* typically grows in volcanic or clay soils or on cliffs in arid coastal areas below 400 ft (120 m) elevation (HHP 1990d2, Wagner *et al.* 1990). Associated species include ko'oko'olau and *Lipochaeta* (nehe) (HHP 1990d2, 1990d5). The major threats to *Centaurium sebaeoides* are habitat degradation by feral goats and cattle; competition from the alien plant species, *Leucaena leucocephala* (koa haole); trampling by humans on or near trails; and fire. The threats are believed to be similar on Kauai, Oahu, Molokai, and West Maui.

Sherff (1936) described *Euphorbia celastroides* var. *kaenana* based upon a 1911 collection by Forbes, and named it after the geographical area in which Forbes had collected the specimen. He previously had described *E. celastroides* var *niuensis* based upon a Hillebrand specimen collected in the Niu area of Oahu in the late 1800s (Sherff 1936). The Degeners (Degener and Degener 1959a) and Leon Croizat accepted the elevation of the section *Chamaesyce* to the generic level and published the necessary combinations for the Hawaiian taxa (Croizat 1943; Degener and Croizat 1936a, 1936b, 1937). Further research (Herbst 1971, Pearcy and Troughton 1975, Perry 1943, Robichaux and Pearcy 1980) has supported retaining this separation. Daryl L. Koutnik (Koutnik 1987, Koutnik and Huft 1990), the most recent monographer of

the genus in Hawaii, placed variety *niuensis*, which has not been collected since Hillebrand's time, in synonymy under variety *kaenana*.

Chamaesyce celastroides var. *kaenana*, a member of the spurge family (Euphorbiaceae), is a low-growing or upright shrub to 5 ft (1.5 m) tall with milky sap. The leaves, which fall off during the dry season, are mostly hairless and are arranged in two opposite rows along the stem; they are 0.8 to 2.6 in (20 to 65 mm) long and 0.3 to 0.8 in (8 to 20 mm) wide, being widest at the tip. Flower clusters (cyathia) are crowded on small side branches and each produce a small, erect capsule. Seeds are small, spherical, and gray or White. this species is distinguished from other members of the genus in the area in which it grows in that it is a woody shrub; the other members of the genus in the area are herbs or small subshrubs (Degener and Degener 1959a, 1959b; Kimura and Nagata 1980; Koutnik 1987; Koutnik and Huft 1990; Sherff 1938).

Historically, *Chamaesyce celastroides* var. *kaenana* was known from the northwestern end of the Waianae Mountains as well as from one collection from the southeastern end of the Koolau Mountains (HHP 1990e4; Koutnik 1987; Koutnik and Huft 1990). This taxon remains only in the vicinity of Kaena Point on State and Federal land (HHP 1990e1 to 1990e3, 1990e5, 1990e6). The 5 known populations, which extend over a distance of about 3 by 1 mi (5 by 1.6 km), contain fewer than 300 individuals (HHP 1990e1 to 1990e3, 1990e5, 1990e6; Joel Lau, Botanist, HHP, Honolulu, pers. comm., 1990). *Chamaesyce celastroides* var. *kaenana* typically grows in coastal dry shrubland on windward talus slopes at an elevation of 30 to 700 ft (9 to 640 m) (HHP 1990e1, 1990e6, 1990e7; Koutnik and Huft 1990). Associated taxa include *Gossypium tomentosum* (ma'o), *Jacquemontia ovalifolia* ssp. *sandwicensis* (pa'uohi'iaka), *Santalum freycinetianum* (sandalwood), and *Sida fallax* ('ilima) (HHP 1990e1 to 1990e3, 1990e5). The major threats to *Chamaesyce celastroides* var. *kaenana* are competition from the alien plant species, koa haole; fire; and effects of recreational activities.

Based on a collection by Degener from Mauna Kuwale, Sherff and Degener (Sherff 1949) described *Euphorbia kuwaleana* as a new species. Otto and Isa Degener (1959a) subsequently transferred the species to the genus *Chamaesyce*.

Chamaesyce kuwaleana, a member of the spurge family, is an erect shrub 8 to 36 in (20 to 90 cm) tall. The leaves, arranged in two rows along the stem, are 0.4 to 1 in (11 to 25 mm) long and 0.3 to 0.8 in (8 to 15 mm) wide; they are oval to occasionally circular in outline, and have a whitish waxy coating on the upper surface. Flower clusters (cyathia) are situated singly in the leaf axils, or sometimes at the branch tips. Only immature capsules have been found. This species is distinguished from other species of the genus in its habitat by its stalked, oval to rounded leaves with untoothed margins, and the bent stalk supporting the small capsule (Koutnik 1987, Koutnik and Huft 1990, Sherff 1949).

Historically, *Chamaesyce kuwaleana* was known from the central Waianae Mountains and Moku Manu Island off the eastern coast of Oahu (HHP 1990f1 to 1990f3, Koutnik and Huft 1990). This species is currently known only from Kauaopuu Peak in the Waianae Mountains, primarily on Federal owned land but with some plants extending onto State land (HHP 1990f3, HPCC 1990c). The one known population contains several hundred individuals (HHP 1990f3, 1990f4; HPCC 1990c). *Chamaesyce kuwaleana* typically grows on arid, exposed volcanic cliffs at an elevation of 1,050 ft (320 m) (HHP 1990f3, 1990f4; HPCC 1990c; Koutnik and Huft 1990) Associated species include 'ilima and *Dodonaea viscosa* ('a'ali'i) (HPCC 1990c). The major threats to *Chamaesyce kuwaleana* are competition from the alien plant species, koa haole; fire; and the small number of populations.

Cyanea pinnatifida was first collected by Chamisso in 1817 and later named *Lobelia pinnatifida* by him (Chamisso 1833), the specific epithet referring to the lobed leaves. George Don (1834) transferred the species to the genus *Rollandia*, and only two years later Karel Borowag Presl (1836) transferred the species to the genera *Delissea*. In 1943, Franz Elfried Wimmer transferred this species to the genus *Cyanea* (Wimmer 1943). The taxon Degener (1932c) described as *C selachicauda* is considered conspecific with this species.

Cyanea pinnatifida, a member of the bellflower family (Campanulaceae), is a shrub, usually unbranched, growing from 2.6 to 10 ft (0.8 to 3 m) tall. Leaves are 10 to 24 in (25 to 60 cm) long by 6 to 20 in (16 to 50 cm) wide and are deeply cut into 2 to 6 lobes per side. Clusters of 8 to 15 stalked flowers arise from the leaf axils. Sepals are fused to form a tube 0.4 to 0.5 in (10 to 12 mm) long with small triangular lobes at the tips. The petals are greenish-white with purple stripes, and are about 2 in (5 cm) long and 0.2 in (4 to 5 mm) wide. Fruits have not been seen. This species differs from other members of the genus on Oahu by its leaves, which are deeply cut into two to six lobes per side. The only other member of the genus on Oahu with lobed leaves has 9 to 12 lobes per side (Degener and Greenwell 1952a, Lammers 1990).

Historically, *Cyanea pinnatifida* was known from the central Waianae Mountains (HHP 1990g1, 1990g2; Lammers 1990). This species remains in Kaluaa Gulch on privately-owned land (HHP 1990g1). The one known population contains three individuals (HHP 1990g1). *Cyanea pinnatifida* typically grows on steep, wet, rocky slopes in diverse mesic forest at an elevation of 1,600 to 1,700 ft (490 to 520 m) (HHP 1990g3, Lammers 1990). Associated plants include *Pipturus albidus* (mamaki) and ferns (HHP 1990g3). The major threats to *Cyanea pinnatifida* are competition from the alien plant species, Koster's curse; habitat degradation by feral pigs; collection or trampling by humans on or near trails; and the small number of extant individuals.

William Dunlop Brackenridge discovered *Diellia falcata* during the Wilkes Expedition of 1838 to 1842 and in 1845 described three Hawaiian species, noting that they were similar to members of the genus *Schizoloma* but differed in their interrupted sori or groups of spore producing bodies (Degener and Greenwell 1950a). In 1857 Thomas Moore included *Diellia* in the genus *Schizoloma* (Wagner 1952) and in 1861 transferred *D. falcata* to *Schizoloma* (Moore 1861). William Jackson Hooker and John Gilbert Baker (1883) transferred the species to *Lindsaea*, giving rise to the name *Lindsaya* [sic] *(Diellia) falcata*. Degener and Amy B. H. Greenwell (1950a) treated the simple pinnate members of the species as varieties of *Diellia erecta*, resulting in the name *Diellia erecta* var. *falcata*. The most recent interpretations (Lamoureux 1988; Wagner 1952, 1987) again accept the taxon at the specific level.

Diellia falcata, in the fern family Polypodiaceae, grown from a rhizome (underground stem), 0.4 to 2 in (1 to 5 cm) long and 0.2 to 0.8 in (0.5 to 2 cm) in diameter, which is covered with small black or maroon scales. Stalks of the fronds are dark brown to pale tan, usually have a dull surface, and are 0.4 to 2.8 in (1 to 7 cm) long. The fronds are long and oval or straight in outline and 8 to 40 in (20 to 100 cm) tall by 1.0 to 3.5 in (2.5 to 9 cm) wide, with 12 to 45 divisions (pinnae) per side. The lower pinnae are small and rounded while pinnae farther up the frond are larger, undivided, and shaped like a sickle or a

long triangle with veins forming a netted textured surface pattern. The sori (groups of the spore-producing bodies) are shaped like short lines 0.04 to 0.1 in (1 to 3 mm) long and are on low projections of the pinna margin. This species is distinguished from others in the genus by the color and texture of its leaf stalk, the venation pattern of its fronds, the color of its scales, its rounded and reduced lower pinnae, and its separate sori arranged on marginal projections (Degener and Greenwell 1950a; Wagner 1952, 1987).

Historically, *Diellia falcata* was known from almost the entire length of the Waianae Mountains, from Manini Gulch to Palehua Iki, as well as from the Koolau Mountains of Oahu, from Kaipapau Valley to Aiea Gulch (HHP 1990h2, 1990h7, 1990h9, 1990h10). This species remains in the Waianae Mountains, from Ekahanui Gulch to Manini Gulch on State and private land (HHP 1990h1, 1990h3, 1990h4, 1990h6 to 1990h8). The 7 known populations, which extend over a distance of about 11 by 2 mi (18 by 3 km), contain an estimated 3,000 individuals (HHP 1990h1, 1990h3 to 1990h8). *Diellia falcata* is a terrestrial fern which typically grows in deep shade or open understory in dryland forest at an elevation of 1,280 to 2,700 ft (390 to 820 m) (HHP 1990h3, 1990h4, 1990h11). Associated species include aulu, *Diospyros sandwicensis* (lama), and *Pouteria sandwicensis* ('ala'a) (HHP 1990h1, 1990h3, 1990h5). The major threats to *Diellia falcata* are habitat degradation by feral goats, pigs, and cattle; competition from alien plant species (Christmasberry, huehue haole, molasses grass, and *Psidium cattleianum* (Strawberry guava)); and fire.

Derral R. Herbst and John K. Obata in 1971 made the first collection of *Dubautia herbstobatae*, which was later described and named to honor its discoverers (Carr 1979). In 1830, Charles Gaudichaud-Beaupre described two closely related Hawaiian genera in the aster family; *Railliardia* has united bracts under the flower head, and *Dubautia* has bracts which are distinct (Gaudichaud-Beaupre 1830). Today, most botanists consider *Railliardia* and *Dubautia* as sections of the genus *Dubautia* (Carr 1990). However, Harold St. John, believing that the separation should be maintained, transferred the species into *Railliardia* (St. John 1981a), a course few botanists follow. The current taxonomic treatment (Carr 1990) recognizes only the genus *Dubautia*.

Dubautia herbstobatae, a member of the aster family (Asteraceae), is a small, spreading shrub to 20 in. (50 cm) tall. The shiny, leathery leaves are oppositely arranged, narrowly elliptic in outline, and 0.8 to 2.2 in. (2 to 5.5 cm) long by 0.1 to 0.4 in. (3 to 11 mm) wide. They usually have one main vein and smooth or nearly smooth margins. There are 5 to 15 heads in an inflorescence, each composed of 4 to 20 yellowish-orange, tubular florets, 0.1 to 0.2 in. (3 to 5 mm) long. The fruit is comprised of a seed with a dry, unopening fruit wall (an achene) covered with silky gray hair. Only 2 species of the genus on Oahu have the outer bracts of the flower heads fused, forming a cup surrounding the florets; of those 2 species, *D. herbstobatae* has 1 large vein showing in each leaf, and the other species has 5 to 11 veins (Carr 1985, 1990).

Dubautia herbstobatae is known to be extant in the northern Waianae Mountains, on Ohikilolo and Kamaileunu ridges on State and private land (HHP 1990i1 to 1990i6). No other locations are known for this recently discovered species (Carr 1979, 1982). The 8 known populations, which extend over a distance of about 3 by 0.5 mi (5 by 0.8 km), contain less than 100 individuals (HHP 1990i7). *Dubautia herbstobatae* typically grows on rock outcrops on north-facing ridges in dry shrubland at an elevation of 1,900 to 3,000 ft (580 to 910 m) (Carr 1982, 1990; HHP 1990i1, 1990i6, 1990i7). Associated species include 'ohi'a and *Eragrostis variabilis* (kawelu). The major threats to *Dubautia herbstobatae* are habitat degradation by feral goats and pigs, competition from alien plant species (Christmasberry, koa haole, and molasses grass), fire, visitation and possible trampling by humans, and the small number of individuals.

Gouania meyenii was collected by Franz Julius Ferdinand Meyen in 1831 and named *Gouania integrifolia* (Meyen 1834), a name previously used by Jean Baptiste Lamarck in 1789 for another plant (St. John 1969). Ernesto Theoph Steudel (1840) renamed the plant *Gouania meyenii*, the species epithet honoring Meyen. Gerhard Walpers (1843), realizing that Meyen had erred in the use of the specific epithet *integrifolia*, but unaware of Steudel's publication, named the taxon *Gossania orbicularis*, the spelling of the genus name being a printer's error. St. John later described two additional species, *Gouania oliveri* (St. John 1969) and *Gouania gagnei* (St. John 1973), which are currently considered synonyms of *Gouania meyenii* (Wagner *et al.* 1990).

Gouania meyenii, a member of the buckthorn family (Rhamnaceae), is a shrub up to 7 ft (2.2 m) tall. Leaves are papery in texture, smooth on the upper surface, and with no teeth on the margins. The leaves are oval or broader in outline and 1.2 to 2.8 in. (3 to 7 cm) long by 0.8 to 1.8 in. (1.6 to 4.5 cm) wide. Flowers are possibly functionally unisexual, with male flowers and female flowers on the same plant. They are arranged in clusters originating in the leaf axils. Sepals are 0.06 to 0.1 in. (1.5 to 3 mm) long and white; petals are 0.05 to 0.07 in. (1.2 to 1.8 mm) long and also white. The 2- or 3-winged fruit are 0.4 to 0.6 in. (9 to 16 mm) long. Seeds are brown and 0.2 to 0.3 in. (5 to 7 mm) long. This species is distinguished from the two other Hawaiian species of *Gouania* by its lack of tendrils on the flowering branches, the absence of teeth on the leaves, and the lack or small amount of hair on the fruit (Wagner *et al.* 1990).

Historically, *Gouania meyenii* was known from central and southern areas of the Waianae Mountains, from Kamaileunu Ridge to Honouliuli (HHP 1990j1, 1990j3; Wagner *et al.* 1990). This species now found on Kamaileunu Ridge and Makaha-Waianae Kai Ridge on State land (HHP 1990j1, 1990j2, 1990j4, 1990j5). The 4 known populations, which are distributed over about a 1 square mi (2.6 square km) area, contain an estimated 75 individuals (HHP 1990j1, 1990j2, 1990j4, 1990j5). *Gouania meyenii* typically grows on rocky ledges, cliff faces, and ridge tops in dry shrubland at an elevation of 1,900 to 2,700 ft (580 to 820 m) (HHP 1990j1, 1990j6; Wagner *et al.* 1990). Associated species include 'a'ali'i, lama, *Lysimachia hillebrandii* (kolokolo kuahiwi), and *Senna gaudichaudii* (kolomona) (HHP 1990j1, 1990j2, 1990j5; HPCC 1990d). The major threats to *Gouania meyenii* are competition from alien plant species (Christmasberry, molasses grass, and strawberry guava), fire, and the small number of extant populations.

Francis Raymond Fosberg (1943) published *Hedyotis degeneri* based on a specimen collected by Otto Degener, and named it in his honor. Two varieties were recognized, the typical var. *degeneri* and one with narrower leaves (resembling leaves of *Coprosma*), var. *coprosmifolia* (Fosberg 1943). Hillebrand (1888) had included var. *coprosmifolia* as a questionable variety of *Kadua foliosa* when he published that name, noting that it might be a distinct species. Today both varieties are recognized (Wagner *et al.* 1990).

Hedyotis degeneri, a member of the coffee family (Rubiaceae), is a prostrate shrub with 4-sided stems and peeling, corky bark. Leaves are quite variable and range from long and thin to heart-shaped, from 0.4 to 1.2 in. (1 to 3 cm) in

length and 0.1 to 0.8 in. (0.3 to 2 cm) in width. Flowers are arranged in groups of 1 to 10 in. clusters at the ends of the stems. Sepals are fused into a tube and flare into 4 or 5 leaflike lobes up to 0.3 in. (8 mm) long. Petals are fused into a trumpet-shaped tube 0.2 to 0.3 in. (6 to 7 mm) long with 4 or 5 lobes up to 0.2 in. (4 mm) long. Capsules are nearly globe-shaped and about 0.2 in. (4 to 5 mm) in diameter. Seeds are angled and almost black. This species can be distinguished from others in the genus on Oahu by its low-growing habit, the peeling corky layers on older stems, and the short, crowded, leafy shoots growing in the leaf axils (Wagner *et al.* 1990).

Historically, *Hedyotis degeneri* was known from Mt. Kaala in the northern Waianae Mountains (Wager *et al.* 1990). This species remains only on Kamaileunu Ridge on State-owned land (HHP 1990kl). The only known population contains about six individuals (Derral Herbst, Botanist, U.S. Fish and Wildlife Service, Honolulu, pers. comm., 1990). *Hedyotis degeneri* typically grows in diverse mesic forest at an elevation of 2,700 ft (820 m) (HHP 1990kl). Associated species include 'ohi'a and *Hedyotis terminalis* (manono) (D. Herbst, pers. comm., 1990). The major threats to *Hedyotis degeneri* are habitat destruction by feral pigs, competition from alien plant species (Christmasberry, molasses grass, and strawberry guava), and the small number of extant individuals.

The first specimen of *Hedyotis parvula* was collected by Heinrich Wawra; Gray (1859) later named the plant *Kadua parvula*, the specific epithet referring to its small size. In 1943, Fosberg transferred the species to the genus *Hedyotis*. He also named a form, f. *sessilis*, which is no longer recognized (Wagner *et al.* 1990).

Hedyotis parvula, a member of the coffee family, is a small, many-branched shrub, either upright or sprawling, with stems usually no more than 1 ft (30 cm) in length. Leaves are leathery in texture, overlapping, 0.4 to 1.6 in (1 to 4 cm) long by 0.3 to 0.9 in (7 to 23 mm) wide, and are uniform in size along the stem. Flowers are grouped in small clusters, and when combined with clusters on adjacent stems, give the appearance of a large inflorescence. Sepals are fused into a tube and flare into 4 or 5 lobes 0.04 to 0.16 in (1 to 4 mm) long by 0.04 to 0.08 (1 to 2 mm) wide, often with different sizes on the same plant. The lobes enlarge up to 0.2 in (5.5 mm) long as the fruit matures. The white petals are fused into a funnel-shaped tube 0.3 to 0.4 in (8 to 11 mm) long with 4 or 5 purplish pink-tipped lobes, each about 0.2 in (5 to 6 mm) long. The capsule is almost globe-shaped and about 0.2 in (4 mm) in diameter. Seeds are angled and brown. Its closely spaced overlapping leaves which are uniform in size along the stem separate this species from other members of the genus on Oahu (Degener 1938a, Wagner *et al.* 1990).

Historically, *Hedyotis parvula* was known from the central and southern Waianae Mountains, from Makaleha Valley to Nanakuli Valley (Wagner *et al.* 1990). This species was found on Makaleha Ridge in 1986 and on Makua-Keaau Ridge in 1976, both on State-owned land (HHP 1990L1, 1990L2). *Hedyotis parvula* has not been seen for several years (John Obata, Assistant to Plant Collector, HPCC, pers. comm., 1990). However, because this species inhabits inaccessible cliffs, the chances that it is still extant are very good (D. Herbst, pers. comm., 1990). *Hedyotis parvula* is included here to extend to it the protection of the Act if and when it is rediscovered. *Hedyotis parvula* typically grows on and at the base of cliff faces, rock outcrops, and ledges in dry habitat at an elevation of 2,350 to 2,730 ft (720 to 830 m) (HHP 1990L1, 1990L2; Wagner *et al.* 1990). Associated species include 'a'ali'i, *Canthium odoratum* (alahe'e), and *Plectranthus parviflorus* ('ala'ala wai nui) (HHP 1990L1). The major threats to *Hedyotis parvula* are habitat degradation by feral goats, competiton from alien plant species (Christmasberry and molasses grass), and the small population size.

Hillebrand (1888) described *Hesperomannia arbuscula* based on a specimen collected by E. Bishop on Maui, the specific epithet referring to the smaller stature of the plant as compared to the previously described species of the genus, *H. arborescens*. At the same time, Hillebrand also described *H. arborescens* var. *oahuensis*, a taller tree from Oahu, which was later raised to specific status, *H. oahuensis*, by Degener (1938b). Sherwin Carlquist (1957) examined fresh material of both the Maui and Oahu plants and decided a new combination, *H. arbuscula* ssp. *oahuensis*, was in order for Oahu plants, as compared to those on Maui, which he called ssp. *arbuscula*. However, examination of additional specimens showed that there were no valid differences between the taxa (Wagner *et al.* 1990). St. John later published *H. arbuscula* var. *pearsallii* (1978) and *H. mauiensis* (1983), neither of which is now recognized as a valid taxon (Wagner *et al.* 1990).

Hesperomannia arbuscula, a member of the aster family (Asteraceae), is a small shrubby tree, 7 to 11 ft (2 to 3.3 m) tall. Leaves are elliptic, generally 4 to 7 in (10 to 18 cm) long and 2.2 to 4.5 in (5.5 to 11.5 cm) wide, although young leaves can sometimes be larger. Flower heads are erect and arranged in clusters of four or five heads. Each head comprises many yellow to yellowish-brown florets, with a tube of fused petals 0.9 to 1.2 in (2.5 to 3 cm) long and a threadlike style extending beyond them. The fruit is a 0.3 to 0.4 in (0.8 to 1 cm) long achene, crowned by a ring of bristles nearly the same length as the petals. This species can be distinguished from other members of the genus by the erect flower heads and the leaves, usually hairy beneath, which are one to two times as long as wide (Degener 1932d, Wagner *et al.* 1990).

Historically, *Hesperomannia arbuscula* was known from the central and southern Waianae Mountains, from Makaleha to Puu Kanehoa, and from West Maui (HHP 1990ml, 1990m2, 1990m4, 1990m6, 1990m7). This species is currently known to be extant on the Makaha-Waianae Kai Ridge on Oahu and in Iao Valley on West Maui, both on State land (HHP 1990m3, 1990m5, 1990m7). The 2 known populations on Oahu are about 0.6 mi (1 km) apart; and including the third population from West Maui, this species numbers about 50 individuals (HHP 1990m3, 1990m5, 1990m7; HPCC 1990e; J. Lau, pers. comm., 1990). *Hesperomannia arbuscula* typically grows on slopes and ridges in mesic to wet forest dominated by koa and 'ohi'a at an elevation of 1,200 to 3,000 ft (350 to 900 m) (Wagner *et al.* 1990). Associated species include ko'oko'olau, *alyxia oliviformis* (maile), and *Psychotria* (kopiko) (HHP 1990m2, 1990m5). The major threats to *Hesperomannia arbuscula* are habitat degradation by feral pigs, competiton from alien plant species (blackberry, Christmasberry, Koster's curse, and strawberry guava), trampling or collection by humans, and the small number of populations.

The earliest collection of *Lipochaeta lobata* var. *leptophylla* was made by Forbes in 1915, from which Degener and Sherff (Sherff 1933) described the taxon, giving it a varietal name that refers to its slender leaves.

Lipochaeta lobata var. *leptophylla*, a member of the aster family (Asteraceae), is a low and somewhat woody perennial herb with arched or nearly prostrate stems which may be up to 59 in (150 cm) long. Leaves of this variety are lance-shaped and closely spaced along the stem. Flower heads grow singly or in clusters of 2 or 3, each consisting of bracts (the involucre)

usually 0.2 to 0.3 in (5 to 8 mm) long beneath 8 to 15 yellow ray florets which surround 20 to 65 yellow disk florets. Fruits are achenes which measure 0.1 in (2.5 to 2.7 mm) long by 0.04 to 0.06 in (1.0 to 1.5 mm) wide. They have small wings about 0.2 in (0.4 to 0.5 mm) long. This species is the only one of its genus on Oahu with four-parted disk florets except for a very rare coastal plant. This variety has narrower leaves spaced more closely along the stem than those of *L. lobata* var. *lobata*, the only other variety of this species (Degener and Degener 1957, Gardner 1979, Wagner *et al.* 1990).

Historically, *Lipochaeta lobata* var. *leptophylla* was known from the southern Waianae Mountains, from Kolekole Pass to Lualualei (Wagner *et al.* 1990). This taxon remains on Lualualei-Nanakuli Ridge and at Kolekole Pass on Federal and State land (HHP 1990n1, 1990n3). The 2 known populations, which are about 4.2 mi (6.7 km) apart, contain about 25 to 50 individuals (HHP 1990n1. 1990n3, 1990n5). *Lipochaeta lobata* var. *leptophylla* typically grows in dry shrubland at an elevation of 1,500 to 2,500 ft (460 to 760 m) (HHP 1990n1. 1990n2, 1990n4). Associated species include 'a'ali'i, 'ala'ala' wai nui, koa haole, and ko'oko'olau (HHP 1990n1). The major threats to *Lipochaeta lobata* var. *leptophylla* are competition from alien plant species (Christmasberry, koa haole, and molasses grass), fire, and the small number of extant individuals.

Gray (1861) described *Lipochaeta tenuifolia* from specimens collected during the U.S. Exploring Expedition in 1840. The species epithet refers to the narrow leaflets of the three-parted, palmately compound leaves.

Lipochaeta tenuifolia, a member of the aster family (Asteraceae), is a low growing, somewhat woody perennial herb with short, more or less erect branches. The branches are 10 ft (3 m) long or longer and root along the lower surface. The oppositely arranged leaves are divided into three lobes so deeply that they appear to be six leaves; each lobe is divided to the midrib into fine segments. Flower heads are single or in clusters of two. The involucral bracts are 0.2 to 0.3 in (5 to 7.5 mm) long. Ray florets, on the outer portion of the flower head, are yellow, number 8 to 10 per head, and measure 0.3 to 0.5 in (8 to 11.5 mm) long. Disk florets, in the center of the flower head, are also yellow, number 20 to 30 per head, are 5-parted, and measure about 0.1 in (2.7 to 3 mm) long. The fruits are bumpy achenes with tiny wings, and measure 0.07 to 0.09 in (1.8 to 2.4 mm) long by 0.04 to 0.06 in (1.1 to 1.5 mm) wide. Its five-parted disk florets and its deeply cut, stalkless leaves separate this species from other members of the genus. (Degener and Greenwall 1959b, Gardner 1979, Wagner *et al.* 1990).

Lipochaeta tenuifolia occurs in the northern half of the Waianae Mountains, from Kaluakauila Gulch to Kamaileunu Ridge and east to Mt. Kaala on State-owned land (HHP 1990o1 to 1990o7). It has not been found anywhere else (HHP 1990o8). The 7 known populations, which extend over a distance of about 6 by 5 mi (10 by 8 km), contain an estimated 400 to 600 individuals (HHP 1990o1 to 1990o8; HPCC 1990f). *Lipochaeta tenuifolia* typically grows on ridgetops and bluffs in open areas and protected pockets of diverse mesic forest dominated by Christmasberry and 'ohi'a at an elevation of 1,200 to 3,000 ft (370 to 900 m) (HHP 1990o1, 1990o3 to 1990o7; Wagner *et al.* 1990). Associated species include ko'oko'olau, molasses grass, and *Ageratina riparia* (Hamakua pamakani), (HHP 1990o1, 1990o2, 1990o4 to 1990o6; HPCC 1990f). The major threats to *Lipochaeta tenuifolia* are habitat degradation by feral goats and pigs, competition for light and space from alien plant species (Christmasberry, koa haole, molasses grass, and strawberry guava), and fire.

Lobelia niihauensis was described by St. John in 1931, based on a specimen he had collected on the island of Niihau (St. John 1931). Thomas G. Lammers (1990), in his revision of the ganus, believed *L. niihauensis* to be conspecific with a Kauai plant previously published by Amos Arthur Heller and named *L. tortuosa* (Heller 1897). When Lammers combined the taxa he was required to use the name *Niihauensis*. Although *tortuosa* is an older name, it had been given to another member of the genus by Carl Ernst Kuntze six years prior to Heller's publication. Other published names which refer to this taxon are: *L. niihauensis* var. *forbesii* (St. John 1939), *L. niihauensis* var. *meridiana* (St. John 1939), *L. tortuosa* f. *glabrata* (Skottsberg 1926), *L. tortuosa* var. *haupuensis* (St. John 1987b), and *L. tortuosa* var. *intermedia* (St. John 1939). In 1965, Otto and Isa Degener proposed a new genus to honor F.E. Wimmer, a distinguished student of the lobelia family. They later transferred 19 taxa to the new genus (Degener and Degener 1965). This genus has not been accepted by any other botanical authority. The synonyms resulting from this transfer which can be applied to *L. niihauensis Neowimmeria niihauensis* and *N. tortuosa* (Degener and Degener 1965), as well as *N. intermedia*, *N. meridiana*, *N. niihauensis* var. *forbesii*, and *N. tortuosa* var. *glabrata* (Degener and Degener 1974).

Lobelia niihauensis, a member of the bellflower family (Campanulaceae), is a low, branched shrub. Each branch ends in a rosette of leaves, which are 2.8 to 5.9 in (7 to 15 cm) long and 0.3 to 0.7 in (0.7 to 1.8 cm) wide. Magenta flowers are clustered at the ends of branches and produced an egg-shaped capsule 0.2 to 0.3 in (6 to 8 mm) long with many small brownish seeds. This species is distinguished from others in the genus by its leaves lacking or nearly lacking leaf stalks, the magenta-colored flowers, the width of the leaf, and length of the flower (Lammers 1990, Rock 1919).

Historically, *Lobelia niihauensis* was known from the Waianae Mountains of Oahu, from Uluhulu Gulch to Nanakuli Valley; from western Kauai, from Limahuli Valley to near the Hanapepe River as well as in the east at Nounou Mountain; and from the island of Niihau (HHP 1990p1, 1990p7, 1990p10, 1990p12, 1990p13, 1990p19). It is now known to be extant only on Kauai and Oahu. On Oahu, this species remains on Kamaileunu Ridge, Makaha-Waianae Kai Ridge, Makua-Keaau Ridge, and in Nanakuli Valley, on State and private land (HHP 1990p2 to 1990p8). On Kauai, this species is found in Waimea Canyon, on Polihale Ridge, and along the Na Pali Coast, on State and private land (HHP 1990p9, 1990p11, 1990p14 to 1990p22). The 19 known populations, which extend over a distance of about 10 by 5 mi (16 by 8 km) on Oahu and 10 by 8 mi (16 by 13 km) on Kauai, contain an estimated 400 to 1,300 individuals (HHP 1990p2 to 1990p9, 1990p11, 1990p14 to 1990p22; J. Lau, pers. comm., 1990; Tim Flynn, Botanist, National Tropical Botanical Garden, Lawai, Kauai, pers. comm., 1990; Steven Perlman, Plant Collector, HPCC, Lawai, Kauai, pers. comm., 1990). *Lobelia niihauensis* typically grows on exposed mesic to dry cliffs at an elevation of 410 to 2,720 ft (125 to 830 m) (HHP 1990p14, Lammers 1990). Associated species include daisy fleabane, kawelu, nehe, and *Artemisia* ('ahinahina) (HHP 1990p3, 1990p16, 1990p22). On Oahu, the major threats to *Lobelia niihauensis* are trampling by feral pigs, habitat degradation and predation by feral goats, fire, competition from alien plant species (Christmasberry, koa haole, and molasses grass), and trampling by humans on or along trails. On Kauai, the major threats are habitat degradation and predation by goats and competition from alien plant species.

On the basis of a 1912 collection by Forbes, Richard S. Cowan (1949) described *Neraudia angulata*, choosing the specific epithet in reference to the angled character of the mature calyx of the female flower. He and Degener (Cowan 1949) described var. *dentata*, which is closely sympatric with the nominative variety but is currently recognized as a distinct taxon (Wagner *et al.* 1990).

Neraudia angulata, a member of the nettle family (Urticaceae), is an erect shrub to 10 ft (3 m) tall. Leaves are thin and elliptic to oval in outline. They are 2.8 to 5.9 in (7 to 15 cm) long and 1.2 to 2.2 in (3 to 5.5 cm) wide. The upper leaf surface has a few silky hairs, and the lower surface is moderately hairy. Flowers are male or female and grow on different plants. The female flowers produce a dry-walled fruit which is surrounded by fleshy, fused sepals. This species is distinguished from other species in its genus by the conspicuously angled, ridged, fleshy calyx in the female flower (Degener and Greenwell 1950c, 1950d; Wagner *et al.* 1990).

Historically, *Neraudia angulata* was known from almost the entire length of the Waianae Mountains, from Kaluakauila Gulch nearly to Puu Manawahua (HHP 1990q1, 1990q3, 1990q5; Wagner *et al.* 1990). This species remains in Kahanahaiki-Makua Ridge, Kaluakauila Gulch, Makaha-Waianae Kai Ridge, Puu Kanehoa, and Puu Kumakalii (HHP 1990q1, 1990q2, 1990q6 to 1990q8) on Federal, State, and private land (HHP 1990q1, 1990q2, 1990q6 to 1990q8). The 5 known populations, which extend over a distance of about 11 by 1 mi (18 by 1.6 km), are estimated to contain fewer than 15 individuals (HHP 1990q1, 1990q2, 1990q4, 1990q6 to 1990q8, 1990q10). *Neraudia angulata* typically grows on slopes, ledges, or gulches in diverse mesic forest dominated by lama, at an elevation of 1,200 to 2,700 ft (370 to 820 m) (HHP 1990q1, 1990q6 to 1990q10; Wagner *et al.* 1990). Associated species include aulu, Christmasberry, and *Nestegis sandwicensis* (olopua) (HHP 1990q3, 1990q6 to 1990q9). The major threats to *Neraudia angulata* are habitat degradation by feral goats and pigs, competition from alien plant species (Christmasberry, molasses grass, and strawberry guava), fire, and the small number of extant individuals.

Hillebrand (1888) discovered *Nototrichium humile* and named the genus for its "remarkable (Latin, *nota*) hairs (Greek, *tricho*)," that is, its extreme hairiness. The species epithet refers to the plant's low-growing habit. The species for a time was transferred to the genus *Psilotrichum* (Drake del Castillo 1892). Sherff (1950) recognized three varieties of this species based on leaf shape and size: var. *humile*, var. *parvifolium*, and var. *subrhomboideum*. These varieties were not accepted in the most recent treatment of the genus (Wagner *et al.* 1990).

Notorichium humile, a member of the amaranth family (Amaranthaceae), is an upright to trailing shrub with branched stems to 5 ft (1.5 m) long. Stems and young leaves are covered with short hairs. Leaves are oppositely arranged, oval to oblong in outline, 1.2 to 3.5 in (3 to 9 cm) long, and 0.8 to 2.0 in (2 to 5 cm) wide. Stalkless flowers are arranged in a spike 1.2 to 5.5 in (3 to 14 cm) long and are at the ends of the stem. Membranous bracts grow below each flower. Two of the bracts and the sepals fall off with the mature fruit, which is 0.08 in (2 mm) long. This species is distinguished from the only other species in the genus by its inflorescence, a slender spike 0.2 in (4 mm) in diameter, or less, which is covered with short hair (Degener and Greenwell 1952a, 1956a; Sherff 1951a; Wagner *et al.* 1990).

Historically, *Nototrichium humile* was known from the entire length of the Waianae Mountains, from near Kaena Point to Nanakuli Valley, and from Lualailua Hills on East Maui (HHP 1990r3, 1990r6, 1990r9, Wagner *et al.* 1990). This species is extant an Oahu in Kahanahaiki Valley, Kealia, Makaha-Waianae Kai Ridge, Makua Valley, Nanakuli Valley, Pahole Gulch, and Waianae Kai on State and private land (HHP 1990r1, 1990r2, 1990r4, 1990r5, 1990r7 to 1990r12). It is also extant in Maui's Lualailua Hills on State land (HHP 1990r3). Ten of the 11 known populations extend over a distance of about 13 by 2 mi (22 by 3 km) in the Waianae Mountains, and, together with the Maui population, total an estimated 1,500 to 3,000 individuals (HHP 1990r1 to 1990r5, 1990r7 to 1990r12; J. Lau, pers. comm, 1990). *Nototrichium humile* typically grows at an elevation of 200 to 2,300 ft (60 to 700 m), on cliff faces, gulches, or steep slopes in remnants of open dry forests often dominated by aulu or lama (HHP 1990r2, 1990r5, 1990r7 to 1990r9, 1990r11, 1990r12; Wagner *et al.* 1990). Associated species include Christmasberry, kukui, and olopua (HHP 1990r1, 1990r2, 1990r7 to 1990r9, 1990r11, 1990r13). On both Oahu and East Maui, the major threats to *Nototrichium humile* are habitat degradation by feral goats, pigs, and cattle; competition from alien plant species (Christmasberry, koa haole, molasses grass, and strawberry guava); and fire.

Soon after erecting the genus *Phyllostegia*, George Bentham (1831) described *Phyllostegia mollis* in reference to its soft pubescence. Other published names referring to this taxon are *P. parviflora* var. *mollis* (Gray 1861), *P. haliakalae* (Wawra 1872), *P. honolulensis* (Wawra 1872), and *P. parviflora* var. *honolulensis* (Sherff 1934c). Sherff's concept of *P. mollis* was broader than that accepted in the most recent treatment of the genus (Wagner *et al.* 1990), and many varieties he described are now referred to other species: var. *skottsbergii* (Sherff 1939), var. *fagerlindii* (Sherff 1949), and var. *hochreutineri* (Sherff 1953) are now included in *P. electra* (Forbes 1916); var. *glabrescens* (Sherff 1952) in *P. stachyoides* (Gray 1861); var. *micrantha* (Sherff 1934a) in *P. imminuta* (St. John 1976); and var. *lydgatei* (Sherff 1934a) in *P. parviflora* (Bentham 1831). Fosberg (1942) described *P. mollis* var *resinosa* based on a specimen of *P. electra*. Most recently, St. John (1987a) published many species, varieties, and combinations in *Phyllostegia*, however, most botanists do not recognize this treatment (Wagner *et al.* 1990).

Phyllostegia mollis, a member of the mint family (Lamiaceae), grows as a nearly erect, densely hairy, nonaromatic, perennial herb. Leaves are oval in outline with rounded teeth and usually are 3.9 to 9.4 in (10 to 24 cm) long and 1.3 to 2.8 in (3.3 to 7 cm) wide. Flowers, usually in groups of 6, are spaced along a stem 3.1 to 6.7 in (8 to 17 cm) long; there are 2 shorter flowering stems directly below the main stem. The flowers have fused sepals which are 0.1 to 0.2 in (3 to 4 mm) long and white petals 0.3 to 0.5 in (8.5 to 12 mm) long fused into a tube and flaring into a smaller upper and a larger lower lip. Fruits are fleshy, dark green to black nutlets about 0.1 in (2 to 3 mm) long. A suite of technical characters concerning the kind and amount of hair, the number of flowers in a cluster, and details of the various plant parts separate this species from other members of the genus (Degener 1935, Sherff 1935b, Wagner *et al.* 1990).

Historically, *Phyllostegia mollis* was known from the central and southern Waianae Mountains, from Mt. Kaala to Honouliuli, and from Makiki in the Koolau Mountains of Oahu (HHP 1990s3 to 1990s5, Wagner *et al.* 1990). It also was known from Molokai and East Maui (HHP 1990s6, 1990s7; Wagner *et al.* 1990). This species remains only in Kaluaa Gulch and on Puu Kaua in the Waianae Mountains on Federal and private land (HHP 1990s1; J. Lau, pers. comm., 1990). The 2 known populations,

which are 1.3 mi (2 km) apart, are estimated to contain less than 50 individuals (HHP 1990s1; J. Lau, pers. comm., 1990). *Phyllostegia mollis* typically grows on steep slopes and in gulches in diverse mesic to wet forest at an elevation of 1,500 to 2,800 ft (450 to 860 m) (Wagner *et al* 1990). Associated plants include ferns, kopiko, *Pisonia* (papala kepau), and *Rubus* (raspberry) (HHP 1990s1, 1990s2, 1990s5). The major threats to *Phyllostegia mollis* are competition from the alien plant species, Christmasberry, and the small number of extant populations.

Sanicula mariversa was discovered by Kenneth M. Nagata in 1981, who later described the species in a publication with Samuel M. Gon, III (Nagata and Gon 1987). The specific epithet refers to the plant's habitat which is on a ridge overlooking the sea.

Sanicula mariversa, a member of the parsley family (Apiaceae), is an upright herb, 16 to 28 in (40 to 70 cm) tall which produces a single branched stem from a sturdy base (caudex) growing just beneath the surface of the soil. There are many heart- to kidney-shaped, leathery, 3- to 5-lobed leaves, 5 to 9 in (13 to 23 cm) wide, growing from the base of the plant. Leaves on the stem become smaller and more deeply lobed the closer they are to the tip of the stem. Flowers are arranged in 1 to 4 more or less flat-topped clusters; each cluster comprises 10 to 20 flowers and is located at the end of the stem or in the leaf axils. Each flower cluster has 8 to 12 bracts beneath it and comprises both male and hermaphroditic flowers. There are 5 nearly circular, fused, toothed, yellow petals, each 0.04 in (1 mm) wide. The egg-shapped fruit is about 0.2 in (4 to 6 mm) long by about 0.1 in (3 to 4 mm) wide, covered with hooked prickles, and separates into 2 single-seeded parts. The larger size of the plant and basal leaves, the color of the flower petals, and the hooked prickles on the fruit separate this species from others of the genus in Hawaii (Constance and Affolter 1990, Nagata and Gon 1987).

Historically, *Sanicula mariversa* was known from the central Waianae Mountains, from Makau-Keaau Ridge to Kaluaa-Lualualei Summit Ridge (HHP 1990t1 to 1990t3). This species is now extant only at Makau-Keaau Ridge on State-owned land (HHP 1990t1, 1990t3). The 2 known populations, which are about 0.4 mi (0.6 km) apart, contain fewer than 100 individuals (HHP 1990t1, 1990t3; J. Lau, pers. comm., 1990). *Sanicula mariversa* typically grows on well-drained, dry slopes at an elevation of 2,500 to 2,800 ft (750 to 850 m) (HHP 1990t4, Wagner *et al.* 1990). Associated species include Hamakua pamakani, kawelu, and 'ohi'a (HHP 1990t1, 1990t4; HPCC 1990g). The major threats to *Sanicula mariversa* are habitat degradation by feral goats, fire, competition from alien plant species (Christmasberry and molasses grass), trampling by humans on or near trails, and the small number of populations.

In 1873 Wawra described *Schiedea kaalae* based upon a specimen he had collected three years earlier. The specific epithet refers to the geographical range of the plant, which is on the slopes of Mt. Kaala on Oahu. Sherff (1943) later recognized an additional variety, var. *acutifolia*, based upon a minor difference in the leaf. This variety is no longer accepted (Wagner *et al.* 1990).

Schiedea kaalae, a member of the pink family (Caryophyllaceae), has a short woody caudex less than 8 in (20 cm) long. The thick, single-veined leaves are bunched at the top of the stem; they are long and elliptic or broader toward the tip and can reach a length of 9.4 in (24 cm) and a width of 2.4 in (6 cm). Flowers are in an open, much branched inflorescence (panicle) usually 8 to 16 in (20 to 40 cm) long. The flowers lack petals, but have purple bracts and sepals, which are 0.1 to 0.2 in (3 to 4 mm) long. Stamens and nectaries each number 5 and are about 0.2 in (4 to 5 mm) long. Capsules are about 0.2 in (4 mm) long, and seeds are dark grayish brown and about 0.04 in (1 mm) long. This species can be distinguished from other members of its genus by its very short stems and its thick leaves with one conspicuous vein (Degener 1938c, Degener and Degener 1956, Sherff 1945, Wagner *et al.* 1990).

Historically, *Schiedea kaalae* was known from the north-central and south-central Waianae Mountains and the northern Koolau Mountains of Oahu (HHP 1990u2, 1990u4, 1990u5, 1990u7). This species remains at Huliwai, Makaleha, Mokuleia, Pahole Gulch, and Puu Hapapa in the Waianae Mountains and at Kaipapau and Punaluu in the Koolau Mountains (HHP 1990u1 to 1990u7, Wagner *et al.* 1990). The 5 known populations in the Waianae Mountains, which are distributed over a distance of about 10 by 1 mi (16 by 1.6 km), and the 2 known populations in the Koolau Mountains, which are about 3 mi (5 km) apart, contain fewer than 100 individuals (HHP 1990u1 to 1990u7; J. Lau, pers. comm., 1990). *Schiedea kaalae* typically grows on steep slopes and shaded sites in diverse mesic forest at an elevation of 700 to 2,600 ft (210 to 790 m) (HHP 1990u6, 1990u7). Associated species include kukui, *Athyrium sandwicensis*, *Delissea subcordata*, and *Pisonia umbellifera* (papala kepau) (HHP 1990u2 to 1990u5, 1990u7; HPCC 1990h). The major threats to *Schiedea kaalae* are habitat degradation by feral pigs and goats, competition from alien plant species (Christmasberry, huehue haole, Koster's curse, molasses grass, and *Myrica faya* (firetree)), fire, and the small number of extant individuals.

Steven Perlman and John Obata discovered *Silene perlmanii* in 1987. It was described by Warren L. Wagner, D.R. Herbst, and S.H. Sohmer (1989), and named in honor of one of its discoverers.

Silene perlmanii, a member of the pink family (Caryophyllaceae), is a perennial plant with stems that are woody at the base. It usually is much branched from the base and often forms clumps. Stems are 12 to 20 in (30 to 50 cm) long, and leaves are in the shape of narrow ellipses 2 to 4 in (5 to 10.5 cm) long and 0.3 to 0.6 in (7 to 16 mm) wide. A few flowers are arranged in clusters at the ends of stems. Each flower has fused sepals 0.9 to 1.2 in (22 to 30 mm) long with 5 lobes and white, deeply notched petals 0.3 to 0.4 in (8 to 10 mm) long. Mature capsules have not been seen. It is the only species of the genus on Oahu and can be distinguished from other *Silene* species by its white petals and a calyx which is more than 0.7 in (19 mm) long and densely covered with short hairs (Wagner *et al.* 1990).

Silene perlmanii isa known from the southern Waianae Mountains, between Palikea and Pohakea Pass on privately owned land (HHP 1990v1; Wagner *et al.* 1990). No other localities are known for this recently discovered species (HHP 1990v2). The 1 known population contains 10 to 20 individuals (J. Lau, pers. comm., 1990). *Silene perlmanii* typically grows on cliff faces in diverse mesic forest at an elevation of 2,600 ft (790 m) (Wagner *et al.* 1990). Associated species include *Plantago princeps* (laukahi kuahiwi) (HHP 1990v1). The major threats to *Silene perlmanii* are competition from alien plant species (Christmasberry, firetree, and molasses grass), and the small number of extant individuals.

Tetramolopium filiforme was collected by Hillebrand in 1869 and described by Sherff (1934b) in his monograph of the genus. Sherff named the species *filiforme* because of its very narrow leaves. In the same monograph, Sherff (1934b) described *Tetramolopium polyphyllum* based upon a plant collected by Wawra in 1870 during the Austrian East Asian Exploring Expedition. In a recent revision of the genus, Timothy K. Lowrey (1986, 1990)

recognized *T. polyphyllum* as a variety of *T. filiforme*.

Tetramolopium filiforme, a member of the aster family (Asteraceae), is a dwarf shrub from 2 to 6 in (5 to 15 cm) tall with complexly branched stems. Leaves are much longer than wide, from 0.4 to 0.8 in (1 to 2 cm) long and 0.02 to 0.05 in (0.4 to 1.2 mm) wide. Flower heads are single or grouped in clusters of 2 to 4, each having a bell-shaped involucre 0.2 in (4 to 5 mm) high and 0.3 to 0.4 in (7 to 10 mm) in diameter. There are 35 to 52 white or pale lavender petals (ray florets) in a single circle at the edge of the head, each 0.1 to 0.2 in (3 to 4 mm) long. There are 18 to 30 maroon (rarely yellow) disk florets in the center of each head. The ray florets are female, while the disk florets function as male flowers. Fruits are achenes, less than 0.1 in (3 mm) long and up to 0.04 in (1 mm) wide. This species is distinguished from the other extant species on Oahu by its separate male and female flowers both on the same plant, and its inflorescence of one to four heads (Lowrey 1986, Sherff 1935a).

Historically, *Tetramolopium filiforme* was known from the northern Waianae Mountains, from Ohikilolo Ridge, Keaau Valley, and Makaha Valley (HHP 1990w5 to 1990w7, Lowrey 1990). This species remains on in Keaau Valley and on Ohikilolo Ridge on State land (HHP 1990wl to 1990w4, 1990w7; Lowrey 1990). The 5 known populations, which are distributed over a distance of about 1.4 by 0.5 mi (2.3 by 0.8 km), are estimated to contain fewer than 500 individuals (HHP 1990wl to 1990w4, 1990w8). *Tetramolopium filiforme* typically grows on dry cliff faces and ridges at an elevation of 1,100 to 3,000 ft (340 to 900 m) (HHP 1990w2, 1990w7). Associated species include 'a'ali'i, *Artemisia australis* ('ahinahina), and *Schiedea mannii* (HHP 1990w2, 1990w4, 1990w7). The major threats to *Tetramolopium filiforme* are habitat degradation by feral goats, competition from alien plant species (Christmasberry, koa haole, molasses grass, and *Erigeron karvinskianus* (daisy fleabane)), fire, and trampling or collection by humans on or near trails.

Tetramolopium lepidotum ssp. *lepidotum* was described by Sherff (1934b) in his monograph of the genus. Other names which have been applied to this taxon are *Erigeron lepidotus* (Lessing 1831), *E. pauciflorus* (Hooker and Arnott 1830–1941), *E. tennerrimus* var. *lepidotus* (Drake del Castillo 1888), *T. chamissonis* var. *luxurians* (Hillebrand 1888), *T. lepidotum* var. *luxurians* (Sherff 1934b), and *Vittadinia chamissonis* (Gray 1861).

Tetramolopium lepidotum ssp. lepidotum, a member of the aster family (Asteraceae), is an erect shrub 4.7 to 14 in (12 to 36 cm) tall, branching near the ends of the stems. Leaves of this taxon are lance-shaped, wider at the leaf tip, and measure 1.0 to 1.8 in (25 to 45 mm) long and 0.04 to 0.3 in (1 to 7 mm) wide. Flower heads are arranged in groups of 6 to 12. The involucre is bell-shaped and less than 0.2 in (4 mm) high. Florets are either female or bisexual, with both occurring on the same plant. There are 21 to 40 white to pinkish-lavender ray florets 0.04 to 0.08 in (1 to 2 mm) long on the periphery of each head. In the center of each head there are 4 to 11 maroon to pale salmon disk florets. The fruits are achenes, 0.06 to 0.1 in (1.6 to 2.5 mm) long and 0.02 to 0.03 in (0.5 to 0.8 mm) wide. This species can be distinguished from the other extant species on Oahu by its hermaphroditic disk flowers and its inflorescence of 6 to 12 heads (Degener 1937b; Lowrey 1986, 1990; Sherff 1935a).

Historically, *Tetramolopium lepidotum* ssp. *lepidotum* was known from nearly the entire length of the Waianae Mountains, from Makua Valley to Kaaikukae Ridge, as well as from the island of Lanai (HHP 1990x1, 1990x3, 1990x5; Lowrey 1990). This taxon remains in the Waianae Mountains on Mauna Kapu and Puu Kaua on Federal and private land (HHP 1990x1 to 1990x3). The 3 known populations, which extend over a distance of about 2.5 mi (4 km), are estimated to contain fewer than 100 individuals (HHP 1990x1 to 1990x3, 1990x6). *Tetramolopium lepidotum* ssp. *lepidotum* typically grows on grassy ridgetops, slopes, or west-facing cliffs in mesic forest at an elevation of 1,200 to 3,100 ft (370 to 940 m) (HHP 1990x2, 1990x4; Lowrey 1990). Associated species include daisy fleabane, firetree, ko'oko'olau, and 'ohi'a (HHP 1990x1, 1990x2; HPCC 1990i). The major threats to *Tetramolopium lepidotum* ssp. *lepidotum* are competition from alien plant species (Christmasberry, daisy fleabane, firetree, and molasses grass), trampling or collection by humans on or along trails, and the small number of populations.

Urera Kaalae was first collected by Chamisso in the early 1800s, and later rediscovered and described by Wawra (1874). The specific epithet refers to the geographical range of the species.

Urera kaalae, a member of the nettle family (Urticaceae), is a small tree or shrub 10 to 23 ft (3 to 7 m) tall. The sap of the plant becomes greenish black when exposed to air. Leaves are pale green, thin and membranous, heart-shaped, 4 to 11 in (10 to 27 cm) long by 2 to 5 in (5 to 13 cm) wide, with 3 main veins and toothed margins. Flowers are either male or female and may grow on the same or different plants. They are arranged in three-branched inflorescences. Sepals of male flowers are fused into rather globe-shaped structures about 0.06 in (1.5 mm) long. Sepals of female flowers are less than 0.04 in (1 mm) long, and the inner pair becomes slightly fleshy to enclose the achene along about half of its 0.04 in (1 mm) length (Degener 1936, Wagner *et al.* 1990). This species can be distinguished from the other Hawaiian species of the genus by its heart-shaped leaves.

Historically, *Urera kaalae* was known from the central to southern windward Waianae Mountains, from Waianae Uka to Kupehau Gulch (HHP 1990y3, 1990y4; Wagner *et al.* 1990). This species now occurs only in Ekahanui and Kaluaa gulches on privately owned land (HHP 1990y1, 1990y2, 1990y6). The 3 known populations, which are sparsely distributed over a distance of about 2 by 0.1 mi (3 by 0.2 km), contain no more than 19 individuals (HHP 1990y6; HPCC 1990j; S. Perlman, pers. comm., 1990). *Urera kaalae* typically grows on slopes and in gulches in diverse mesic forest dominated by papala kepau at an elevation of 980 to 2,700 ft (300 to 820 m) (HHP 1990y5; Wagner *et al.* 1990). Associated species include huehue haole, mamaki, and *Psidium guajava* (guava) (HHP 1990y6; HPCC 1990j). The major threats to *Urera kaalae* are habitat degradation by feral pigs, competition from alien plant species (Christmasberry, daisy fleabane, firetree, huehue haole, molasses grass, and strawberry guava), fire, and the small number of extant individuals.

First collected in 1817 by Johann Friedrick Eschscholz, surgeon on a Russian world exploring expedition, *Viola chamissoniana* was named by Gingins (1826) in honor of Chamisso, the botanist on the expedition. the name *V. chamissoniana* as used by Hillebrand (1888) included the taxon presently known as *v. chamissoniana* ssp. *tracheliifolia*; his *V. helioscopia* is now referred to as ssp. *chamissoniana* (Wagner *et al.* 1990.)

Viola chamissioniana ssp. *chamissoniana*, a member of the violet family (Violaceae), is a branched shrub up to 3 ft (90 cm) tall. The toothed leaves, usually clustered at branch tips, are triangular-oval to heart-shaped in outline and measure about 0.8 to 1.6 in (2 to 4 cm) long. Each flowering stalk produces 1 or 2 flowers with 5 sepals which are 0.2 to 0.4 in (5 to 9 mm) long and 5 white, purple-tinged petals which

are 0.4 to 0.9 in (10 to 23 mm) long. Capsules are usually 0.5 to 0.7 in (12 to 17 mm) long and contain dark brown to almost black seeds which are about 0.1 in (1.8 to 2.3 mm) long. This subspecies can be distinguished from the other members of the genus in the Waianae Mountains by the small size of its leaves (Degener and Greenwell 1952c, 1956b; St. John 1989; Wagner *et al.* 1990).

Historically, *Viola chamissioniana* ssp. *chamissoniana* was known from the center and southern Waianae Mountains, from Makaleha Valley to Kaaikukai (HHP 1990z1, 1990z5). This taxon now occurs on Kamaileune Ridge, Puu Hapapa, and Puu Kumakalii on Federal and State land (HHP 1990z2 to 1990z4). the 3 known populations, which extend over a distance of about 4.4 by 0.2 mi (7.0 by 0.3 km), contain about 16 individuals (HHP 1990z2 to 1990z4). *Viola chamissioniana* ssp. *chamissoniana* typically grows on dry cliffs in mesic shrubland at an elevation of 2,300 to 3,040 ft (700 to 1,000 m) (HHP 1990z1, 1990z2). Associated species include 'ahinahina, ko'oko'olau, and 'ohi'a (HHP 1990z1 to 1990z4). The major threats to *Viola chamissioniana* ssp. *chamissoniana* are habitat degradation by feral goats; competition from the alien plant species, Christmasberry and molasses grass; and the small number of extant individuals.

Previous Federal Action

Federal action on these plants 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 in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Abutilon sandwicense* (as *Abutilon sandwicense* var. *sandwicense*), *Alsinidendron obovatum*, *Alsinindendron trinerve*, *Chamaesyce celastroides* var. *kaenana* (as *Euphorbia celastroides* var. *kaenana*), *Cyanea pinnatifida* (as *Rollandia pinnatifida*), *Diellia falcata*, *Hedoytis degeneria*, *Hedyotis parvula*, *Hesperomannia arbuscula*, *Lipochaeta lobata* var. *leptophylla*, *Lobilia niihauensis*, *Neraudia angulata*, *Nototrichium humile*, *Phyllostegia mollis*, *Schiedea kealae*, *Tetramolopium lepidotum* ssp. *lepidotum* (as *Tetramolopium lepidotum* var. *lepidotum*), *Urera kaalae*, and *Viola chamissoniana* ssp. *chamissoniana* (as *Viola chamissoniana*) were considered to be endangered, *Lipochaeta tenuifolia* was considered to be threatened, and *Gouania meyenii* as well as *Tetramolopium filiforme* were considered to be extinct. Only July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now) section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine endangered status pursuant to Section 4 of the Act for approximately 1,700 vascular plant species, including all of the above 18 taxa considered to be endangered, plus *Gouania meyenii* and *Tetramolopium filiforme* (both thought to be extinct). *Lipochaeta tenuifolia* was not included in the proposed rule. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, Federal Register publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909). 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) withdrawing the 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 82479), September 27, 1985 (50 FR 39525), and February, 1990 (55 FR 6183). In these notices, 19 of the taxa that had been in the proposed rule were treated as Category 1 Candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the 1980 and 1985 notices, *Gouania meyenii* was included in Category 3A, meaning that the Service believed that the species was extinct. *Gouania meyenii* was included in Category 1 in the 1990 notice after a taxonomic revision combined *G. meyenii* with two other Category 1 species (*G. gagnei* and *G. oliveri*). *Dubautia herbstobatae* was included on the 1980 and subsequent notices as a Category 1 species after it was described by Carr in 1979. The 1990 notice also included *Centaurium sebaeoides*, *Chamaesyce kuwaleana* *Sanicula mariversa*, and *Silene perlmanii* as Category 1 species.

Section 4(b)(3)(B) of the Act 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. 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 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 for these species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) 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). The threats facing these 26 taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Feral animal activity			Alien plants	Fire	Human impacts	Limited numbers [1]
	Pigs	Cattle	Goats				
Abutilon sandwicense		X		X	X		
Alsinidendron obovatum	X			X		X	X
Alsinidendron trinerve	X			X		X	X
Centaurium sebaeoides		X	X	X	X	X	
Chamaesyce celestroides var. *kaenana*				X	X	X	

TABLE 1.—SUMMARY OF THREATS—Continued

Species	Feral animal activity			Alien plants	Fire	Human impacts	Limited numbers [1]
	Pigs	Cattle	Goats				
Chamaesyce Kuwaleana				X	X		X
Cyanea pinnatifida	X			X		X	X
Diellia falcata	X	X	X	X	X		
Dubautia herbstobatae	X		X	X	X	X	X
Gouania meyenii				X	X		X
Hedyotis degeneri	X			X			X
Hedyotis parvula			X	X			X
Hesperomannia arbuscula	X			X		X	X
Lipochaeta lobata var. *leptophylla*				X	X		X
Lipochaeta tenuifolia	X		X	X	X		
Lobelia niihauensis	X		X	X	X	X	
Neraudia angulata	X		X	X	X		X
Nototrichium humile	X	X	X	X	X		
Phyllostegia mollis				X			X
Sanicula mariversa			X	X	X	X	X
Schiedea kaalae	X		X	X	X		X
Silene perlmanii				X			X
Tetramolopium filiforme			X	X	X	X	
Tetramolopium lepidotum ssp. *lepidotum*				X		X	X
Urera kaalae	X			X	X		X
Viola chamissoniana ssp. *chamissoniana*			X	X			X

[1] No more than 100 individuals and/or fewer than 5 populations.

These factors and their application to *Abutilon sandwicense* (Degener) Christoph. (NCN), *Alsinidendron obovatum* Sherff (NCN), *Alsinidendron trinerve* H. Mann (NCN), *Centaurium sebaeoides* (Griseb.) Druce ('awiwi), *Chamaesyce celastroides* (Boiss.) Criozat var. *kaenana* (Sherff) Degener and I. Degener ('akoko), *Chamaesyce kuwaleana* (Degener and Sherff) Degener and I. Degener (NCN), *Cyanea pinnatifida* (Cham.) F. Wimmer (haha), *Diellia falcata* Brack. (NCN), Dubautia herbstobatae G. Carr (na'ena'e), *Gouania meyenii* Steud. (NCN), *Hedyotis degeneri* Fosb. (NCN), *Hedyotis parvula* (A. Gray) Fosb. (NCN), *Hesperomannia arbuscula* Hilleb. (NCN), *Lipochaeta lobata* (Gaud.) DC var. *leptophylla* Degener and Sherff (nehe), *Lipochaeta tenuifolia* A. Gray (nehe), *Lobelia niihauensis* St. John (NCN), *Neraudia angulata* R. Cowan (NCN), *Nototrichium humile* Hilleb. (kulu'i), *Phyllostegia mollis* Benth. (NCN), *Sanicula mariversa* Nagata and Gon (NCN), *Schiedea kaalae* Wawra (NCN), *Silene perlmanii* W.L. Wagner, Herbst, and Sohmer (NCN), *Tetramolopium filiforme* Sherff (NCN), *Tetramolopium lepidotum* (Less.) Sherff ssp. *lepidotum* (A. Gray) Lowrey (NCN), *Urera kaalae* Wawra (opuhe), and *Viola chamissoniana* Ging. ssp. *chamissoniana* (pamakani) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The native vegetation of the Waianae Mountains and adjacent areas has undergone extreme alterations because of past and present land management practices, including deliberate alien plant and animal introductions, agricultural development, and military use (Frierson 1973, Wagner *et al.* 1985). Degradation of habitat by feral animals and competition with alien plants are considered the greatest present threats to the 26 species being proposed.

Feral pigs (*Sus scrofa*) have been in the Waianae Mountains for about 150 years and are known to be one of the major current modifiers of forest habitats (Stone 1985). Pigs damage the native vegetation by rooting and trampling the forest floor and encourage the expansion of alien plants that are better able to exploit the newly tilled soils than are native species (Stone 1985). Pigs also disseminate alien species through their feces and on their bodies, accelerating the spread of alien plant species within the native forest. Present throughout the Waianae Mountains in low numbers, feral pigs pose a significant threat to the native flora (HHP 1987a, 1987b; J. Lau, pers. comm., 1990). For example, digging was noted in the wet summit forests within honouliuli in the southern Waianae Mountains where two of the proposed plant species (*Cyanea pinnatifida* and *Urera kaalae*) are restricted (HHP 1987a). In Pahole Gulch in the northwestern Waianae Mountains, a population of pigs, which are thriving as the result of insufficient hunting pressure, threatens at least two of the proposed plant species, *Alsinidendron trinerve* and *Schiedea kaalae* (Nagata 1980). Of the 26 plant species, 13 are threatened or already have sustained loss of individual plants or habitat as the result of feral pig activity (see Table 1) (HHP 1990b3, 1990i7, 1990p23, 1990u2; HPCC 1990e, 1990j; Nagata 1980; J. Lau and S. Perlman, pers. comms., 1990).

Although feral cattle (*Bos taurus*) were eliminated from Oahu by the mid-1900s (Stone 1985), the effects of cattle ranching have left an indelible scar on the native low to mid-elevation forests of the Waianae Mountains. Much of the forest between 700 and 1,800 ft (210 and 550 m) in elevation has been destroyed by cattle and feral goats (*Capra hircus*) (Cuddihy and Stone 1990), effectively restricting the native vegetation to higher elevations (Nagata 1980). Cattle ranching still continues in the Mokuleia area on the west side of the Waianae Mountains. Taking advantage of the natural barrier of its slopes, ranchers have not installed adequate fences to contain the cattle. Some cattle escape into the upland forest (J. Lau, pers. comm., 1990) where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Scott *et al.* 1986). Species such as *Abutilon sandwicense, Diellia falcata,* and *Nototrichium humile* have been detrimentally affected by the activities of cattle (J. Lau, pers. comm., 1990). Cattle grazing also is considered a threat to the population of *Centaurium sebaeoides* on Maui (HHP 1990d5).

Goats have been on Oahu for the past 170 years. Because of their commercial value in the 1820's, goats were allowed to proliferate throughout the Waianae Mountains without the confines of fences (Culliney 1988). As the result of their agility, goats were able to reach more remote areas than pigs or cattle.

Goats (and cattle) are responsible for the destruction of most of the lower elevation dryland forests of Oahu (Stone 1985). The impact of feral goats on the native vegetation is similar to that described above for cattle (Scott *et al.* 1986). Successful control efforts decreased the goat population significantly by 1905 (Gill *et al.* 1989). Although their estimated current numbers are low, there continues to be a problem of trampling and grazing by goats in areas where 12 of the 26 plant taxa now occur (Culliney 1988). Erosion is a serious direct effect of grazing and trampling by feral goats. Through their activities, goats remove the ground cover, exposing the soil to erosional actions, thereby further degrading the habitat (J. Lau, pers. comm., 1990). Encroaching urbanization and hunting pressure tend to restrict goats to the drier upper slopes of the Waianae Mountains (Tomich 1986). The dry to mesic habitat of *Diellia falcata, Dubautia herbstobatae, Hedyotis parvula, Lipochaeta tenuifolia, Lobelia niihauensis, Neraudia angulata, Nototrichium humile, Sanicula mariversa, Schiedea kaalae, Tetramolopium filiforme,* and *Viola chamissoniana* ssp. *chamissoniana* in the Waianae Mountains is being heavily degraded by these animals (HHP 1990i1, 1990o1, 1990p4, 1990q4, 1990r2, 1990u2, 1990w1, 1990z6; J. Lau, pers. comm., 1990). A population of *Centaurium sebaeoides* in similar habitat on West Maui was recently destroyed by goats (HHP 1990d3).

Habitat degradation by goats, cattle, or pigs is a likely threat to the populations of these plant taxa whose distributions extend beyond the Waianae Mountains to elsewhere on Oahu, Kauai, Molokai, or Maui (*Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce kuwaleana, Hesperomania arbuscula, Lobelia niihauensis, Nototrichium humile,* and *Schiedea kaalae*). The adverse impacts of these animals on these seven proposed plant taxa is similar to the effects observed in the Waianae Mountains.

All of the 26 Waianae plant species being proposed for listing are threatened by competition from one or more alien plant species. *Schinus terebinthifolius* (Christmasberry), an aggressive tree introduced to Hawaii before 1911 as an ornamental, has had particularly detrimental impacts (Cuddihy and Stone 1990). This fast-growing alien plant is able to form dense thickets, displacing other plants; it also may release a chemical that inhibits the growth of other species (Smith 1985). As early as the 1940s, Christmasberry had invaded the dry slopes of Oahu; it is now replacing the native vegetation of much of the southern Waianae Mountains (Cuddihy and Stone 1990). Christmasberry is gradually invading other areas of the Waianae Mountains as well, and now is found on nearly all the other Hawaiian Islands; it now threatens to occupy the habitat of 20 of the 26 plant species being proposed (HHP 1990a1, 1990o5, 1990q2, 1990r14, 1990t4, 1990z6; HPCC 1990d; J. Lau, pers. comm., 1990).

The native vegetation of the leeward ridges of the Waianae Mountains, especially Ohikilolo, Kamaileunu, and Kumaipo ridges, is being replaced by *Melinus minutiflora* (molasses grass), another aggressive alient plant species. This species and Christmasberry are considered the two most serious alient plant problems in these areas (J. Lau, pers. com., 1990). Molasses grass ranges from the dry lowlands to the lower wet forests, especially in open areas with sparse vegetation and is distributed on the other islands as well. This fire-adapted grass produces a dense mat capable of smothering plants, provides fuel for fires, and carries fires into areas with native woody plants (Cuddihy and Stone 1990). Because most native forest species are not fire-adapted, molasses grass is able to exploit freshly burned areas (J. Lau, pers. comm., 1990). Populations of 19 of the 26 proposed taxa located on leeward slopes and ridges are most vulnerable to molasses grass (J. Lau, pers. comm., 1990).

Myrica faya (firetree), a species that was introduced before 1900 as an ornamental or for firewood, inhabits dry to mesic habitats on most of the Hawaiian Islands (Cuddihy and Stone 1990). The Territory of Hawaii planted firetree in the Waianae Mountains in the 1920s for reforestation. It now forms a dense stand near Palikea in the Honouliuli Forest Reserve and has spread approximately two mi (three km) to the north (Whiteaker and Gardner 1985) where it poses a threat to the habitat of *Schiedea kaalae, Silene perlmanii, Tetramolopium lepidotum* ssp. *lepidotum,* and *Urera kaalae.* The impact of this noxious tree is serious because, given suitable habitat, firetree can form a dense closed canopy to the exclusion or detriment of other plants. This plant also produces nitrogen, making it adaptable to habitats with low nitrogen soils and an excellent competitor with native plants that have evolved in low nitrogen conditions (Cuddihy and Stone 1990).

Psidium cattleianum (strawberry guava), a pervasive alien tree in the southern Waianae Mountains, is distributed mainly by feral pigs and fruit-eating birds (Smith 1985). It also is found on the other Hawaiian Islands. Like Christmasberry and firetree, strawberry guava is capable of forming dense stands to the exclusion of other plant species (Cuddihy and Stone 1990). Populations of *Diellia falcata, Gouania meyenii, Hedyotis degeneri, Hesperomannia arbuscula, Lipochaeta tenuifolia, Neraudia angulata, Nototrichium humile,* and *Urera kaalae* are immediately threatened by competition with this alien plant (HPCC 1990e; Obata 1988; J. Lau, pers. comm., 1990).

Leucaena leucocephala (koa haole) is an alien tree usually seen in disturbed lowland areas on the Hawaiian Islands. Originally introduced as fodder (Smith 1989), it is now widely distributed in dry and mesic forests that are the habitat for *Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce kuwaleana, Dubautia herbstobatae, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia niihauensis, Nototrichium humile,* and *Tetramolopium filiforme* (J. Lau, pers. comm., 1990). Like firetree, koa haole is an aggressive competitor that produces its own nitrogen.

Clidemia hirta (Koster's curse), a noxious shrub first cultivated in Wahiawa on Oahu, spread to the Koolau Mountains in the early 1960s, where it is now rapidly displacing native vegetation. Koster's curse spread to the Waianae Mountains around 1970 and is now widespread throughout Honouliuli (Cuddihy and Stone 1990, Culliney 1988). It has recently spread to other Hawaiian Islands (Cuddihy and Stone 1990). This species forms a dense understory, shading other plants and hindering plant regeneration (HHP 1987a). At present, Koster's curse threatens to replace four of the proposed plant species (*Abutilon sandwicense, Cyanea pinnatifida,* and *Hesperomannia arbuscula*) in the Waianae Mountains, and *Schiedea kaalae* in the Koolau Mountains (HHP 1990a1; J. Lau and S. Perlman, pers. comms., 1990).

Rubus argutus (blackberry), recognized as a noxious weed by the Hawaii State Department of Agriculture (Cuddihy and Stone 1990), poses a serious threat to *Alsinidendron trinerve* and *Hesperomannia arbuscula* (HHP 1990c1; HPCC 1990e; Paul Higashino, Maui Preserves Naturalist, The Nature Conservancy of Hawaii, pers. comm., 1990). Blackberry occurs in the Waianae Mountains between 3,300 and 7,500 ft (1,000 and 2,300 m) in elevation, where it

forms impenetrable thickets in disturbed areas (Smith 1985). Its distribution includes the other Hawaiian Islands.

Passiflora suberosa (huehue haole), a vine that smothers small plants in the subcanopy of dryland habitats (Smith 1985) on Oahu, Maui, and Hawaii, poses an immediate threat to several of the proposed plant species. There are major infestations in the Waianae Mountains and it is a probable threat to all extant populations of *Urera kaalae* and to some populations of *Abutilon sandwicense* and *Diellia falcata* (HPCC 1990j; J. Lau, pers. comm., 1990).

Erigeron karvinskianus (daisy fleabane) is another low-growing alien species that smothers native plants, particularly on cliffs and is fund on most of the Hawaiian Islands. This species threatens *Cyanea pinnatifida, Lobelia niihauensis, Terramolopium filiforme,* and *Tetramolopium lepidotum* ssp. *lepidotum* (S. Perlman, pers. comm., 1990).

Fire threatens 16 of the 26 proposed species, particularly those located upslope from makua Military Reservation and Schofield Barracks, where current firing exercises could unintentionally ignite fires. Within a 14-month period in 1989 and 1990, for example, a total of 10 fires resulted from firing activities in the Makua Military Reservation. Of these, eight occurred outside of the firebreak installed by the Army (Colonel William Chastain, Commanding Officer, U.S. Army Support Command, Fort Shafter, Hawaii, *in litt.*, 1989a, 1989b, 1990a, 1990b). A 300 acre (120 hectare) fire in July 1989 may have consumed a population of *Neraudia angulata*, and came within 0.25 mi (0.4 km) of a population of *Nototrichium humile*. Although most fires have been contained within 0.02 acres (0.01 hectares), the July 1989 fire is evidence of the potential for escape into the fire-prone habitat of 16 of the proposed species (*Abutilon sandwicense, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaecyse kuwaleana, Diellia falcata, Dubautia herbstobatae, Gouania meyenii, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia niihauensis, Neraudia angulata, Nototrichium humile, Sanicula mariversa, Schiedea kaalae, Tetramolopium filiforme,* and *Urera kaalae*) (Carr 1982; HHP 1990d6, 1990f4, 1990o8, 1990p23, 1990q4, 1990r14, 1990u2, 1990w6, 1990w8; HPCC 1990d; St. John 1981b; Sam Gon, Ecologist, HHP, Honolulu, pers, comm., 1990; J. Lau, pers. comm., 1990).

B. Overutilization for commercial, recreational, scientific, or educational purposes. Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity, and would seriously impact several of these species. *Alsinidendron obovatum, Alsinidendron trinerve, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Cyanea pinnatifida, Dubautia herbstobatae, Hesperomannia arbuscula, Lobelia niihauensis, Sanicula mariversa, Tetramolopium filiforme,* and *Tetramolopium lepidotum* ssp. *lepidotum* are located on or near trails or roads and have the potential of being collected or trampled (HHP 1990b3, 1990x6; Nagata 1980; D. Herbst, J. Lau, and S. Perlman, pers. comms., 1990). For these seven species, disturbance from trampling during recreational use (hiking, for example) could promote erosion and greater ingress by competing alien species.

C. Disease or predation. Xylosandrus compactus (black twig borer) has been cited as a possible threat to the extant populations of *Urera kaalae* (St. John 1981b). The black twig borer burrows into the branches and introduces a pathogenic fungus, pruning the host severely, often killing branches or whole plants (Hara and Beardsley 1979, Howarth 1985). No other evidence of disease is known for any of the species to be proposed.

Predation of *Lobelia niihauensis* by goats has been observed in the Makua area of the Waianae Mountains (HHP 1990p4). While there is no direct evidence of predation on the other 25 proposed species, none of them are known to be unpalatable to goats or cattle. Predation is therefore a probable threat at sites where those animals have been reported, potentially affecting 11 of the proposed species (*Centaurium sebaeoides, Diellia falcata, Dubautia herbstobatae, Hedyotis parvula, Lipodhaeta tenuifolia, Neraudia angulata, Nototrichium humile, Sanicula mariversa, Schiedea kaalae, Tetramolopium filiforme,* and *Viola chamissoniana* ssp. *chamissoniana*) (HHP 1990d3, 1990q2, 1990r1, 1990r2, 1990u2; St. John 1981b; J. Lau, pers. comm., 1990). The restriction of most of the populations of *Lobelia niihauensis* on both Oahu and Kauai to virtually inaccessible cliffs suggests that goat predation may have eliminated that species from more accessible locations, as is the case for other rare plants of Kauai's Na Pali Coast (Corn *et al.* 1979). Similar restriction of populations of other proposed species to inaccessible cliffs in the Waianae Mountains suggests that goats have played a parallel role in limiting the distribution of those species (J. Lau, pers. comm., 1990).

Although predation of fruits and seeds by rodents has been cited as a probable threat to *Abutilon sandwicense* and *Schiedea kaalae* (Center for Plant Conservation 1990; Wagner *et al.* 1985), those reports have not been confirmed.

D. The inadequacy of existing regulatory mechanisms. Of the 26 proposed species, a total of 12 have populations located on private land, 17 on State (including City and County) land, and 6 on Federal land. While 13 of the species occur in more than 1 of those 3 ownership categories, the other 13 species are restricted to a single category: 5 species are found only on private land, 7 species only on State land, and 1 species only Federal land. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these species on private land. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits raking and encourages conservation by State government agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of wildlife or wild 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 (Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these 26 plant taxa would therefore reinforce and supplement the protection available to the species under State law. The Federal Act also would offer additional protection to these 26 species because if they were to be listed as endangered, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy an endangered plant in an area not under Federal jurisdiction in knowing violation of 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 number of populations and of

individual plants of all of these species increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals (or the only known extant population) of these species. For example, 4 of the species are known from a single population: *Cyanea pinnatifida* (totalling 3 known plants), *Hedyotis degeneri* (6 plants), *Silene perlmanii* (10 to 20 plants), and *Chamaesyce kuwaleana* (several hundred plants) (HHP 1990f3, 1990g1, 1990k1, 1990v2). Fifteen of the 26 proposed species are known from fewer than 5 populations. And 17 of the proposed species are estimated to number no more than 100 known individuals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list these 26 plant species as endangered. Eighteen of these species either number no more than about 100 individuals or are known from fewer than 5 populations. The 26 species are threatened by one or more of the following: habitat degradation by feral pigs, cattle, and goats; competition from alien plants; fire; overcollection, mainly for scientific purposes; and trampling by humans along trails. Small population size makes these species particularly vulnerable to extinction from stochastic events. Given these circumstances, the determination of endangered status for these 26 species seems warranted. Critical habitat is not being proposed for these species for reasons discussed in the "Critical Habitat" section of this proposal.

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 a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to the species. The publication of descriptions and maps required in a proposal for critical habitat would increase the degree of threat to these plants from possible take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of species as either endangered or threatened publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the location and importance of protecting the habitat of these species. Protection of the species' habitat will be addressed through the recovery process and through the section 7 consultation process. The only known Federal activity within the currently known habitat of these plants involves the use of portions of the Makua Military Reservation and Schofield Barracks as military buffer zones adjacent to impact areas used as ordnance training sites by the Army. Firebreaks have been constructed between the impact area and the buffer zone on the Makua Military Reservation to minimize potential impacts from any fires that may be generated during the ordnance training exercises (Herve Messier, Environmental Protection Specialist, U.S. Army Support Command, Ft. Shafter, Hawaii, pers. comm., 1990). As there is no direct use of the area by the military and the zoning prevents human entry onto military land, it is unlikely that such continued classification of the area would threaten the existence of these plants. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain 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 Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Some of these plant taxa are located on the Makua Military Reservation and Schofield Barracks, both under the jurisdiction of the U.S. Army. The military uses portions of both these areas for ordnance training of its troops and provides a buffer zone adjacent to the impact areas. Entry into the buffer area is forbidden to prevent injury from stray or unexploded shells or other devices (H. Messier, pers. comm., 1990). Virtually all of the proposed plants that occur on Army land are present only in the buffer zones and, therefore, are not directly affected by military activities. The Army has constructed firebreaks on the Makua Military Reservation to minimize damage from unintentional fires that occasionally result from stray bullets (H. Messier, pers. comm., 1990). There are no other known Federal activities that occur within the present known habitat of these 26 plant 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 the 26 plant species from the Waianae Mountains, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal with respect to any endangered plant, 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 any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage or destroy any such

endangered plant species on any other area 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 the 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 921–2104); FAX 703/358–2281).

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 other relevant data concerning any threat (or lack thereof) to these species:

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 5 of this Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal 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 one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see ADDRESSES section).

National Environmental Policy Act

The fish and wildlife Service has determined that an Environmental Assessment of Environmental Impact Statement, 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

A complete list of all references cited herein is available upon request from the Honolulu Field Office (See ADDRESSES above).

Author

The primary authors of this proposed rule are Z.E. Ellshoff, Joan M. Yoshioka, Joan E. Canfield, Derral R. Herbst, and Patricia C. Welton, 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). Substantial data were also generously contributed by Joel Q.C. Lau of the Hawaii Heritage Program.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping 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. 1531–1544; 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 indicated, 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					
*	*	*	*	*	*	
Amaranthaceae—Amaranth family:						
*	*	*	*	*	*	
Nototrichium humile	kulu'i	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	
Apiaceae—Parsley family:						
*	*	*	*	*	*	
Sanicula mariversa	None	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	
Aspleniaceae—Spleenwort family:						
*	*	*	*	*	*	
Diellia falcata	None	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	
Asteraceae—Aster family:						
*	*	*	*	*	*	
Dubautia herbstobatae	na'ena'e	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	
Hesperomannia arbuscula	None	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	
Lipochaeta lobata var. *leptophylla*	nehe	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	
Lipochaeta tenuifolia	nehe	U.S.A. (HI)	E		NA	NA
*	*	*	*	*	*	

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Tetramolopium filiforme	None	U.S.A. (HI)	E		NA	NA
Tetramolopium lepitodum var. *lepidotum.*	None	U.S.A. (HI)	E		NA	NA
Campanulaceae—Bellflower family:						
Cyanea pinnatifida	haha	U.S.A. (HI)	E		NA	NA
Lobelia nilhauensis	None	U.S.A. (HI)	E		NA	NA
Caryophyllaceae—Pink family:						
Alsinidendron obovatum	None	U.S.A. (HI)	E		NA	NA
Alsinidendron trinerve	None	U.S.A. (HI)	E		NA	NA
Schiedea kaalae	None	U.S.A. (HI)	E		NA	NA
Silene perlmanii	None	U.S.A. (HI)	E		NA	NA
Euphorbiaceae—Spurge family:						
Chamaesyce celastroides var. *kaenana.*	'akoko	U.S.A. (HI)	E		NA	NA
Chamaesyce kuwaleana	'akoko	U.S.A. (HI)	E		NA	NA
Gentianaceae—Gentian family:						
Centaurium sebaeoides	'awiwi	U.S.A. (HI)	E		NA	NA
Lamiaceae—Mint family:						
Phyllostegia mollis	None	U.S.A. (HI)	E		NA	NA
Malvaceae—Mallow family:						
Abutilon sandwicense	None	U.S.A. (HI)	E		NA	NA
Rhamnaceae—Buckthorn family:						
Gouania meyenii	None	U.S.A. (HI)	E		NA	NA
Rubiaceae—Coffee family:						
Hedyotis degeneri	None	U.S.A. (HI)	E		NA	NA
Hedyotis parvula	None	U.S.A. (HI)	E		NA	NA
Urticaceae—Nettle family:						
Neraudia angulata	None	U.S.A. (HI)	E		NA	NA
Urera kaalae	opuhe	U.S.A. (HI)	E		NA	NA
Violaceae—Violet family:						
Viola chamissoniana ssp. *chamissoniana.*	pamakani	U.S.A. (HI)	E		NA	NA

Dated: September 24, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-22936 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 55, No. 189
Friday, September 28, 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

Cooperative Forestry Research Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1987, (Pub. L. 92–463, 86 Stat. 770–776) U.S. Department of Agriculture announces the following meeting:

Name: Cooperative Forestry Research Advisory Council

Date: November 15–16, 1990

Time: 8 a.m.—5 p.m.

Place: College of Forestry, Oregon State University, Corvallis, Oregon

TYPE OF MEETING: Open to public. Persons may participate in the meeting if time and space permit.

COMMENTS: The public may file written comments before or after the meeting by contacting the person below.

PURPOSE: The council will be deliberating the McIntire-Stennis Forestry Research program with particular emphasis on 1991 and 1992 appropriations, the annual distribution of funds, the review process for cooperating research institutions, and the National Research Initiative.

CONTACT PERSON FOR AGENDA AND MORE INFORMATION: Peter A. Muscato, Cooperative State Research Service, Room 329, Aerospace Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 401–4515.

Dated: 21st day of September, 1990.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 90–23011 Filed 9–27–90; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Partin Limestone Products, Inc., Mine Operating Plan; Revision of Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The **Federal Register** of July 1, 1988 published a Notice of Intent to prepare an Environmental Impact Statement for a proposed mining plan of operations for the development of the Partin Limestone Mine on the Big Bear Ranger District, San Bernardino National Forest, San Bernardino County, California. This notice revises that notice to recognize the additional involvement of the Bureau of Land Management (BLM) and the County of San Bernardino (County). The document to be prepared will be a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) meeting the requirements of both the National Environmental Policy Act and the California Environmental Quality Act.

The mining plan of operations proposes to expand the existing 195 acre operation by an additional 88 acres: 77 acres on National Forest System lands and 11 acres on Public Domain lands within the Bighorn Mountains Wilderness Study Area (WSA: CDCA #217). The involvement of Public Domain lands was not proposed at the time of the previous notice.

The Forest Service will serve as the lead federal agency, the BLM as a cooperating federal agency, and the County as the lead state agency in the preparation of the EIS/EIR.

SUPPLEMENTARY INFORMATION: The General Mining Law of 1872 (May 10, 1872) as amended, authorizes the location and extraction of minerals, including limestone, subject to regulations prescribed by law.

Mining regulations for the Forest Service are found in 36 CFR part 228, subpart A, first issued on August 28, 1974. Mining activity within BLM WSAs are regulated under 43 CFR subpart 3802, first issued on April 2, 1980. The County is responsible for the implementation of the California Surface Mining and Reclamation Act of 1975, California Public Resources Code, Division 2, Chapter 9.

Public Domain lands under wilderness review are managed under the "Interim Management Policy and Guidelines for Lands Under Wilderness Review (IMP). BLM Manual H–8550–1. To be approved, the proposed action on Public Domain lands must qualify under the "grandfathered" rights provision of the IMP. The existence or absence of grandfathered rights will be determined during the preparation of the EIS/EIR.

Partin Limestone and three other limestone mining companies have extracted ore rock from within the San Bernardino National Forest for many years under several plans of operations and amendments. For a variety of reasons, most of the plans and amendments have become obsolete, incomplete, or for some other reason are no longer adequate. Approximately 32 acres of surface disturbance occurred on Public Domain lands without authorization and prior to the enactment of the Federal Land Policy and Management Act of 1976.

Since 1987, the Forest Service has been working to update the mining plans of operations of four limestone operations on the Forest. Two public meetings were held by the Forest Service to inform and gather information. Public concerns were noted and were addressed in an environmental assessment. During the environmental analysis process, it was determined that a large area of sensitive plants and their habitat exist within the Partin Limestone area, and would be impacted by any development alternative. Partin also proposed to increase their level of activity on the BLM WSA lands. For these reasons, it was determined that the proposal could have significant effects on the environment, and an EIS was required.

In July of 1988, the San Bernardino National Forest issued news releases and mailed scoping letters to interested parties requesting comments and concerns. Issues identified in the scoping include dust, noise, financial impacts, archeological values, land uses, impacts to recreation, sensitive plant species, and habitat loss.

The purpose of amending the previous notice is to recognize that the Bureau of Land Management (BLM) and the County of San Bernardino are now involved in the process, and to provide the public the opportunity to identify

additional issues and to provide other comments.

The draft EIS/EIR is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 1990. At that time, EPA will publish a notice of availability of the draft EIS/EIR in the Federal Register. The comment period on the draft EIS/EIR will be 45 days from the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the management of the north slope of the San Bernardino Mountains participate at that time. To be most helpful, comments on the draft EIS/EIR should be as specific as possible and may address the adequacy of the document or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), 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. 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service, Bureau of Land Management, and the County of San Bernardino at a time when they can meaningfully consider them and respond to them in the final document.

After the comment period ends on the draft EIS/EIR, the comments will be analyzed and considered by the Forest Service in preparing the final EIS/EIR.

In the final EIS/EIR, the Forest Service, Bureau of Land Management, and County of San Bernardino are required to respond to the comments, responses, and environmental consequences discussed in the EIS/EIR, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under the provisions of 36 CFR part 217.

DATES: Comments are requested on this notice concerning the scope of the analysis of the draft EIS/EIR. Comments must be received within 30 days of the publication date of this notice.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Charles H. Irby, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408–3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the preparation of the EIS/EIR to George Kenline, Lands and Minerals Officer, Big Bear Ranger District, P.O. Box 290, Fawnskin, CA 92333, phone (714) 866–3437.

Dated: September 20, 1990.

Charles H. Irby,

Forest Supervisor.

[FR Doc. 90–22923 Filed 9–27–90; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Under Secretary for Technology

Industrial Technology Advisory Board; 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 Industrial Technology Advisory Board is in the public interest in connection with the performance of duties imposed on the Department by law.

The Board will advise the Secretary, through the Under Secretary for Technology, on matters relating to the development and commercialization of industrial technologies needed to increase U.S. economic growth and international competitiveness.

The Board will consist of not more than twenty members to be appointed by the Secretary to assure a balance with regard to (a) The diversity of U.S. technology interests such as biotechnology, materials, electronics, automation, information technology, etc. (b) company size, (c) representation from the financial community (e.g. venture capitalists), and (d) organizations, including academia and other relevant institutions.

The Board 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 Board to Dr. Robert M. White, Under Secretary for Technology, U.S. Department of Commerce, Room 4824, Herbert C. Hoover Building, Washington, DC 20230. Telephone: 202–377–1575.

Dated: September 26, 1990.

Robert H. White,

Under Secretary for Technology.

[FR Doc. 90–22953 Filed 9–27–90; 8:45 am]

BILLING CODE 3510–BP–M

International Trade Administration

[A–122–601]

Brass Sheet and Strip From Canada; Termination in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration Department of Commerce.

ACTION: Notice of termination in part of antidumping duty administrative review.

SUMMARY: On February 28, 1990, the Department of Commerce initiated an administrative review of the antidumping duty order on brass sheet and strip from Canada. The Department is now terminating its review of Arrowhead Metals Limited.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–8312/3601.

SUPPLEMENTARY INFORMATION: On February 28, 1990, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on brass sheet and strip from Canada (55 FR 7015). That notice stated that the Department would review two manufacturers/exporters, Ratcliffs (Canada) Limited and Arrowhead Metals Limited ("Arrowhead"), for the period January 1, 1989 through December 31, 1989. On June 29, 1990 Arrowhead withdrew its request for review. No other interested party had requested a review of Arrowhead. The petitioners object to Arrowhead's withdrawal on the grounds that it was untimely.

Section 353.22(a)(5) of the Department's regulations provides that the Department may permit a party that requests a review to withdraw its request not later than 90 days after the

date of publication of the notice of initiation. It further provides that the Department may extend this time limit if it decides that it is reasonable to do so.

In this case, Arrowhead requested that it be reviewed; however, since requesting the review, Arrowhead has gone out of business and, therefore, did not answer the questionnaire in this review. Because of these facts, the Department has concluded that it is reasonable in this case to extend the period for withdrawal of review requests, and has determined to terminate in part this review.

This notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1989).

Dated: September 21, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-22950 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-247-003]

Portland Cement, Other Than White, Nonstaining Portland Cement, From The Dominican Republic, Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on Portland cement, other than white, nonstaining Portland cement, from the Dominican Republic.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On May 3, 1990, the Department of Commerce ("the Department") published in the Federal Register (55 FR 18652) its intent to revoke the antidumping finding on Portland cement, other than white, nonstaining Portland cement, from the Dominican Republic (28 FR 4507, May 4, 1963).

The Department may revoke a finding if the Secretary concludes that the finding is no longer of interest to interested parties. We had not received a request for an administrative review of the finding for the last four consecutive annual anniversary months and, therefore, published a notice of intent to revoke pursuant to § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4) (1990)).

On May 31, 1990, Southdown, Inc., Texas Industries, Inc., and Florida Crushed Stone, U.S. producers of Portland cement, objected to our intent to revoke the finding. Therefore, we no longer intend to revoke the finding.

Dated: September 20, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-22948 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-008]

Titanium Sponge From The U.S.S.R. Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on titanium sponge from the U.S.S.R.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On August 2, 1990, the Department of Commerce (the Department) published in the Federal Register (55 FR 31420) its intent to revoke the antidumping finding on titanium sponge from the U.S.S.R. (33 FR 12138, August 28, 1968).

The Department may revoke a finding if the Secretary concludes that the finding is no longer of interest to interested parties. We had not received a request for an administrative review of the findings for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke prusuant to 19 CFR 353.25(D)(4) (1990).

On August 27, 1990, RMI Titanium Company, petitioner in the antidumping investigation, objected to our intent to revoke the finding. On August 31, 1990, Titanium Metals Corporation, an interested party, also objected to the proposed revocation. Therefore, we no longer intend to revoke the finding.

Dated: September 21, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-22949 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council's Scientific and Statistical Committee (SSC) will hold a public meeting on October 10-11, 1990, at the Town and Country Inn; 2008 Savannah Highway; Charleston, SC. The meeting will begin at 1 p.m. on October 10, and will adjourn at 5 p.m. on October 11.

The SSC will review the snapper/grouper stock assessment for use in Amendment #4 to the Snapper/Grouper Fishery Management Plan (FMP), limited entry options for the wreckfish fishery (Amendment #5), overfishing definitions for billfish, sea scallops and spiny lobster, as well as other SSC business.

FOR MORE INFORMATION CONTACT: Carrie R. F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: September 25, 1990.

Joe P. Clem,

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

[FR Doc. 90-22966 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-22-M

Steller Sea Lion Listing—Public Hearings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Public hearings on the proposed rule to list the Steller sea lion as threatened is scheduled as follows:

DATES:

Tuesday, October 16, 1990 (7 to 9 p.m.)—Anchorage

Thursday, October 18, 1990 (7 to 9 p.m.)—Cordova

Thursday, October 18, 1990 (7 to 9 p.m.)—Kodiak

ADDRESSES:

Anchorage—Anchorage Sheraton, Third Floor Boardroom, 401 E 6th Avenue, Anchorage, AK.
Cordova—Cordova District Fishermen's United, Main Street, Cordova, AK.
Kodiak—Fishermen's Hall, 201 Marine Way, Kodiak, AK.

FOR FURTHER INFORMATION CONTACT: Steve Zimmerman, 907–586–7233.

SUPPLEMENTARY INFORMATION: At the request of representatives of the Seward Trade and Commerce Advisory Board and the State of Alaska Department of Fish and Game, the National Marine Fisheries Service is holding three public meetings to discuss the proposed listing of Steller sea lions as threatened under the Endangered Species Act. Citizens residing in the Seward area who are interested in commenting upon the proposal may attend the meeting held in Anchorage.

Dated: September 24, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–22937 Filed 9–27–90; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

September 24, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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) 566–6828. 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 Categories 338/339 and its sublevel 338–S/339–S are being increased for carryforward.

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 52047, published on December 20, 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

September 24, 1990

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel the directive of December 14, 1989, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the period January 1, 1990 through December 31, 1990.

Effective on September 24, 1990 you are directed to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
338/339	2,245,288 dozen of which not more than 1,688,809 dozen shall be in Categories 338–S/339–S [2]

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.
[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

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. 90–22951 Filed 9–27–90; 8:45 am]

BILLING CODE 3510–DR–M

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Macau

September 24, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: October 1, 1990.

FOR FUTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6495. 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 Committee for the Implementation of Textile Agreements has decided to control imports of cotton textile products in Category 349 in Group I.

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 52437, published on December 21, 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

September 24, 1990

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 15, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of

certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on October 1, 1990, the directive of December 15, 1989 is amended to establish a limit of 145,833 dozen [1] for cotton textile products in Category 349. Category 349 shall remain subject to the Group I limit.

Imports already charged to Group I for Category 349 shall be applied to the limit established in this directive.

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. 90-22952 Filed 9-27-90; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1989.

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 commodities and military resale commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 29, 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 August 3 and 10, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 31620, 31621 and 32682) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (43 46540). After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities, military resale commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities, military resale commodities and services lised 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 commodities, military resale commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities, military resale commodities and provide the services procured by the Government.

Accordingly, the following commodities, military resale commodities and services are hereby added to Procurement List 1990:

Commodities

Strap Set, Webbing,
4935-00-805-3522,
(Remaining Government Requirement).
Binder, Looseleaf,
7510-00-782-2664.
Folder, File
7530-00-285-1732
7530-00-291-0098
7530-00-281-5968
7530-00-222-3443
7530-00-222-3444
7530-00-926-8975
7530-00-985-7012
7530-00-663-0031
(Requirements for Fort Worth, Texas, Belle Meade, New Jersey, Franconia, Virginia and Palmetto, Georgia Supply Facilities only)
Folder Set, File
7530-00-281-5959
7530-00-281-5941
7530-00-281-5945
7530-00-281-5942
7530-00-281-5960
7530-00-282-2507
7530-00-282-2508

Military Resale Item No. and Name

757 Pillow, Bed, Standard Size
758 Pillow, Bed, Queen Size
759 Pillow, Bed, King Size

Services

Janitorial/Custodial (SH) at the following Denver, Colorado locations:
Colonnade Center, 1244 Speer Boulevard
Colonnade Center Parking Facility, 1300 Fox Street
Janitorial/Custodial, DLA, Defense National Stockpile Zone, HMW-New Haven Depot, State Route 14, 3 Miles East of New Haven, New Haven, Indiana
Janitorial/Custodial, Little White House Child Care Center, 100 North Washington Avenue, Battle Creek, Michigan
Janitorial/Custodial, Social Security Administration Building, 122 West Third Street, Greensburg, Pennsylvania
Janitorial/Custodial, Federal Building, 115 4th Avenue SE., Aberdeen, South Dakota

This action does not affect contracts awarded prior to the effective date of this addition or optons exercised under those contracts.

Beverly L. Milkman,

Executve Director.

[FR Doc. 90-23029 Filed 9-27-90; 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 to be produced and a service to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 29, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments 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 and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement Listg 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Pouch, Mechanic's Tool
5140-00-329-4306

Key Blank, Standard, USPS 5340-00-NIB-0002

Service

Supply Room/Motor Vehicle Service, Federal Aviation Administration, Great Lakes Region, Des Plaines, Illinois

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-23030 Filed 9-27-90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of Change 2 to DoD 5025.1-I, "DoD Directives System Annual Index"

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This document is to inform the public and Government Agencies of the availability of Change 2 to DoD 5025.1-I. It is available from National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487-4650. The NTIS accession number for Change 2 is PB 90 959512.

FOR FURTHER INFORMATION CONTACT: Ms. L. Bynum, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155, telephone (202) 697-4111.

Dated: September 24, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90-23025 Filed 9-27-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Notice of Intent To Prepare Environmental Impact Statement for Disposal/Reuse of George AFB, CA

The United States Air Force will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of disposal and reuse of the property that is now George Air Force Base (AFB) near Victorville, California. On 20 June 1990, the Air Force signed a Record of Decision (ROD) for closure of George AFB.

The disposal/reuse EIS will address disposal of the property to public or private entities and the potential impacts of reuse alternatives. All available property will be disposed of in accordance with provisions of the Base Closure and Realignment Act, Public Law 100-526, and applicable federal property disposal regulations.

The Air Force is planning to conduct a scoping and screening meeting on October 29, 1990 at 7 p.m. in conference room "C", Holiday Inn, Victorville, CA (I-15 & Palmdale Road). The purpose of the meeting is to determine the environmental issues and concerns to be analyzed, to solicit comments on the proposed action and to solicit proposed disposal/alternatives that should be addressed in the EIS. In soliciting disposal/reuse inputs, the Air Force intends to consider all reasonable alternatives to the proposed action offered by any Federal, State, and local government agency and any Federally-sponsored or private entity or individual with an interest in acquiring available property at George AFB. These alternatives will be analyzed in the EIS. The resulting environmental impacts will be considered in making disposal decisions to be documented in the Air Force's Final Disposal Plan for George AFB.

To ensure the Air Force will have sufficient time to consider public inputs on issues to be included in the disposal/reuse EIS and disposal alternatives to be included in the Final Disposal Plan, comments and reuse proposals should be forwarded to the address listed below by November 30, 1990. However, the Air Force will accept comments at the address below at any time during the environmental impact analysis process.

For further information concerning the study of George AFB disposal/reuse and EIS activities, contract: Lt. Col. Tom Bartol, AFRCE-BMS/DEV, Norton AFB, CA 92409-6448, (714) 382-4891.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-23100 Filed 9-27-90; 8:45 am]

BILLING CODE 3910-01-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Office of Personnel Management (OPM) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between OPM and DoD that their records are being matched by computer. The purpose of the match is to identify individuals who are improperly receiving military retired pay and (1) credit for military service in their civil service annuities, or (2) annuities based on the "guaranteed minimum" disability formula. This match will identify and/or prevent erroneous payments under the Civil Service Retirement System Act (CSRA), Federal Employees' Retirement Act (FERSA) and the Joint Uniform Military Retired Pay System.

DATES: This proposed action will become effective October 29, 1990, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884. Telephone (202) 694-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and OPM has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies to identify individuals improperly receiving military retired pay and (1) credit for military service in their civil service annuities, or (2) annuities based on the "guaranteed minimum" disability formula.

It is OPM and DoD's responsibility to assure the civil service annuitants, who are also military retirees and who have not waived their military retired pay, are not erroneously receiving credit for military service in the computation of civil service benefits or improperly receiving "guaranteed minimum" disability benefits. (Under Pub. L. 96-499, effective December 5, 1980, certain military retirees who receive military retired pay or retainer pay or Veterans Administration compensation (in lieu of retired or retainer pay) may not have their annuities computed under the "guaranteed minimum" disability formula.)

By comparing the data received through this matching program on a

recurring basis, OPM and DoD will be able to make timely and accurate adjustments in benefits. The matching program will prevent or correct overpayment, fraud and abuse, thus assuring proper benefit payments.

Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between OPM and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Chief, Quality Assurance Division, Retirement and Insurance Group, Office of Personnel Management, Washington, DC 20415.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the Federal Register at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on September 18, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: September 24, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

Computer Matching Program Between the Office of Personnel Management and the Department of Defense for Military Retired Pay

A. *Participating agencies:* Participants in this computer matching program are the Quality Assurance Division, Retirement and Insurance Group, Office of Personnel Management (OPM) and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The OPM is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the matching agreement is to identify individuals who are improperly receiving military retired pay and (1) credit for military service in their civil service annuities, or (2) annuities based on the "guaranteed minimum" disability formula. This match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA), Federal Employees' Retirement System Act (FERSA) and the Joint Uniform Military Retired Pay System.

It is OPM and DoD's responsibility to assure that civil service annuitants, who are also military retirees and who have not waived their military retired pay, are not erroneously receiving credit for a military service in the computation of civil service benefits or improperly receiving "guaranteed minimum" disability benefits. (Under Pub. L. 96-499, effective December 5, 1980, certain military retirees who receive military retired pay or retainer pay or Veterans Administration compensation (in lieu of retired or retainer pay) may not have their annuities computed under the "guaranteed minimum" disability formula.)

By comparing the data received through this matching program on a recurring basis, OPM and DoD will be able to make timely and accurate adjustments in benefits. The matching program will prevent or correct overpayment, fraud and abuse, thus assuring proper benefit payments.

Periodic matches conducted since 1985 have resulted in the identification of numerous improper payments and recovery of millions of dollars. Without a matching program, both agencies would have to rely on voluntary reporting by their beneficiaries. This would be an inadequate means of keeping records accurately updated to prevent overpayments.

The computer matching program is an efficient and least obtrusive method of determining if individuals are receiving prohibited or erroneous benefits from both DoD and/or OPM.

A cost benefit analysis, based on data collected from prior matches, shows that OPM will save approximately $1,500,000 over a 12-month period by performing this matching program. DoD expects to save $500,000 for the same period.

C. *Authority for conducting the match:* It is OPM's responsibility to monitor retirement and survivor benefits paid under Title 5 U.S.C. Section 8331 (CSRA) and Title 5 U.S.C. Section 8401 (FERSA), et. seq. Title 5 U.S.C. Section 8332 is the legal authority for CSRA and Title 5 U.S.C. Section 8411 is the legal authority for FERSA for determining credibility of military service for civil service retirement purposes. DoD's legal authority for monitoring retired pay is Title 10 U.S.C. Section 1401.

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows: OPM will use records from the OPM system of records published as OPM Central-1, Civil Service Retirement and Insurance Records, 55 FR 3816, February 5, 1990; and the DoD system of records published as Defense Manpower Data Center Data Base, S322.10 DLA-LZ, 53 FR 44937, November 7, 1988. Appropriate routine uses have been published by both agencies to permit disclosures needed to conduct this match. OPM's routine use for this match is published in paragraph ff of the Federal Register notice, dated February 5, 1990, cited above.

The tape extract provided by OPM will contain the names, addresses, Social Security Numbers, provision retired codes and payment and service data of individuals currently receiving benefits from OPM. Matched DoD data will contain names, Social Security Numbers, branches of service and dates of retirement.

The OPM file will contain the information for approximately 1.5 million CSRA and FERSA retirees. DoD retired files contain approximately 1.6 million records.

E. *Description of computer matching program:* DMDC will match OPM's payment data with DoD's military retired pay data for the same dates to make an initial determination (i.e., that benefits were being paid in apparent violation of the law). DMDC will provide OPM with the match results on magnetic tape.

OPM will screen the initial data to rule out matched individuals which are not valid according to information available to OPM at that time. OPM will provide DMDC with information on number of valid cases and potential amount of overpaid benefits.

OPM will send lists of screened individuals to DMDC. DMDC will obtain from the appropriate military retired pay centers the information necessary to verify retired pay status. The military retired pay centers will review retired pay information on each of the remaining matched individuals and will

determine if matched individuals are receiving (1) reserve retired pay under provisions of chapter 67, title 10, or (2) military retired pay as a result of a service-connected disability, caused by combat with an enemy of the U.S. or by an instrumentality of war and incurred in the line of duty during a period of war. The military retired pay centers will provide this information to OPM through DMDC.

Each individual identified as receiving prohibited dual benefits or improper "guaranteed minimum" disability benefits will be notifed of the match findings and be notified of their options concerning their benefits. At the same time the individual will be given the opportunity to contest the findings and any actions that may ensue as a result of the match.

For each applicable match record, OPM or DoD will adjust the monthly annuity/retired pay and collect any overpayment if debt collection is required after providing the individual with an opportunity to contest the findings of the match and other due process rights as required by law and regulation.

Each individual identified in a match as receiving prohibited benefits or owing debts to DoD will be notified of the match findings.

Individuals identified as receiving prohibited benefits or owing debts to DoD will be given an opportunity to: (1) Contest the findings; (2) provide documentation refuting the findings; and (3) contest any proposed actions before benefits are adjusted or overpayment collections are initiated as required by the Debt Collection Act of 1982 (Pub. L. 97–365).

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis, normally in January. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between OPM and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202–2884. Telephone (202) 694–3027.

[FR Doc. 90–23026 Filed 9–27–90; 8:45 am]
BILLING CODE 3810–01

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Office of Personnel Management (OPM) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between OPM and DoD that their records are being matched by computer. The record subjects are civil service annuitants who are reemployed in the Federal government. By comparing the data received through this computer matching program on a recurring basis, OPM and DoD will be able to make timely and accurate adjustments in salary and benefits. This program will prevent or correct overpayment, fraud and abuse, thus insuring proper benefit payments.

DATES: This proposed action will become effective October 29, 1990, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202–2884. Telephone (202) 694–3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and OPM has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to identify civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD. This match will insure that (1) annuities of DoD reemployed annuitants are terminated where applicable, and (2) salaries are correctly offset where applicable. A cost benefit analysis, based on data collected from prior matches, shows that OPM will save between $175,000 and $700,000 over a 12-month period by performing this match. DoD does not expect to realize any monetary savings from this matching program, but does benefit by having a mechanism to assist in correcting its civilian personnel data bases. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personnel privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between OPM and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Chief, Quality Assurance Division, Retirement and Insurance Group, Office of Personnel Management, Washington, DC 20415.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on September 18, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: September 24, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Office of Personnel Management and the Department of Defense on Reemployed Annuitants

A. *Participating agencies:* Participants in this computer matching program are the Quality Assurance Division, Retirement and Insurance Group, Office of Personnel Management (OPM), Washington, DC 20415 and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The OPM is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of this computer matching program is to identify civil service annuitants (including disability annuitants under age 60) who are employed by DoD. This match will help insure that (1) annuities of DoD reemployed annuitants are terminated where applicable, and (2) salaries are correctly offset where applicable.

C. *Authority for conducting the match:* Both OPM and DoD have responsibilities to monitor and adjust retirement benefits under Title 5, U.S.C. Section 8331 (CSRA), (especially 5 U.S.C. Section 8344) and Title 5 U.S.C. Section 8401 (FERSA) et seq. (especially 5 U.S.C. Section 8468).

D. *Records to be matched:* The system of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows: OPM will use records from the system of records published as OPM Central–1, Civil Service Retirement and Insurance Records, 55 FR 3818, February 5, 1990 and the DoD system of records published as Defense Manpower Data Center Data Base, S322.10 DLA–LZ, 53 FR 44937, November 7, 1988. Appropriate routine uses have been published by both agencies to permit disclosures needed to conduct this match. OPM's routine use for this match is published in paragraph ff of the **Federal Register** notice dated February 5, 1990, cited above. These routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record systems.

E. *Description of computer matching program:* OPM, as the source, will provide DMDC with a magnetic tape extract of individuals. The tape extract provided by OPM will contain the name, address, Social Security Number, date of birth, retirement claim number, payment and service data of the individual receiving benefits from OPM. The OPM file will contain the information on approximately 1.5 million CSRA and FERSA retirees. The DoD file contains approximately 1 million records. DMDC will match OPM data with DoD employee data for the same dates to make an initial determination. DMDC will share the matched information with appropriate DoD offices. DoD will screen the initial data appropriate to rule out matched individuals who are not valid matches according to information available to them at the time. DoD will take appropriate adjustment action for each matched individual. Each individual identified as receiving prohibited or improper salary or retirement benefits will be notified of the match findings and will be afforded due process and given the opportunity to contest the findings and any actions that may ensue as a result of the match.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on a semi-annual basis, normally in January and July. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between OPM and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202–2884. Telephone (202) 694–3027.

[FR Doc. 90–23027 Filed 9–27–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Indian Nations at Risk Task Force; Issue Sessions and Meeting

AGENCY: Indian Nations At Risk Task Force, ED.

ACTION: Notice of Issue Sessions and Task Force Meeting.

SUMMARY: This notice invites the public to participate in, and sets forth the schedule of forthcoming issue sessions at the annual conference of the National Indian Education Association in San Diego, California, on October 15–16, 1990. These issue sessions are being jointly sponsored by the Indian Nations At Risk Task Force and the National Advisory Council on Indian Education. This notice also announces a business meeting of the Indian Nations At Risk Task Force to be held on October 17, 1990, which will be open to the public. The subject of the meeting will be the outline and content of the final report, and other topics to be determined at the discretion of the Task Force Chairpersons. This notice also describes the functions of the Task Force. Notice of these sessions and business meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES, TIMES AND LOCATIONS:

October 15, 1990, 9 a.m. to 4:30 p.m., Town and Country Hotel, 500 Hotel Circle North, San Diego, California 92108, (619) 291–7131, (For specific rooms, see below).

October 16, 1990, 9 a.m. to 6 p.m., Town and Country Hotel, 500 Hotel Circle North, San Diego, California 92108, (619) 291–7131, (For specific rooms, see below).

October 17, 1990, 9 a.m. to 5 p.m., Town and Country Hotel, 500 Hotel Circle North, San Diego, California 92108, (619) 291–7131, Town and Country Room.

SUPPLEMENTARY INFORMATION: The Indian Nations At Risk Task Force, in conjunction with the National Advisory Council on Indian Education (NACIE) is planning to conduct special issues sessions at the San Diego, CA, National Indian Education Association Conference on October 15th and 16th, 1990. Each of the two days of sessions will be attended by at least one Task Force member and one NACIE board member. Most of the sessions will be repeated to allow more opportunity for the public and American Indian/Alaska Native educators to present comments in small groups on a variety of issues.

During these issues sessions, the audience is invited to address the specific issue that is the subject of the

session in a discussion format moderated by the chair of the session. Discussion should be limited to the subject issue for the session. The discussion format will allow the presentation and development of ideas with comments from a number of individuals as in a committee or council meeting. This format is expected to allow many people from all areas of the country to participate in an organized discussion of important issues.

Individuals interested in participating in the issues sessions will be asked to complete a brief identification card as they enter the session. The card will be used by participants to indicate to the session chair a desire to speak to the issue through a microphone. The chair will moderate the discussion by recognizing speakers and limiting the time of each speaker as necessary to ensure broad participation in the discussion. The comments of the chair will be limited to a very brief introduction of the session. The intent is to allow maximim opportunity for the audience to address the issues and for the Task Force and NACIE members to listen.

All discussion will be recorded for the public record and for use by the Task Force and NACIE in preparing reports and recommendations. The participants are not expected to have written comments. However, the Task Force encourages submission of written testimony or papers from the public at all sessions.

Issues Sessions

Times and session topics are tentative and subject to change pending finalization of the NIEA Schedule. (Approximately 2 hours 30 minutes are planned per topic)

October 15, 1990—Theme: Successes in American Indian/Alaska Native Education

The Indian Nations At Risk Task Force and NACIE invite presentation and discussion of specific programmatic innovations and methods that have produced significant achievements in critical areas of Native education.

Room and Subject

9 a.m.–10:15 a.m.
De Anza—Academic performance.
Mesa—Native culture and languages.
Adobe—Health, wellness, substance abuse prevention.
El Camino—Teacher and administrator training, recruitment and retention.
10:45 a.m.–Noon.
De Anza—Academic performance.
Mesa—Native culture and languages.
Adobe—Health, wellness, substance abuse prevention.
El Camino—Teacher and administrator training, recruitment and retention.
1:30 p.m.–2:45 p.m.
De Anza—Dropout prevention.
Mesa—Instructional technology.
Adobe—Educaton of exceptional children.
El Camino—Partnerships of schools, tribes, communities, parents and business.
3:15 p.m.–4:30 p.m.
De Anza—Dropout prevention.
Mesa—Instructional technology.
Adobe—Education of exceptional children.
El Camino—Partnership of schools, tribes, communities, parents and business.

October 16, 1990—Theme: Effective Strategies for Improvements in American Indian/Alaska Native Education

NACIE and the Indian Nations At Risk Task Force invite presentation and discussion of strategies and ideas to improve the educational achievement of Native students in specific levels of education and through involvement of parents and Elders.

Room and Subject

9 a.m.–10:15 a.m.
De Anza—Early childhood education.
Mesa—Elementary school.
Adobe—Middle/high school.
El Camino—Parental involvement.
10:45 a.m.–Noon.
De Anza—Early childhood education.
Mesa—Elementary school.
Adobe—Middle/high school.
El Camino—Parental involvement.
1:30 p.m.–2:45 p.m.
De Anza—Adult and vocational/technical education.
Mesa—Postsecondary education.
Adobe—Special session for Elders to address the Task Force and NACIE.
El Camino—Open discussion with NACIE and Task Force members.
3:15 p.m.–4:30 p.m.
De Anza—Adult and vocational/technical education.
Mesa—Postsecondary education.
Adobe—Special session for students to address the Task Force and NACIE.
El Camino—Open discussion with NACIE and Task Force members.
5 p.m.–6 p.m.
De Anza—Wrap-up discussion with Task Force and NACIE members.

On October 17, 1990, the full Indian Nations At Risk Task Force will hold a business meeting from 9 a.m. to 5 p.m. in the Town and Country Room of the Town and Country Hotel. This meeting will be open to the public. The main topic of this meeting will be the outline and content of the final report of the Task Force. Other issues may be addressed during the business meeting at the discretion of the Task Force Chairpersons.

The Indian Nations At Risk Task Force was established by the Secretary of Education on March 8, 1990. Its purpose is to advise and make recommendations to the Secretary of Education on the condition of education of American Indians/Alaska Natives in the United States. Public notice will be given of all future meetings. Records are kept of the proceedings of the Task Force and are available for public inspection at the staff offices of the Task Force, from 9 a.m. to 4:30 p.m., on weekdays, excluding Federal holidays, room 4010, FOB–6, 400 Maryland Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Alan Ginsburg, Executive Director, Indian Nations At Risk Task Force, room 3127, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–4244, Telephone: (202) 401–0039 or 401–3132.

George Pieler,

Acting Deputy Under Secretary for Planning, Budget and Evaluation.

[FR Doc. 90–23113 Filed 9–27–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

American Indian Graduate Center; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy (DOE); San Francisco Operations Office (SAN).

ACTION: Notice of Intent to Award a Grant on the Basis of Noncompetitive Financial Assistance.

SUMMARY: The Department of Energy, San Francisco Operations office intends to enter into a two year grant with the American Indian Graduate Center, Albuquerque, New Mexico. The purpose of this program is to develop an American Indian College Student Tracking System which will enable DOE to identify American Indian students at the undergraduate and graduate college level which will enable DOE to encourage American Indian students to pursue energy-related careers (e.g., math, science, engineering, and environmental science). Features of the program will include the development of computer data on American Indian students by college, grade, field, status,

and other pertinent information. The DOE desires to enhance the public benefits to be derived by providing financial assistance and knows of no other entity which is conducting or is planning to conduct this activity. The project is expected to have a two (two) year life including two (2) separately funded one (1) year budget periods. Total estimated cost for the project is $65,000 in 1990 and $80,000 in 1991. The period of performance is expected to start September 30, 1990 and expire two years thereafter.

Grant No. DE-FG03-90SF18797.

FOR FURTHER INFORMATION CONTACT: Olga R. Perez, Contracting Officer, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, CM Division, Oakland, CA 94612.

Issued in Oakland, CA, September 18, 1990.

Kathleen M. Day,

Director, Contracts Management Division.

[FR Doc. 90-23019 Filed 9-27-90; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S. 2160), notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the supply of the following materials:

Contract Number DE-SC05-90NSO 7190, for supply of 10 kilograms of natural uranium to British Nuclear Fuels plc. in England.

Contract Number DE-SC05-90NSO 7194, for supply of 10 kilograms of natural uranium to Advanced Nuclear Fuels in the Federal Republic of Germany.

Contract Number DE-SC05-90NSO 7195, for supply of 10 kilograms of natural uranium to Seimens AG in the Federal Republic of Germany.

Contract Number DE-SC05-90NSO 7196, for supply of 10 kilograms of natural uranium to Franco-Belgium Fuel Company, in Belgium.

Contract Number DE-SC05-90NSO 7193, for supply of 10 kilograms of natural uranium to Japan Nuclear Fuel Company, Ltd. in Japan.

Contract Number DE-SC05-90NSO 7192, for supply of 10 kilograms of natural uranium to Mitsubishi Nuclear Fuel Company, Ltd. in Japan.

Contract Number DE-SC05-90NSO 7191, for supply of 10 kilograms of natural uranium to the Japan Nuclear Fuel Conversion Company in Japan.

All of the above-mentioned materials are to be used to determine the feasibility for UO3 in the manufacture of sinterable UO2 for use in the manufacture of nuclear fuel.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on September 24, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-23018 Filed 9-27-90; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Opportunities for Public Review and Comment on the Variable Industrial Power Rate and Termination Provision Proposals

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of opportunities for review and comment. *BPA File No:* VI-C-91. BPA requests that all comments regarding the Variable Industrial Power (VI) rate and contract termination provision proposal contain the file designation VI-C-91. *BPA File No:* VI-91. BPA requests that all comments and documents intended to become part of the official record for the VI rate proposal contain the file designation VI-91.

SUMMARY: BPA is proposing not to terminate the current VI-87 rate and VI rate contracts effective July 1, 1991, and will consider all public comments on the proposal. BPA also is proposing to adopt a successor VI rate for the period July 1, 1993, through June 30, 1996.

The VI rate varies with the market price of aluminum, lagged 3 months. The VI rate was designed in the mid-1980s to be in effect for 10 years, and BPA and its direct service industry (DSI) customers involved in primary aluminum production (aluminum smelters) entered into 10-year contracts to implement the proposed VI rate in 1986. The VI rate and contract provide BPA with a unilateral option to terminate the rate and contract after 5 years, effective July 1, 1991. The Federal Energy Regulatory Commission (FERC) approved the VI rate for 7 years, August 1986 through July 1993. Since its implemention in 1986, the VI rate has been successful in its goals of discouraging plant closures in the short run, encouraging high operation rates, and enhancing BPA revenues. The VI rate has added to overall rate stability for all BPA customers.

Responsible Official: Mr. Sydney D. Berwager, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's wholesale power and transmission rates.

DATES: *BPA File No. VI-C-91:* Written comments on the proposal not to terminate the VI rate and contract will be accepted through October 30, 1990. Written replies to comments will be accepted thereafter through November 19, 1990. All comments received will be available for review in BPA's Public Information Center. *BPA File No. VI-91:* Persons wishing to become a party to the rate hearing must notify BPA in writing of their intention to do so in accordance with requirements stated later in this notice. Petitions to intervene must be received at or before the prehearing conference on October 11, 1990, and should be addressed as follows: The Honorable Dean F. Ratzman, Hearing Officer, c/o John Ciminello—APR. Hearing Clerk, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. In addition, a copy of the intervention must be served on BPA's Office of General Counsel—APR, P.O. Box 3621, Portland, Oregon 97208.

BPA will prefile the testimony of its witnesses on October 2, 1990. Copies will be available in BPA's Public Information center. BPA will mail copies to requesting parties.

A prehearing conference will be held before the Hearing Officer at 9:30 a.m. on October 11, 1990, in the BPA Hearing Room, room 223, 911 NE. 11th, Portland, Oregon. Registration for the prehearing conference will begin at 9 a.m. At the prehearing conference, the Hearing Officer will rule on all intervention petitions and oppositions to intervention petitions, establish additional procedures, establish a service list, establish a procedural schedule, and

consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs and expediting cross-examination. A notice of the dates and times of the hearings will be mailed to all parties of record. Objections to orders issued by the Hearing Officer at the prehearing conference must be made at the prehearing conference in person or through a representative.

A final schedule will be established by the Hearing Officer at the prehearing conference. The following proposed schedule is provided for informational purposes:

October 2, 1990	BPA direct case filed. Available at BPA's Public Information Center, 905 NE. 11th, 1st Floor, Portland, Oregon.
October 11, 1990	Deadline for petitions to intervene. Prehearing conference to set schedule and act on petitions to intervene.
October 30, 1990	Parties' direct cases and litigants' rebuttal testimony.
November 29, 1990.	Cross-examination.
January 24, 1991	Final Record of Decision.

If no party files a direct case or rebuttal testimony, BPA proposes to issue a draft Record of Decision (ROD) on December 11, 1990, and a final ROD on January 10, 1991.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager—ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Price, Public Involvement Office, at the address listed above or at 503–230–3478. BPA has toll-free numbers available: Oregon callers may use 800–452–4829; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Gwinnut, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Robert N. Laffel, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109–1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225.

Mr. Richard J. Itami, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

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I. Background

A. History of the VI Rate and Contract

In the first half of the 1980's, the amount of electric power demanded by BPA's aluminum smelter customers had become unstable and unpredictable due to fluctauating aluminum market conditions. Many of the region's smelters were operated at reduced levels or shut down during that period, and the resulting changes in demand for power introduced uncertainty about BPA's resource planning, financial strength, and rate stability.

During the development of BPA's 1985 wholesale power rates, the issue of the DSIs' long-term viability was raised. The DSIs indicated that they need predictable and stable rates to help them make long-term investment decisions. The DSI Options Study was undertaken to examine mid- to long-term DSI policy, service, and rate options. Based on the results of the study and public comment, BPA decided to pursue the development of a power rate linked to the price of aluminum.

In 1985 and 1986, a formal rate hearing was conducted to develop the VI rate. The VI rate was first implemented in August 1986. The VI rate was designed to be in effect for 10 years through June 1996. All aluminum smelters elected to take service under this rate schedule and entered into the 10-year contracts with BPA to implement the rate. The rate schedule and contract provide BPA with a unilateral option to terminate the rate after 5 years, effective July 1, 1991. FERC approved the rate for 7 years, through July 31, 1993.

The VI rate varies monthly with the market price of aluminum, lagged 3 months. When the market price of aluminum drops below a defined point, the VI rate decreases, helping the smelters remain competitive and maintain stable loads on BPA. Likewise, when the market price rises above a defined point, the VI rate increases, enhancing BPA's revenue from sales to DSIs.

The key variables of the VI rate are the plateau, the upper and lower pivot prices, and the upper and lower rate limits. The VI rate is constant over the range of aluminum prices between the upper and lower pivot prices. This range is the eplateau, which is set equal to the Industrial Firm Power (IP) rate. When the price of aluminum is above the upper pivot price, the energy rate increases by 0.75 mills/kilowatthour (kWh) for every 1 cent/pound (lb) increase in aluminum prices, up to the upper rate limit. The upper rate limit is the point above which an increase in aluminum prices does not result in additional changes in the rate. When aluminum prices are below the lower pivot price, the energy rate decreases by 1 mill/kWh for every 1 cent/lb decrease in aluminum prices, down to the lower rate limit. The lower rate limit is the floor: decreases in aluminum prices below the lower rate limit do not result in additional changes to the rate.

The VI rate is adjusted every rate case based on the change in the overall IP rate level. Thus, the VI rate reflects BPA cost increases. In addition, the upper and lower pivot prices are adjusted every year on July 1 to reflect changes in aluminum production costs. The lower rate limit is increased by 1 mill/kWh every 2 years on July 1.

The VI rate has resulted in several benefits for BPA and its DSI customers. The rate has contributed to the overall improved health of the aluminum smelters by encouraging a high operating rate and making the smelters more competitive. The VI rate has increased BPA's revenues above what would have been possible under the IP rate. The resulting load stability has contributed to BPA's rate stability and aided its resource planning.

B. Proceedings Before BPA and FERC

On December 18, 1985, BPA published a notice in the Federal Register, 50 FR 51577, describing the proposed VI rate and commencing a rate proceeding pursuant to section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). 16 U.S.C. section 839e(i). A hearing officer conducted the rate proceeding, providing parties an opportunity to present direct cases, rebuttal, cross-examination, and submission of briefs. BPA issued a ROD in June 1986, based upon the record compiled by the hearing

officer. That record was included in BPA's 1985 wholesale power and transmission rate filing submitted to FERC for confirmation and approval. FERC granted interim approval of the VI rate effective July 31, 1986, *U.S. Dept. of Energy—Bonneville Power Admin.*, 36 F.E.R.C. ¶ 61,142 (1986), and granted final approval of the VI rate in April 1987, *U.S. Dep't. of Energy—Bonneville Power Admin.*, 39 F.E.R.C. ¶ 61,078 (1987).

II. Proposal Regarding VI–87 Rate and Contract Termination Provisions

Pursuant to the VI–87 rate schedule and the 10-year VI rate contracts, BPA is required to determine at the 5-year point whether to terminate the rate and the contract effective July 1, 1991. The termination provision of the VI–87 rate schedule reads as follows:

VI.E. The Administrator may terminate the Variable Industrial Power rate effective midnight June 30, 1991, upon a determination that significant changes in the conditions and expectations under which this rate was offered render the continuation of the Variable Industrial rate inconsistent with BPA's stated goals and objectives. BPA shall provide notification of such a determination pursuant to the provisions of the Variable Rate Contract. As part of the notification procedures, BPA shall provide a reasonable opportunity for interested parties to comment on BPA's determination, as well as to examine the comments submitted by other parties, prior to BPA taking final action to cancel the rate. If BPA determines that the Variable Industrial rate will remain in place until midnight June 30, 1993, BPA shall provide notice that so states and no additional action by BPA will be required.

The termination provision of the VI rate contracts provides as follows:

1.b. *Termination Date.*

This Agreement shall terminate on the earliest of:

(1) June 30, 1996,

(2) June 30, 1991, in the event that the VI rate is terminated in a manner consistent with the provisions of subsection c, below, or

(3) the date of termination of the Purchaser's Power Sales Contract.

c. *Five Year Termination.*

On or before April 1, 1991, [BPA] shall determine whether to extend the VI rate through June 30, 1996, or terminate both the VI rate and this Agreement effective June 30, 1991, at 2400 hours. Although [BPA] may choose to terminate the VI rate and this Agreement at that time, [BPA] may also elect to redesign the VI rate and offer that redesigned rate to eligible Industries.

* * * * *

On or before October 1, 1990, [BPA] will publish an initial proposal regarding its proposed actions with respect to the VI rate. Following publication of this proposal, [BPA] will conduct a public process on the issue, taking and evaluating public comment on [BPA's] proposal.

BPA proposes not to terminate the VI–87 rate or the VI rate contracts for service of electric power to BPA's DSI aluminum smelter customers. The cotinuation of the VI–87 rate and the VI rate contracts has several benefits. The rate and contracts meet BPA's primary objectives of enhancing BPA's revenue stability, resource planning certainty, and ability to meet planned Treasury payments, by reducing the rate uncertainty perceived by the DSIs.

BPA's proposal not to terminate the VI rate contracts on June 30, 1991, means that BPA intends to continue the contract until it terminates at the earlier of June 30, 1996, or the date of termination of the DSIs' underlying power sales contracts with BPA. The proposal not to terminate the VI–87 rate on June 30, 1991, means that BPA intends to permit the rate to continue until the FERC approval period expires. In order to fulfill the full term of the VI rate contact, BPA also proposes to adopt a rate, virtually the same as VI–87, for the remaining contract term provided that FERC approves and confirms the rate through June 30, 1996. This proposal is contained in the rate proposal portion of this notice, designated BPA File No. VI–91. *See* section III, below. Public comment on the prosal not to terminate the VI–87 rate and contracts as provided for in the respective termination provisions should be designated as BPA File No. VI–C–91.

III. Proposed VI–91 Rate Schedule and General Rate Schedule Provisions

The VI–87 rate is effective through June 30, 1993. BPA is proposing the following VI–91 rate schedule and associated General Rate Schedule Provisions (GRSPs) to be effective July 1, 1993, through June 30, 1996, the date that the VI rate contract expires. The VI–87 rate and associated 1989 GRSPs are used as the basis for the current rate proposal. The rate charges and parameters in the proposed rate schedule are those in effect on July 1, 1990, under the VI–87 rate, and shall be escalated according to the provisions in the rate schedule and GRSPs.

Proposed Variable Industrial Power Rate (VI–91)

Section I. Availability

This schedule is available to DSI customers for purchases under the Power Sales Contract implementing the VI Rate Schedule (Variable Rate Contract) of: (1) Industrial Firm Power; and (2) Auxiliary Power if requested by the DSI customer and made available by BPA. This schedule is available only for that portion of a DSI's load used in primary aluminum reduction including associated administrative facilities, if any. By virtue of incorporation of this rate schedule and associated GRSPs in the Variable Rate Contract, DSIs electing to purchase power under this rate schedule contractually agree to the terms and conditions of this rate schedule. A DSI further agrees to waive, for that portion of their load designated to purchase power at the VI rate, all rights they might otherwise have to purchase power at the Industrial Firm Power Rate Schedule for the duration of the Variable Rate Contract. Sales under this schedule are made subject to BPA's GRSPs effective October 1, 1989, and as revised in subsequent wholesale rate filings.

Section II. Term of the Rate

This rate schedule shall take effect on July 1, 1993, and shall terminate on midnight June 30, 1996.

Section III. Rate

A. *Base rate charges subject to rate case adjustments.*—The following base rates shall be adjusted on Rate Adjustment Dates beginning October 1, 1991, following the procedures set forth in section VI.C. of this rate schedule, unless the Cost Recovery Adjustment Clause triggers, at which point the rates shall be adjusted following the procedures set forth in section VI.I of this rate schedule. In addition, the Lower Rate Limit also will be subject to a biennial adjustment pursuant to section VI.B. of this rate schedule. The formula to be used in the calculation of the monthy power bill is contained in section IV. A separate billing adjustment for the value of the reserves provided by purchasers of Industrial Firm Power is not contained in this rate schedule; the value of reserves credit has been included in the determination of the Plateau Energy Charge. On July 1, 1993, the base rates, as adjusted, shall be applied to purchases by DSI customers under the Variable Rate Contract. These rates shall continue to be adjusted, as described, through June 30, 1996.

1. *Base variable industrial rate*—a. Demand charge. $5.33 per kilowatt of billing demand occurring during the Peak Period. No demand charge is applied during Offpeak Period hours.

b. *Plateau energy charge.* 16.1 mills per kilowatthour of billing energy.

2. *First quartile service discount.* 0.5 mills per kilowatthour of billing energy.

3. *Lower rate limit.* 10.3 mills per kilowatthour of billing energy.

4. *Upper rate limit.* 21.9 mills per kilowatthour of billing energy.

B. *Base rate parameters subject to annual adjustments.* The following base rate parameters will be adjusted annually starting on July 1, 1991, and every July 1 therafter, in accordance with the procedures contained in section VII.B of the GRSPs. On July 1, 1993, the base rate parameters, as adjusted, shall be used in determining power bills for DSI customers purchasing power under the Variable Rate Contracts. These parameters shall continue to be adjusted as described through June 30, 1996.

1. *Lower pivot aluminum price.* 68.5 cents per pound.

2. *Upper pivot aluminum price.* 79.6 cents per pound.

Section IV. Formula

The Variable Industrial Power rate is a formula rate tied to the U.S. market price of aluminum. Under this rate schedule, the monthly energy charge varies in response to changes in the average price of aluminum in U.S. markets.

A. *Demand charge.* The Demand Charge, as stated in section III.A.1.a. of this rate schedule, remains constant over all aluminum prices. The demand charge is applied to billing demand occurring during all Peak Period hours for all billing months.

2. No demand charge during Offpeak Period hours.

B. *Energy charge*—1. *Plateau energy charge.* When the monthly billing aluminum price (described in section VII.A. of the GRSPs) is between the Lower Pivot Aluminum Price and the Upper Pivot Aluminum Price inclusive (as stated in sections III.B.1. and III.B.2. of this rate schedule), the monthly energy charge shall be the Plateau Energy Charge as stated in section III.A.1.b. of this rate schedule.

2. *Reductions to Plateau Energy Charge.* When the monthly billing aluminum price is less than the Lower Pivot Aluminum Price, the monthly energy charge shall be the greater of:

a. The Plateau Energy Charge—(LP–MAP)* (LS)

where:

LP=the Lower Pivot Aluminum Price as stated in section III.B.1. of this rate schedule.

MAP=the monthly billing aluminum price in cents per pound determined pursuant to section VII.A. of the GRSPs.

LS=lower slope=

$$\frac{\textit{1 mill per kilowatthour}}{\text{1 cent per pound}}$$

or

b. The Lower Rate Limit as stated in section III.A.3. of this rate schedule.

3. *Increases to plateau energy charge.* When the monthly billing aluminum price is greater than the Upper Pivot Aluminum Price, the monthly energy charge shall be the lesser of:

a. The Plateau Energy Charge + (MAP–UP)* (US)

where:

MAP=the monthly billing aluminum price in cents per pound, as determined according to section VII.A. of the GRSPs.

UP=the Upper Pivot Aluminum Price as stated in section III.B.2. of this rate schedule.

US=upper slope=

$$\frac{\text{0.75 mills per kilowatthour}}{\text{1 cent per pound}}$$

or

b. The Upper Rate Limit, as stated in section III.A.4. of this rate schedule.

Section V. Billing Factors

A. *Billing demand*—1. *Billing demand for customers whose entire BPA load is served at the VI rate.* The billing demand for power purchased shall be the BPA Operating Level during the Peak Period as adjusted for power factor. If there is more than one BPA Operating Level during the Peak Period within a billing month, the billing demand shall be a weighted average of the BPA Operating Levels during the Peak Period for the billing month. The BPA Operating Level is defined in section III.A10. of the GRSPs.

2. *Billing demand for customers when only a portion of their total BPA load is served at the VI rate.* The Billing Demand shall be the portion of the BPA Operating Level attributable to the VI rate as determined by the method specified in the Variable Rate Contract.

3. *Billing demand during periods of transitional service.* If BPA has agreed, pursuant to section 4 of the DSI power sales contract, to sell Industrial Firm Power on a daily demand basis (transitional service) sections V.A.1. and V.A.2. of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C. of the GRSPs.

B. *Billing energy.* The billing energy for power purchased shall be the Measured Energy for the biling month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

Section VI. Other Adjustments and Special Provisions

A. *Lower and upper pivot aluminum prices.* Effective July 1, 1991, and every July 1 thereafter, the Lower and Upper Pivot Aluminum Prices set forth in section III.B. of the rate schedule shall be adjusted following the procedures set forth in section VII.B. of the GRSPs. The adjusted Lower and Upper Pivot Aluminum Prices shall supersede the Lower and Upper Pivot Aluminum Prices contained in section III.B. of the rate schedule. The revised Lower and Upper Pivot Aluminum Prices shall be used for billing purposes and subsequent adjustments to the Lower and Upper Pivot Aluminum Prices.

B. *Lower rate limit.* On July 1, 1992, and July 1, 1994, the Lower Rate Limit as stated in section III.A.3. shall be increased by 1 mill per kilowatthour. The revised Lower Rate Limit shall supersede the Lower Rate Limit as stated in section III.A.3. of the rate schedule. This increase is in addition to rate adjustment increases in the Lower Rate Limit described in section VI.C. of this rate schedule. In the event that a rate adjustment date and the annual adjustment date occur simultaneously, the Lower Rate Limit shall be adjusted first for changes in the Plateau Energy Charge pursuant to section VI.C. of this rate schedule, and then increased by 1 mill per kilowatthour. The revised Lower Rate Limit shall be used for billing purposes and subsequent rate adjustments.

C. *Rate adjustments.* The Overall rate level of this rate shall be subject to adjustment in BPA's general wholesale power rate case following the procedures and directives of the Northwest Power Act. The overall rate level consists of the Demand Charge, Plateau Energy Charge, and First Quartile Service Adjustment contained in sections III.A.1. and III.A.2.; these shall be adjusted by a uniform percentage based on the percentage change in the overall rate level. The Lower and Upper Rate Limits as stated in sections III.A.3. and III.A.4. of this rate schedule shall be adjusted by an amount equal to the change, in mills per killowatthour, in the Plauteau Energy Charge. The Lower and Upper Pivot Aluminum Prices shall not be adjusted in the rate case; rather, they shall be adjusted pursuant to the procedures described in section VII.B. of the GRSPs. The lower and upper slopes shall not be adjusted. The rate for unauthorized increase shall be separately determined in each rate case.

D. *Discount for quality of first quartile service.* If a purchaser requests First Quartile service with other than Surplus Firm Energy Load Carrying Capability, a discount contained in section III.A.2. of this rate schedule shall be granted. This billing credit shall be applied to the monthly billing energy under section

V.B. for all power purchased under this rate schedule. No credit shall be applied to those purchases subject to unauthorized increase charges under section VI.F. of this rate schedule. To qualify for the First Quartile Discount, the purchaser must request discounted rate service in writing by April 2 of each calendar year. By virtue of making such request, the Purchaser is agreeing to accept the level and quality of First Quartile service described in section 6 of the Variable Rate Contract. Such acceptance includes the waiver of contract rights provided in § 6.a(2)(a) of said contract.

E. *Curtailments.* BPA shall charge the customer for curtailments of the lower three quartiles in accordance with the provisions of section 9 of the power sales contract and the provisions contained in the Variable Rate Contract.

F. *Unauthorized increase*—1. Rate for unauthorized increase. 67.3 mills per kilowatthour. 2. Application of the charge. During any billing month, BPA may assess the unauthorized increase charge on the number of kilowatthours associated with the DSI Measured Demand in any one 60-minute clock-hour, before adjustment for power factor, that exceed the BPA Operating Level for that clock-hour, regardless of whether such Measured Demand occurs during the Peak or Offspeak Period.

G. *Power factor adjustment.* The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1. of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjutment, BPA shall increase the BPA Operating Level by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

H. *Outage credit.* Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any DSI to whom BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Industrial Firm Power. Such credit shall not be provided if BPA is able to serve the DSI's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2. of the GRSPs.

I. *Cost recovery adjustment clause.* The Cost Recovery Adjustment Clause described in the GRSPs in effect July 1, 1993, to June 30, 1996, shall be applied to all power purchases under this rate schedule consistent with the procedures to adjust the VI rate and the provisions of the Variable Rate Contract.

Section VII. Resource cost contribution

BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the VI–91 rate is 99.3 percent Exchange and 0.7 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour.

Proposed GRSPs Associated with the VI Rate Schedule

Section VII. Variable Industrial Rate Parameters and Adjustments

A. *Monthly average aluminum price determination*—1. *Calculation of the monthly billing aluminum price.* The monthly billing aluminum price shall be determined by BPA for each billing month. For purposes of this rate schedule, the monthly billing aluminum price shall be based on the average price of aluminum in U.S. markets during the third calendar month prior to the billing month. The average price of aluminum in U.S. markets shall be defined as the average U.S. Transaction Price reported for the month by "Metals Week," in cents per pound, rounded to the nearest tenth of a cent.

2. *Notification of the monthly average aluminum price.* BPA shall provide, 45 days prior to the billing month, written notification to purchasers under this rate schedule of the monthly billing aluminum price to be used for billing purposes. Upon written request supporting documentation shall be provided.

3. *Changes in aluminum price indicators.* In the event that BPA determines that factors outside its control render the monthly average U.S. Transaction Price unusable as an approximation of U.S. market prices, BPA may develop and substitute another indicator for prices in U.S. markets. BPA shall notify interested parties of its intent to do so at least 120 days prior to the billing month in which the change would become effective. In this notification, BPA shall explain the reason for the substitution and specify the replacement indicator it intends to use. BPA also shall describe the methodology to determine the monthly billing aluminum price to be used for billing purposes under this rate schedule and shall provide the necessary data to be used in the calculation. Interested persons will have until close of business 3 weeks from the date of the notification to provide comments. Consideration of comments and more current information may cause the final methodology and the substitute aluminum price index to differ from those proposed. BPA shall notify all affected parties, and those parties that submitted comments, of its final determination 90 days prior to the billing month the new indicator shall be effective.

B. *Annual adjustments to the lower and upper pivot aluminum prices.* On July 1, 1991, and every July 1 thereafter, the Lower and Upper Pivot Aluminum Prices, as stated in section III.B of the rate schedule, shall be subject to change for billing purposes as herein described. The term "annual adjustment date" shall refer to July 1 of each year.

1. *Implementation Procedures.* Beginning in 1991 and every year thereafter, prior to April 1 of that year, BPA shall provide the purchasers under this rate schedule preliminary written estimates of proposed adjustments to the Lower and Upper Pivot Aluminum Prices. By the last working day of the month of April, BPA shall notify interested parties in writing of BPA's revised determination concerning changes to the Lower and Upper Pivot Aluminum Prices. BPA shall describe how the adjustments were determined and provide the data used in the calculations. In addition to written notification, BPA may, but is not obligated to, hold a public comment forum to clarify its determination and solicit comments. Interested persons may submit comments on the determination to BPA and other parties. Comments will be accepted until close of business on the last working Friday in May. Consideration of comments and more current information may result in the final adjustment differing from the proposed adjustment. By June 30 of each year, BPA shall notify all VI purchasers, those parties that submitted comments, and parties that requested notification, of the final determination.

2. *Annual adjustment procedures—a. Annual adjustment of the lower pivot aluminum price.* Beginning with the July 1, 1991, annual adjustment date, for each year that the VI rate is in effect, the Lower Pivot Aluminum Price, as stated in section III.B.1. of the rate schedule

shall be adjusted on the July 1 annual adjustment date. The Lower Pivot Aluminum Price shall be revised by multiplying 59 cents per pound by the Cost Escalation Index described in section VII.B.3.b of these GRSPs and rounded to the nearest tenth of a cent. The revised Lower Pivot Aluminum Price shall replace the Lower Pivot Aluminum Price as stated in section III.B.1 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 billing months.

b. *Annual adjustment of the upper pivot aluminum price.* For each year that the Variable Industrial rate is in effect, the Upper Pivot Aluminum Price as stated in section III.B.2 of the rate schedule shall be adjusted on the July 1 annual adjustment date. The Upper Pivot Aluminum Price will be adjusted such that the Average Historical Aluminum Price described in section VII.B.4 of these GRSPs is the midpoint between the adjusted Upper Pivot Aluminum Price and the Average Historical Lower Pivot Aluminum Price described in section VII.B.5 below, except as limited to the greater of 65 cents per pound or the adjusted Lower Pivot Point for the year.

The Upper Pivot Aluminum Price shall equal the greater of:

(1) (2)*(AAP)—ALP:
where

AAP=the average Historical Aluminum Price described in section VII.B.4 of these GRSPs.

ALP=the Average Historical Lower Pivot Aluminum Price described in section VII.B.5 of these GRSPs.

(2) 65.0 cents per pound escalated to current dollars using the Cost Escalator from the Upper Pivot Aluminum Price described in section VII.B.3.c of these GRSPs.

or

(3) The adjusted Lower Pivot Aluminum Price for the year.

The revised Upper Pivot Aluminum Price shall supersede the Upper Pivot Aluminum Price as stated in section III.B.2 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 months.

3. *Cost escalators.* a. The cost indices described below shall be used in calculating the appropriate cost escalators. Each index shall be rounded to the nearest one-tenth of a percent, or three significant places.

(1) *Electricity Cost Index.* The average VI rate in mills per kilowatthour based on the Plateau Energy Charge and the Discount for Quality of First Quartile Service in effect on the April 1 preceding the annual adjustment date and a load factor of 98.5 percent; divided by 22.8 mills per kilowatthour (the average VI–86 rate assuming the plateau energy charge and the Discount for Quality of First Quartile Service in 1986).

(2) *Labor cost index.* The annual average hourly earnings for the U.S. primary aluminum industry (SIC 3334) over the previous complete calendar year, from the Employment and Earnings, published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS), divided by $14.20 per hour (the value of SIC 3334 earnings reported for 1985).

(3) *Alumina cost index.* The annual average of the monthly billing aluminum prices described in section VII.A of the GRSPs for the previous 1-year period beginning July 1 through June 30 divided by 50.8 cents per pound (the average U.S. Transaction price over the period April 1985 through March 1986).

(4) *Other costs index.* The annual average GNP Implicit Price Deflator for the previous complete calendar year, as published by the U.S. Department of Commerce, Bureau of Economic Analysis, divided by 1.109 (the value of the GNP Implicit Price Deflator for 1985 with 1982=1.000).

In the event the indices delineated above are discontinued or revised in a manner that BPA determines renders them unusable for calculating a consistent cost index, BPA will adjust or substitute another similar price index, following advance notification and opportunity for public comment as described in section VII.B.1 of these GRSPs.

b. The Cost Escalator for the Lower Pivot Aluminum Price shall be a weighted average of the four indices contained in section VII.B.3.a above. The following weights shall be assigned each index:

Electricity Cost Index	.30
Labor Cost Index	.20
Alumina Cost Index	.20
Other Costs Index	.30

c. The Cost escalator for the Upper Pivot Aluminum Price shall be a weighted average of the Electricity Cost and Other Cost Escalators as stated in sections VII.B.3.a(1) and VII.B.3.a(4) above. The following weights shall be assigned each index:

Electricity Cost Index	.25
Other Costs Index	.75

4. *Average historical aluminum price.* Prior to the July 1, 1991, annual adjustment date and every annual adjustment date thereafter, an average historical aluminum price shall be calculated for the period the VI rate has been in effect beginning August 1986. The average historical aluminum price shall be determined following the procedures set forth below:

a. Each monthly billing aluminum price determined pursuant to section VII.A of these GRSPs for the period August 1, 1986, through June 30 immediately preceding the annual adjustment date, shall be escalated to the current year dollars using the Price Deflator procedures described in section VII.B.6 below.

b. The sum of the escalated monthly billing aluminum prices shall be divided by the number of months in the period and rounded to the nearest tenth of a cent to obtain the Average Historical Aluminum Price.

5. *Average historical lower pivot aluminum price.* Prior to the July 1, 1991, annual adjustment date and every annual adjustment date thereafter, the average of the Lower Pivot Aluminum Prices for the period the VI rate has been in effect beginning August 1986 shall be calculated following the procedures set forth below:

a. The Lower Pivot Aluminum Price in each month for the period August 1, 1986, through June 30 of the calendar year preceding the annual adjustment date, shall be escalated to the current year's dollars using the Price Deflator procedures described in section VII.B.6 below.

b. The sum of the escalated monthly Lower Pivot Aluminum Prices shall be divided by the number of months in the period, and rounded to the nearest tenth of a cent to obtain an Average Historical Lower Pivot Aluminum Price.

6. *Price deflator procedures.* For purposes of converting nominal dollars to real dollars in the calculation of the Average Historical Aluminum Price and the Average Historical Lower Pivot Aluminum Price, the following Price Deflator procedures shall be used:

a. Monthly billing aluminum prices and Lower Pivot Aluminum Prices for any calendar months July through December shall be inflated by multiplying the price by the ratio of the GNP Implicit Price Deflator for the calendar year prior to the annual adjustment date divided by the Implicit Price Deflator for the calendar year in which the price occurred.

b. Monthly billing aluminum prices and Lower Pivot Aluminum Prices for any calendar months January through June shall be inflated by multiplying the price by the ratio of the Implicit Price Deflator for the calendar year prior to the annual adjustment date divided by the Implicit Price Deflator for the calendar year prior to the year in which the price occurred.

Each price shall be rounded to the nearest tenth of a cent.

IV. Relevant Statutory Provisions

Northwest Power Act, section 7, 16 U.S.C. 839e, directs the Administrator to establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. The rates are to be set so that BPA recovers, over a reasonable period of years, and in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River System. Other rate directives within section 7 describe how the rates for individual customer groups are derived.

Rates for the DSIs are to be set according to provisions contained in section 7(c) of the Northwest Power Act. 16 U.S.C. section 839e(c). Section 7(c)(2) of the Northwest Power Act provides that, beginning July 1, 1985, rates that apply to DSI customers

> shall be based upon the Administrator's applicable wholesale rates to * * * public body and cooperative customers and the typical margins included by such public body and cooperative customers in their retail rates * * *.

Section 7(c)(2) further provides that the rate determination must take into account

> (a) the comparative size and character of the loads served; (b) the relative costs of electric capacity, energy, transmission, and related delivery facilities provided and other service provisions; and (c) direct and indirect overhead costs, all as related to the delivery of power to industrial customers * * *.

Section 7(c)(2) also provides that DSI rates

> shall in no event be less than the rate in effect for the contract year ending on June 30, 1985.

Section 7(c)(3) provides that DSI rates must be adjusted

> to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers.

V. Procedures Governing Rate Adjustments

A. Rate Procedures

Section 7(i) of the Northwest Power Act, 16 U.S.C. section 839e(i), requires that rates be set according to certain procedures. These procedures include: issuance of a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be conducted according to the rule for general rate proceedings, section 1010.9 of BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986) (BPA Procedures) which implement, and in most instances expand, the statutory requirements. BPA's procedures provide for publication of a notice of proposed rates, a prehearing conference, a hearing, receipt of written comments, preparation of decisional documents, a decision, and the transmittal of the decision with supporting documentation to FERC.

B. Distinguishing Between "Participants" and "Parties"

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written and oral comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are submitted on or before November 30, 1990. Participants' written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement office.

The section category of interest is that of a "party" as defined in § § 1010.2 and 1010.4 of the BPA Procedures. Parties may participate in any aspect of the hearing process.

C. Petitions for Intervention

Persons wishing to become a party of BPA's rate proceeding must notify BPA in writing of their request. Petitioners may designate no more than two representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status and the person's interest in the hearing. Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to § 1010.1(d) of BPA's Procedures, BPA waives the requirement in § 1010.4(d) that opposition to an intervention petition be filed and served 24 hours before the prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any proposed intervener, and BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and received by BPA within 2 days after service of the petition. Intervention petitions will be available for inspection in BPA's Public Information Center, 1st floor, 905 NE. 11th, Portland, Oregon.

Persons seeking to become parties may wish to obtain copies of BPA's testimony prior to the prehearing conference. The testimony will be available October 2, 1990.

To request the testimony by telephone, call BPA's toll-free document request line: 800–841–5867 for Oregon outside of Portland; 800–624–9495 for Washington, Idaho, Montana, California, Wyoming, Utah, and Nevada. You will reach a recorded message where you can leave your request for the testimony. Other callers should use 503–230–3478.

D. Developing the Record

Cross-examination will be scheduled by the Hearing Officer as necessary, following completion of the filing of all parties' and BPA's direct cases, rebuttal testimony, and discovery. Parties will have the opportunity to file initial briefs at the close of cross-examination.

After the close of the hearings, and following submission of initial briefs, BPA will file a draft ROD, which will identify the issues BPA will resolve in the hearing, summarize the factual, legal, and policy arguments presented by BPA and the parties on each issue, and state the Administrator's tentative decision. Parties may file briefs on exceptions and may request oral argument. When oral argument has been scheduled, the argument will be transcribed and made part of the record.

The record will include, among other things, the transcripts of any hearings, written material submitted by the participants, and evidence accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

The basis for the final rate will be expressed in the Administrator's ROD. The Administrator will serve copies of the ROD on all parties and will file the final proposed rate, together with the record, with FERC for confirmation and approval.

VI. Scope

BPA file no. VI–C–91: This comment process will address only BPA's proposal not to terminate the VI rate and contract.

BPA file no. VI–91: This rate hearing will address BPA's VI–91 rate proposal and any alternative rate proposals.

Issues relating to other BPA processes, such as Surplus Power Marketing and System Operations Review, are beyond the scope of these proceedings.

Issued in Portland, Oregon, on September 13, 1990.

Jack Robertson,

Deputy Administrator, Bonneville Power Administration, Department of Energy.

[FR Doc. 90–23022 Filed 9–27–90; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order With Salomon Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Salomon Inc. (formerly Phibro Corporation), including five affiliated companies (collectively herein Salomon). The agreement proposes to resolve matters relating to Salomon's compliance with the federal petroleum price and allocation regulations in resales of crude oil for the period January 1, 1978, through January 27, 1981. If this Consent Order is approved, Salomon shall pay to the DOE eighty three million seven hundred fifty thousand dollars ($83,750,000) within thirty (30) days of the effective date of the Consent Order. The DOE's Office of Hearings and Appeals (OHA) will be petitioned to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the Federal Register, along with an analysis of the response to the significant written comments, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1699.

SUPPLEMENTARY INFORMATION:CO4

I. Resolution of Regulatory Issues

Salomon is a crude oil reseller subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period when federal price and allocation controls were in effect, August 19, 1973 through January 27, 1981, Salomon engaged in, among other things, the purchase and resale of crude oil.

ERA conducted an audit of Salomon's crude oil transactions during the price and allocation control period. As a result of this audit, disputes arose between ERA and Salomon concerning Salomon's compliance with the federal petroleum price and allocation regulations applicable to the resale of crude oil. Disputes between the parties concerning crude oil resale transactions which occurred prior to January 1, 1978 were settled for $16.25 million by a Consent Order which was made final on March 24, 1988. 53 FR 9660. Disputes concerning crude oil resales which occurred between January 1, 1978 and January 27, 1981 are the subject of the present proposed Consent Order.

On September 23, 1988, ERA issued a Proposed Remedial Order (PRO) to Salomon and its affiliated entities Philipp Brothers Inc., Derby & Co., Inc., Derby Distributors, Inc., Philipp Brothers Latin American Corporation, and Philipp Brothers Pan American Corporation. The PRO alleged that, in 400 in-line, in-tank, and in-vessel crude oil resales between January 1978 and December 1980, Salomon violated 10 CFR 212.186, 210.62(c) and 205.202 by engaging in "layering," *i.e.*, by selling the crude oil at prices in excess of its acquisition costs without performing any service or other function traditionally and historically associated with the resale of crude oil. The amount of the layering violations alleged in the PRO is $83,380,132, plus interest which currently would amount to approximately $203 million.

In addition, the PRO also alleges that, in an additional 2722 crude oil resales during the period covered by the proposed Consent Order, Salomon violated 10 CFR 212.183 by selling crude oil in some months at average mark-ups over acquisition costs which exceeded the "permissible average mark-up" (PAM), as defined in the regulations. The PRO calculated these PAM violations as $24,593,683 (plus interest), based upon treating each of Salomon's five affiliated entities as a separate "firm" (10 CFR 212.31) and utilizing an ERA-determined May 1973 PAM of $.06 per barrel for Derby & Co., Inc., and $.20/bbl. PAMs for the remaining Salomon subsidiaries (which did not begin reselling crude oil until after December 1977).

During the course of the litigation on the PRO's charges, OHA issued an interlocutory Order on March 15, 1990, which, *inter alia*, granted Salomon's request for single "firm" treatment of Salomon and its five affiliated companies, and accepted one of Salomon's alternative arguments that Derby & Co., Inc.'s May 1973 PAM was $.2261/bbl. Accordingly, OHA directed ERA to recalculate the PRO's alleged PAM violations reflecting single-"firm" treatment and utilizing the May 1973 PAM of $.2261bbl. for the entire Salomon "firm." *Salomon Inc*, 20 DOE ¶ 84,002 (1990). ERA recalculated the alleged PAM violations as $6,250,739, plus interest of approximately $15 million. The layering and PAM violations currently at issue in the PRO proceeding thus total $89.6 million before interest.

In the alternative to the foregoing layering *and* PAM charges, the PRO also alleges that in the event the layering charges are not sustained, Salomon in the subject resales violated the PAM rule. Under this alternative theory, the total amount of the all-PAM violations as originally alleged in the PRO was $47,974,789, plus interest. As revised in light of OHA's single "firm" and $.2261/bbl. PAM rulings, that alleged violation amount would be $16,807,036, plus interest of approximately $39 million, for a current total of nearly $56 million.

In summary, the PRO as originally issued alleged violations ranging from $48 million (plus interest) to $106 million

(plus interest). During the course of the PRO litigation to date, Salomon's potential alleged liability has been reduced from a maximum of $89.6 million, plus interest to $16.8 million, plus interest, in the alternative.

II. Determination of Reasonable Settlement Amount

The proposed settlement calls for Salomon to pay $83,750,000 to discharge in full its obligations under the price and allocation regulations relating to crude oil resales during the period January 1978 through January 27, 1981. ERA has preliminarily agreed to the proposed settlement amount after considering the number and complexity of the factual and legal issues currently in dispute in the litigation, assessing the litigation risks associated with establishing the alleged overcharges, and considering the benefit to the public from a significant settlement of issues which would take years of additional litigation to resolve.

While it would be necessary for the government to prevail in litigation on all of the disputed issues in order to achieve the maximum overcharge recovery currently alleged against Salomon, the inherent risks of litigation make such an outcome problematic. Of particular significance in this regard are issues relating to the manner in which the amount of any layering violations which may be adjudicated should be calculated. Even assuming that ERA succeeds in proving that the instances of layering alleged in the PRO occurred, the amount of the resulting overcharges is uncertain.

Since Salomon did not, contemporaneously with the subject transactions, track each crude oil purchase to the corresponding resale, the method ERA used to arrive at the $83.4 million layering violation amount alleged in the PRO is based on the only accounting system of matching of crude oil costs and revenues reflected in Salomon's records: Salomon assigned a transaction number (referred to as a "trumber") to a given purchase and sale or (more typically) a group of purchases and sales, and computed a profit or loss for that sale or group of sales. The $83.4 million figure is the sum of the profits resulting under Salomon's trumber system for sales alleged by ERA to be layered. By contrast, Salomon argues that restitution for any layering violations should be limited to its gross profits from the subject transactions, which Salomon computes as $22 million (or less, depending on the data included in the computation).[1] Adding interest to this amount yields a current maximum potential liability of approximately $76 million.

In its March 15 Order, OHA found ERA's reliance on Salomon's trumber system reasonable, but nevertheless determined to accept an alternative overcharge computation methodology based on groupings of Salomon's purchases and sales of each type and grade of crude oil traded in a given pipeline in a given month.[2] Pursuant to OHA's invitation, Salomon proffered its calculations of alleged layering overcharges under OHA's pipeline tracing methodology for five sample months of the audit period. Those calculations totaled $20.6 million, exclusive of interest. More recently, Salomon has computed layering overcharges under the pipeline tracing alternative for the entire 36-month audit period as $57.6 million (exclusive of interest). ERA believes that the correct application of the pipeline tracing methodology yields approximately $71 million, exclusive of interest.

It is uncertain which, if any, of the parties' pipeline tracing alternative violation amounts OHA might adopt, in the event of a determination that Salomon layered in some or all of the 400 subject resales. It is also at least possible, given the dispute between Salomon and ERA regarding the proper method of calculating layering overcharges in the circumstances of this case, that any such overcharges might ultimately be computed on a gross profits basis. Furthermore, whatever overcharge methodology OHA might employ would be subject to further administrative appeal and judicial review.

In addition to substantial uncertainty in the overcharge amount assuming that all of the layering allegations are proven, it is also certain that ERA will succeed in proving each and every instance of layering alleged in the PRO. For example, a very large number (400) of crude oil resales are at issue, as to which Salomon has asserted numerous transaction-specific defenses. Another factor is the complexity of Salomon's transactions, in which multiple dispositions and receipts of crude oil volumes frequently intervened between a purchase of crude oil by Salomon and a sale by Salomon which was allegedly layered. The complexity of the transctions has presented Salomon with an opportunity to raise an unusually large number of defenses with respect to each volume sold in an allegedly layered transaction. Salomon has also asserted numerous legal defenses to the PRO, including, for example, the validity and application of the anti-layering rule to Salomon's business activities, and DOE jurisdiction over Salomon's foreign crude oil resales. Each instance in which layering charges were not sustained would result in some reduction of the violation amount. If none of the layering charges were sustained, leaving only PAM violations, the maximum overcharge liability, including interest, would total nearly $56 million.

Based on all of the foregoing considerations, ERA has tentatively concluded that the resolution of these matters for a total of $83.75 million is an appropriate settlement and in the public interest.

III. Terms and Conditions of the Consent Order

If the settlement is made final, Salomon will pay DOE $83,750,000 within thirty (30) days of the effective date of the Consent Order. In addition, Salomon will waive its rights to make claims for refunds in any proceedings conducted pursuant to 10 CFR part 205, subpart V.

To distribute the monies received by DOE under the settlement with Salomon, ERA will petition OHA to implement Special Refund Procedures under the provisions of subpart V. To ensure that OHA has sufficient information to evaluate refund claims, the proposed Consent Order requires that Salomon maintain customer identification and purchase volume information, and provide such information to OHA if needed.

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[1] ERA calculated Salomon's gross profits from the allegedly layered transactions as approximately $27 million.

[2] OHA adopted this alternative pipeline tracing methodology in order to address a number of Salomon's objections to ERA's trumber-based methodology. In OHA's view, the alternative method: (1) Would provide a pipeline-specific methodology; (2) would not reflect separate "firm" treatment of Salomon's subsidiaries; and (3) would recognize the performance of any traditional reseller services performed by Salomon that were pipeline-specific but that could not be related to any particular sale.

OHA explained its alternative pipeline tracing methodology, which follows the physical flow of the crude oil, as follows. A given group of purchases and sales would include all Salomon purchases and sales, regardless of which Salomon subsidiary made the sale(s). In order to determine if Salomon made profits with respect to a given group, the per barrel acquisition cost for that group would be subtracted from the per barrel selling price for that group. The resulting number would be multiplied by the number of barrels sold from that group. Salomon would then have a profit or loss for each type and grade of crude oil sold in a given pipeline in a given month. If OHA then determined that Salomon had performed a traditional and historical reseller service in connection with a profitable group of sales, OHA would make an appropriate reduction in the alleged violation amount.

Salomon and DOE mutually release each other from the claims arising under the subject matters covered by the proposed Consent Order. The proposed Order does not affect the rights of any other party to take action against Salomon, or Salomon or the DOE to take action against any other party.

If the settlement is not made final by the one hundred twentieth (120th) day following execution, Salomon may withdraw from the proposed agreement.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Salomon Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Issued in Washington, DC, on September 20, 1990.

Chandler L. van Orman,

Acting Administrator, Economic Regulatory Administration.

Consent Order.

[Insert Text of Consent Order]

I. Introduction

101. This Consent Order is entered into between Salomon Inc ("Salomon") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Salomon, as hereinafter defined, relating to Salomon's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, in its crude oil resale transactions during the period January 1, 1978, through January 28, 1981 (hereinafter "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA.

203. The following definitions apply for purposes of this Consent Order:

a. "Federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping 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, all applicable DOE regulations codified in 6 CFR parts 130 and 150 and 10 CFR parts 205, 210, 211 and 212, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, and forms relating to the pricing and allocation of crude oil. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order, except to the extent inconsistent herewith.

b. "DOE" includes not only the Department of Energy, but also the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Economic Regulatory Administration and all successor agencies.

c. "Salomon" includes Salomon Inc (formerly known as Engelhard Minerals & Chemicals Corporation, Phibro Corporation, and Phibro-Salomon Inc), its successors, subsidiaries and affiliates (including but not limited to Philipp Brothers Inc., Derby & Co., Inc., Derby Distributors, Inc., Philipp Brothers Latin American Corporation, and Philipp Brothers Pan American Corporation) and its officers, directors and employees.

d. "PRO" means the Proposed Remedial Order issued to Salomon by the DOE on September 23, 1988 in Case No. 6COX00249.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Salomon engaged in, among other things, the resale of "crude oil", as that term is defined in the federal petroleum price and allocation regulations, and as a United States corporation is subject to the audit jurisdiction of the DOE.

302. The DOE conducted an audit to determine Salomon's compliance with the federal petroleum price and allocation regulations during the period covered by this Consent Order.

303. On September 23, 1988, the DOE issued a PRO to Salomon alleging that Salomon violated certain federal petroleum price regulations with respect to the matters covered by this Consent Order. Salomon formally objected to the issuance of the PRO to the Office of Hearings and Appeals ("OHA") of the DOE, which commenced an administrative enforcement proceeding with respect to the PRO in Case No. KRO–0720. The PRO proceeding before the OHA remains pending.

304. During the course of the DOE's audit, the PRO proceeding before the OHA, and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to the application of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order.

305. With respect to the issues raised by DOE, each party believes that its respective positions are meritorious. In particular, DOE and Salomon disagree as to the validity and application of various provisions of 10 CFR part 212 subpart L pertaining to crude oil resales during the period covered by the Consent Order, and whether the DOE's jurisdiction under the federal petroleum price and allocation regulations extended to certain of Salomon's transactions. However, in order to avoid the expense of protracted and complex litigation and the disruption of orderly business functions, Salomon has agreed to enter into this Consent Order. The DOE believes that this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or, might have been sought by the DOE against Salomon for such matters, under 10 CFR 205.199I or otherwise, Salomon shall pay a total of $83,750,000 inclusive of interest, to DOE within 30 days of the effective date of this Consent Order. Payment shall be by wire transfer before 2 p.m. Eastern time, pursuant to written directions provided to Salomon by DOE.

402. Payment made pursuant to this Consent Order shall be distributed by the DOE pursuant to the Special Refund Procedures prescribed by 10 CFR part 205 subpart V.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Salomon regarding Salomon's compliance with and obligations under the federal petroleum price and allocation regulations, with respect to the matters covered by this Consent Order, whether or not heretofore raised by an issue letter, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Salomon by this Consent Order.

502. (a) Except as otherwise provided herein, compliance by Salomon with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Salomon, the DOE hereby releases Salomon completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or might otherwise be able to assert against Salomon before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Salomon or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Salomon or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Salomon has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Salomon in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence currently in its possession with respect to the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from: (1) Seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence currently known to the DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel, or defense against any criminal or civil action brought by an agency of the United States other than the DOE under: (i) Section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price allocation regulations. Finally, this Consent Order does not prejudice or expand the rights, if any, of any third party against Salomon.

(c) Salmon releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Salomon has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price allocation regulations with respect to the matters covered by this Consent Order. This release, however, does not preclude Salomon from asserting any factual or legal position or argument as a defense against any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Further, Salomon waives all claims that it may assert in proceedings before the Office of Hearings and Appeals pursuant to 10 CFR part 205 subpart V. Nor does it preclude Salomon from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

(d) Salomon also agrees that, upon the effective date of this Consent Order, it shall withdraw in writing Request No. 89021703R and paragraphs 4 and 5 and subparagraph 7(iii) of Request No. 87063001R made under the Freedom of Information Act 5 U.S.C. 552, *et seq.* Salomon will not initiate or prosecute any new requests under the Freedom of Information Act with respect to the matters covered by this Consent Order.

503. (a) Within ten (10) days after the effective date of this Consent Order, Salomon and the DOE will file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings covered by this Consent Order then pending or subsequently filed before the DOE's Office of Hearings and Appeals or the Federal Energy Regulatory Commission, including the OHA proceeding in Case No. KRO–0720, and to dismiss with prejudice any court proceeding then pending or subsequently filed involving an appeal from or seeking review of a decision by the Office of Hearings and Appeals or the Federal Energy Regulatory Commission in any such proceeding.

(b) Within two (2) days after the execution of this Consent Order by both parties, the DOE agrees to join with Salomon in written notification to the DOE's Office of Hearings and Appeals and any appropriate court of the fact of such execution, which notice shall request that said administrative or judicial tribunal stay all further action in the proceeding covered by this Consent Order, including the OHA proceeding in Case No. KRO–0720, until such time as the DOE provides notice to said tribunals that the Consent Order has become effective or has been withdrawn pursuant to Article IX of this Consent Order.

504. Execution of this Consent Order constitutes neither an admission by Salomon nor a finding by the DOE of any violation by Salomon of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. None of the payments or expenditures made by Salomon pursuant to this Consent Order is to be considered for any purposes as a penalty, fine, or forfeiture or as settlement of any potential liabiiity for penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, with respect to the

matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Salomon, but only if Salomon has concealed facts relating to such violation. The DOE and Salomon reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit, the OHA proceeding, or the negotiations that preceded this Consent Order.

VI. Recordkeeping, Reporting and Confidentiality

601. Salomon shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 401, Salomon shall also maintain sales volume data and customers' names and addresses regarding its sales of crude oil for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 401. The DOE in the first instance will attempt to obtain this information from the documents already provided to the DOE by Salomon in the course of the DOE's audit and the OHA proceeding. Thereafter, if requested, Salomon shall make such information available to DOE. Except as otherwise provided in this paragraph, upon completion of payment to DOE of the amount set forth in paragraph 401 of this Consent Order, Salomon is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters covered by this Consent Order.

602. Except for formal requests for information regarding other firms subject to the DOE's information gathering and reporting authority, Salomon will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Salomon's compliance with the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order.

603. The DOE will treat the sensitive commercial and financial information provided by Salomon pursuant to negotiations which were conducted with respect to this Consent Order or obtained by the DOE in its audit of Salomon or during the OHA proceeding and related to matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Salomon with ten (10) days' actual notice of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Salomon's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information, the DOE will make such information available to the Department of Justice ("DOJ") should there be a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If required by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Salomon may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Salomon and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Salomon (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States District Court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Salomon agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Salomon hereby waives its right to administrative or judicial review of this Order, but Salomon reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Salomon, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Salomon, Salomon may, at any time thereafter until the effective date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

Dated: September 12, 1990.

I, the undersigned, a duly authorized representative of Salomon, hereby agree to and accept on behalf of Salomon the foregoing Consent Order.

Arnold S. Olshin,

Secretary, Salomon Inc.

Dated: September 12, 1990.

I, the undersigned, a duly authorized representative of the DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Chandler L. van Orman,

Administrator, Economic Regulatory Administration, Department of Energy.

[FR Doc. 90-23159 Filed 9-27-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES90-53-000, et al.]

UtiliCorp United Inc. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 21, 1990.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES90-53-000]

Take notice that on September 17, 1990, UtiliCorp United Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authorization to issue $250 million of Medium Term Notes on or before December 31, 1992.

Comment date: October 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Oklahoma Gas and Electric Co.

[Docket No. ES90-52-000]

Take notice that on September 17, 1990, Oklahoma Gas and Electric Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authorization to issue $300 million of short-term debt on or before December 31, 1992, with a final maturity date no later than December 31, 1993.

Comment date: October 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22933 Filed 9-27-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2244-000 et al.]

Superior Offshore Pipeline Co. et al.; Natural Gas Certificate Filings

September 21, 1990.

Take notice that the following filings have been made with the Commission:

1. Superior Offshore Pipeline Co.

[Docket No. CP90-2244-000]

Take notice that on September 18, 1990, Superior Offshore Pipeline Company (SOPCO), 12450 Greenspoint Drive, Houston, Texas 77060-1991, filed a request with the Commission in Docket No. CP90-2244-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of Energy Development Corporation (EDC) under SOPCO's blanket certificate issued in Docket No. CP86-387-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

SOPCO proposes an interruptible natural gas transportation service of 600 MMBtu on peak and average days and 72,000 MMBtu annually for EDC. SOPCO states that it would use existing facilities for the transportation service. SOPCO also states that it would receive and deliver natural gas volumes for EDC's account in Cameron Parish, Louisiana. SOPCO would perform the service under its FERC Rate Schedule T-2. SOPCO commenced transporting gas for EDC on July 2, 1990, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-4013.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gulf Transmission Co.

[Docket No. CP90-2212-000]

Take notice that on September 19, 1990,[1] Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP90-2212-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add a new delivery point to its authorized transportation service for Columbia Gas Transmission Corporation, under Columbia Gulf's blanket certificate issued in Docket No. CP83-496-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf proposes to add the existing interconnection between the facilities of Columbia Gulf and Piedmont Natural Gas Company (Piedmont) located in Davidson County, Tennessee as a new delivery point to Columbia Gas under Columbia Gulf's Rate Schedule T-1. It is indicated that the proposed poing of delivery was constructed by Columbia Gulf to render transportation service for Piedmont under section 311 of the Natural Gas Policy Act of 1978. It is also stated that Columbia Gulf would provide transportation service for Columbia Gas of the quantities to be purchased from Columbia Gas by Piedmont. Columbia Gulf states that Columbia Gas has requested authorization in Docket No. CP90-679-000 to provide sales service to Piedmont of 5,000 dt equivalent of natural gas per day of contract demand under Columbia Gas' CDS Rate Schedule with an annual entitlement nomination level of 1,472,826 dt equivalent of natural gas and a maximum daily quantity of 10,000 dt equivalent of natural gas per day of winter service under Columbia Gas' WS Rate Schedule with a winter contract quantity of 600,000 dt equivalent of natural gas.

Columbia Gulf states that the total volumes to be delivered to Columbia Gas do not exceed the total volumes authorized at Docket No. G-15524. It is also indicated that Columbia Gulf is not prohibited by an existing tariff to add the new point. It is also stated that Columbia Gulf has sufficient capacity to accomplish the delivery specified without detriment or disadvantage to Columbia Gulf's other customers.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

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[1] the request was tendered for filing on September 14, 1990; however, the fee required by § 381.208 of the Commission's Rules (18 CFR 381.207) was not paid until September 19, 1990. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

3. Florida Gas Transmission Co.; Florida Gas Transmission Co.; Florida Gas Transmission Co.; Colorado Interstate Gas Co.; High Island Offshore System; High Island Offshore System; High Island Offshore System;

Docket Nos. CP90-2205-000, CP90-2206-000, CP90-2207-000, CP90-2208-000, CP90-2209-000, CP90-2210-000, and CP90-2211-000]

Take notice that on September 14, 1990, 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 Commisson 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 docket numbers and initiation dates of the 120-day tranactions 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 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: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No.	Applicant	Shipper name	Peak day [1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP90-2205-000	Florida Gas Transmission Company, 1400 Smith Street, Houston, Texas 77002.	Enron Gas Marketing, Inc.	20,000 15,000 7,300,000	Off TX	TX	8-1-90 FTS-1	CP90-555-000 ST90-4445-000
CP90-2206-000	Florida Gas Transmission Company, 1400 Smith Street, Houston, Texas 77002.	Citrus Trading Corp.	400,000 300,000 146,000,000	TX, LA, MS, AL, FL, Off Fed. Domain.	TX, LA, MS, AL, FL.	8-1-90 ITS-1	CP90-555-000 ST90-4440-000
CP90-2207-000	Florida Gas Transmission Company, 1400 Smith Street, Houston, Texas 77002.	Acacia Gas Corp	50,000 37,500 18,250,000	TX, LA, MS, AL, FL, Off Fed. Domain.	TX, LA, MS, AL, FL.	8-1-90 ITS-1	CP90-555-000 ST90-4432-000
CP90-2208-000	Colorado Interstate Gas Company, Post Office Box 1087, Colorado Springs, Colorado 80944.	Golden Gas Energies, Inc.	10,000 [3] 5,000 1,800,000	OK	KS	6-1-90 TI-1	CP90-589-000 ST90-3512-000
CP90-2209-000	High Island Offshore System, 500 Renaissance Center, Detroit Michigan 48243.	Tejas Power Corp	215,000 [3] 215,000 78,475,000	Off TX, Off LA	Off TX, Off LA	7-19-90 IT	RP89-82-000 ST90-4105-000
CP90-2210-000	High Island Offshore System, 500 Renaissance Center, Detroit Michigan 48243.	NML Development Corp.	115,000 [3] 115,000 41,975,000	Off TX, Off LA	Off TX, Off LA	7-27-90 IT	RP89-82-000 ST90-4161-000
CP90-2211-000	High Island Offshore System, 500 Renaissance Center, Detroit Michigan 48243.	American Central Gas Marketing Company.	330,000 [3] 330,000 120,450,000	Off TX, Off LA	Off TX, Off LA	7-17-90 IT	RP89-82-000 ST90-4104-000

[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.
[3] Volumes in Mcf.

4. Trunkline Gas Co.

[Docket No. CP90-2231-000, CP90-2232-000, CP90-2233-000]

Take notice that Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicant), 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 its blanket certification issued in Docket No. CP86-586-000, 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.[3]

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 Applicant and is summarized in the attached appendix.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name	Peak day, average day, annual Mcf	Receipt points[1]	Delivery points	Contract date rate schedule service type	Related docket start up date
CP90-2231-000 (9-18-90)	Williams Gas Marketing Company.	100,000 100,000 36,500,000	IL, LA, TN, TX	LA	PT Interruptible	ST90-4378-000, 8-1-90
CP90-2232-000 (9-18-90)	Shell Gas Trading	75,000 50,000 27,375,000	IL, LA, TN, TX	LA	PT Interruptible	ST90-4304-000, 8-1-90
CP90-2233-000 (9-18-90)	Pandhandle Trading Company.	75,000 20,000 7,300,000	IL, LA, TN, TX	LA	PT Interruptible	ST90-4383-000, 8-1-90

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

5. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90-687-001]

Take notice that on September 6, 1990, Transcontinental Gas Pipe Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-687-001 an amendment to its pending application in Docket No. CP90-687-000 for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate certain natural gas facilities, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Transco states the purpose of this Amendment is to seek Commission authorization: (1) To reallocate available firm capacity to more accurately reflect shippers' requirements as demonstrated since the filing of Transco's original application, and (2) to construct the proposed facilities in two phases to correspond to the revised timing and availability of upstream transportation capacity on CNG Transmission Corporation (CNG) for use by Transco as proposed herein.

In order to effectuate deliveries of up to 167,375 dt per day on a firm basis, commencing on November 1, 1991, Transco in Phase I, is proposing to construct the following pipeline looping, compression facilities and market area facilities:

- Modifications to Leidy Odorization System, Leidy Lateral M.P. 194.06
- 12,600 horsepower of additional compression at Station 520, Leidy Lateral M.P. 157.63
- A new 23,500 horsepower compressor Station 517, Leidy Lateral M.P. 115.14
- 4.93 miles of 36-inch Leidy Lateral Loop from M.P. 37.85 to M.P. 42.78
- 12.37 miles of 10-inch Pottstown Lateral Loop from M.P. 0.00 to M.P. 12.37
- 3.66 miles of 42-inch Mainline "A" Loop from M.P. 1794.99 to M.P. 1798.65
- New M&R Station at Catham, New Jersey M.P. 1812.36
- M&R Station Expansion at Piles Creek M.P. 1.30 on the Long Island Extension
- 600 horsepower Upgrade at South Hill Compressor Station, Virginia

In order to effectuate deliveries of up to an additional 113,980 dt per day on a firm basis, commencing on November 1, 1992, for a total expansion project of 281,355 dt of capacity, Transco is proposing in Phase II to construct and install the following pipeline looping and market area facilities:

- 6.67 miles of 36-inch Leidy Lateral Loop from M.P. 157.64 to M.P. 164.34
- 4.08 miles of 42-inch Mainline "A" from M.P. 1798.65 M.P. 1802.73
- 4.40 miles of 24-inch Trenton-Woodbury lateral Loop from M.P. 26.06 to M.P. 30.46
- M&R Station Expansion at Central Manhattan Lateral M.P. 184
- 0.95 mile of 36-inch D Loop from M.P. 1826.39 to M.P. 1827.34

All of the facilities set forth above were proposed in Transco's original Application with the following exceptions:

(1) The proposed 23,500 horsepower compressor station to be constructed in Phase I originally was proposed as a 16,500 horsepower compressor station. Subsequent to the filing of Transco's application, Transco was advised by equipment manufacturers that it would be extremely inefficient to construct the compressor to meet the original specifications. Furthermore, it appeared that Transco would be unable to obtain such a compressor without a substantial delay. In order to avoid such delays and operating inefficiencies, Transco is requesting authorization to redesign the compressor station as proposed herein.

(2) An expansion of the M&R station at Piles Creek, which is proposed in Phase I, is necessary in view of the incresed volumes allocated to customers downstream of the station.

(3) The 6.67 miles of 36-inch diameter mainline loop to be constructed as part of Phase II originally was to be 7.76 miles in length. The extra compression to be installed at Station 517 in Phase I has enabled Transco to shorten the length of this mainline loop.

(4) The 0.95 mile of 36-inch diameter loop near Carlstadt, New Jersey (M.P. 1826.39 to M.P. 1827.34) to be constructed in Phase II was not proposed in Transco's original Application. The addition of this loop is necessary as a result of an increase in capacity allocated to New York customers due to the reallocation proposed hrein.

(5) There is no need for a new metering and regulating station at Carlstadt, New Jersey as proposed in Transco's original application due to the reallocation of capacity proposed herein.

(6) The proposal in Transco's original application to construct 7.74 miles of 42-inch diameter Mainline "A" Loop from M.P. 1794.99 to M.P. 1802.73 has not changed. However, Transco is proposing herein to phase the construction of this loop by constructing 3.66 miles during Phase I and 4.08 miles during Phase II.

Transco estimates the Phase I facilities to cost $64,898,000 and the Phase II facilities proposed are estimated to cost $38,215,000, for a total estimated project cost of $103,113,000.

These costs will be financed initially through short-term loans and funds on hand, with permanent financing to be arranged as part of Transco's overall long-term financing program.

Comment date: October 12, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

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.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22934 Filed 9-27-90; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. CP90-2158-000]

Northwest Pipeline Corp.; Application

September 24, 1990.

Take notice that on September 7, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-2158-000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for an order granting:

(1) Permission and approval for a limited-term, partial abandonment of Northwest's existing authorized Rate Schedule SGS-1 storage service for The Washington Water Power Company (Water Power), corresponding to a limited-term release of storage capacity by the Water Power to Cascade Natural Gas Corporation (Cascade); and

(2) A limited-term certificate for public convenience and necessity, with pre-granted abandonment, authorizing Northwest to provide additional Rate Schedule SGS-1 storage service for Cascade in place of the abandoned SGS-1 service for Water Power; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is said that Water Power and Cascade have executed an agreement dated July 23, 1990 for the release of Jackson Prairie storage capacity (Release Agreement) for a primary term extending until April 30, 1995. The Release Agreement calls for the release to Cascade of 4,900,000 therms of seasonal capacity, 150,000 therms per day of firm deliverability and 55,328 therms per day of best-efforts deliverability. On July 31, 1990, Water Power filed in Docket No. CP90-1849-000 its application for authorization to release storage capacity to Cascade in accordance with the Release Agreement.

Further it is said that to accommodate Water Power's relese of storage capacity to Cascade, Northwest has entered into the following new Rate Schedule SGS-1 service agreements with Water Power and Cascade:

(1) An SGS-1 service agreement, dated July 18, 1990, with Cascade for the capacity released by Water Power. Consistent with the Release Agreement, this new service agreement will be effective for a term expiring April 30, 1995.

(2) A new SGS-1 service agreement, dated July 18, 1990, with Water Power reflecting reductions in existing SGS-1 service quantities equivalent to the capacity released by Water Power to Cascade. This new service agreement will supercede Water Power's existing SGS-1 service agreement and will be effective until superceded by the July 20, 1990 agreement discussed below.

(3) An SGS-1 service agreement, dated July 20, 1990, with Water Power which also reflects reductions in service quantities equivalent to the capacity released by Water Power to Cascade. This new service agreement replaces the May 25, 1989 SGS-1 service agreement currently pending approval in Docket No. CP89-1525-000 and would supercede the above-described July 18, 1990 service agreement upon approval of the expanded Jackson Prairie services pending in Docket No. CP89-1525. This new agreement expires April 30, 1995, contemporaneous with the expiration of Water Power's release to Cascade.

(4) An SGS-1 service agreement, dated July 23, 1990, with Water Power which will supercede the above-described July 20, 1990 service agreement effective May 1, 1995 and continue in effect until October 31, 1999. This agreement reflects the reversion to Water Power of the capacity which is assigned to Cascade only for the limited-term expiring April 30, 1995.

Northwest requests permission and approval to abandon, for a limited-term expiring April 30, 1995, that portion of its presently authorized Rate Schedule SGS-1 storage service for Water Power which corresponds to the Jackson Prairie capacity that Water Power has agreed to release to Cascade. The resulting changes in SGS-1 service levels for Water Power would be as follows:

		Existing	Proposed pre May 1995	Proposed post April 1995
Firm storage capacity (Therm)	15,048,000	10,248,000	24,262,663	29,062,663
Firm deliverability (Therm/d)	680,000	530,000	762,000	912,000

		Existing	Proposed pre May 1995	Proposed post April 1995
Best-efforts deliverability (Th/d)	250,822	195,494	190,713	246,041

Northwest also requests issuance of a limited-term certificate of public convenience and necessity, with pre-granted abandonment, authorizing Rate Schedule SGS–1 storage service for Cascade, in the quantities released by Water Power, for a term expiring April 30, 1995.

It is stated that for the proposed new SGS–1 service, Cascade would pay the demand charge, capacity demand charge and commodity charge applicable to SGS–1 service (section 10 option), as set forth in Northwest's FERC Gas Tariff, Volume No. 1. However, Northwest explains that since the subject service would be provided from Water Power's ownership share of the Jackson Prairie storage capacity, Northwest proposes to give a demand charge credit and a capacity demand charge credit to Cascade. Northwest further explains the SGS–1 Rate Schedule currently provides such a crediting mechanism for SGS–1 services to the owners of Jackson Prairie. Northwest is proposing herein certain minor changes to its SGS–1 Rate Schedule and Form of Service Agreement to specify that such credits also are due customers which acquire an assigned interest in Jackson Prairie storage from one of the owners.

Northwest avers that approval of the requested reduction in storage service to Water Power and provision of equivalent additional storage service to Cascade will benefit both Water Power and Cascade. Temporarily (for five years), the proposed storage service changes would relieve Water Power of the expense of storage capacity which it has determined to be currently excess to its seasonal requirements within its market area and would provide Cascade with the aditional storage availability which it needs to help it serve the heating season requirements of its core market.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1990, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) 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 the subject to the 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 application 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, and permission and approval for the proposed abandonment are 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 Northwest to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90–22935 Filed 9–27–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Conservation and Rewewable Energy

Renewable Energy and Energy Efficiency Technology Joint Ventures; Solicitation of Expressions of Interest

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Notice of Solicitation of Expressions of Interest and Request for Public Comment.

SUMMARY: The Department of Energy (DOE) today gives notice of its preliminary thinking regarding the policies, terms and conditions applicable to joint ventures authorized by the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Act), 42 U.S.C. 12001, et seq. DOE hereby solicits expressions of interest and public comment in response to this notice. After the close of the comment period, DOE will seek the recommendations of an Advisory Committee, established pursuant to the Act, regarding the structure and selection criteria for a draft solicitation of proposals to be published for public comment. Following receipt of public comment on the draft solicitation of proposals, and contingent on the availability of appropriations, DOE will publish a final solicitation of proposals.

DATES: Public comments and expressions of interest from those who may desire to participate in a joint venture should be sent to the address indicated below by October 31, 1990.

ADDRESS: Steve Morrell, Procurement & Contracts Division, AD–42, P.O. Box 2001, Oak Ridge, Tennessee 37831–87857.

FOR FURTHER INFORMATION CONTACT: Steve Morrell, (615) 576–0799.

SUPPLEMENTARY INFORMATION: DOE is announcing the establishment of a program to enter into joint ventures, as authorized by the Act, and is soliciting both expressions of interest in the program and comments on the policies, terms and conditions which should be applicable to the creation of joint ventures under the Act.

Purpose

Productive and focused cooperation between the public and private sectors is essential to the success of a national program of research, development and demonstration of renewable energy and energy efficiency technologies. In turn, this approach will contribute to a more stable and secure future energy supply by:

(1) Achieving as soon as practicable cost competitive use of those technologies without need of Federal financial incentives; and,

(2) Assisting the private sector to commercialize renewable energy and energy efficiency technologies in the near term by fostering collaborative research and development efforts through the creation of joint ventures.

DOE recognizes a need to encourage the commercialization of its research products. Greater private sector participation in DOE's research program, both in cost sharing and program direction, can ensure that

project designs recognize and reflect the needs of the marketplace.

In its effort to bridge the distance between research and development and commercialization, DOE will, in consultation with an Advisory Committee established under the Act, endeavor to develop joint venture criteria that balance the dual objectives of maximizing private-sector participation in joint ventures and targeting the best use of Federal resources. To accomplish these twin objectives, it will be necessary to fashion flexible and streamlined policies and procedures governing the cooperative arrangements envisioned by the Act. Proposed policies, terms, conditions, and procedural provisions governing joint ventures established pursuant to the Act will be incorporated into a future draft solicitation of proposals and a period of public comment will be provided prior to any issuance of a final solicitation of proposals.

An Overview

The Act directs the Secretary of Energy (Secretary) to make use of joint ventures to expedite commercialization of renewable energy and energy efficiency technologies. The term *joint venture* is defined by the Act as "any agreement entered into under this Act by the Secretary with more than one or a consortium of non-Federal persons (including a joint venture under the National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.)) for cost-shared research, development or demonstration of technologies, but does not include procurement contracts, grant agreements, or cooperative agreements as those terms are used in sections 6303, 6304 and 6305 of title 31, United States Code." (42 U.S.C. 12002(2)).

As defined by the Act, the term *non-Federal person* "means an entity located in the United States, the controlling interest (as defined by the Secretary) of which is held by persons of the United States, including—

(A) A for-profit business;
(B) A private foundation;
(C) A nonprofit organization such as a university;
(D) A trade or professional society; and,
(E) A unit of State or local government."

The Act requires joint venture research and development activities to be performed in the United States, but leaves to DOE discretion whether demonstration activities (perhaps to develop an export market) might be performed outside of the United States. The Act also requires that the manufacture and reproduction of any invention resulting from a joint venture occur substantially within the United States, but leaves to DOE discretion whether a similar requirement should apply to a joint venture limited to testing of an existing invention produced without Federal funds. DOE believes that a purpose of these requirements is to enhance the ability of domestic firms to compete with foreign enterprises in the sales of renewable and energy efficiency technologies. DOE intends to develop policies in discretionary areas regarding foreign entities and locations consistent with that purpose. (42 U.S.C. 12005).

Joint ventures established pursuant to the Act must include at least one for-profit business. At least 50 percent of the costs "directly and specifically related to any joint venture" are to be provided from non-Federal sources. Upon application, the Secretary may reduce the required cost share if the joint venture is to be composed exclusively of small businesses or of small businesses and nonprofit entities and the reduction is appropriate and necessary for the successful operation of the proposed joint venture (42 U.S.C. 12005).

DOE believes that substantial cost sharing is the best single predictor of successful technology transfer. The minimum 50 percent non-Federal cost share requirement was established to ensure that the projects chosen would have a strong commitment on the part of the non-Federal participants to achievement of the commercialization goal.

As indicated above, a joint venture agreement is specifically described by the Act as other than a procurement contract, cooperative agreement or grant agreement. The legislative history of the Act indicates concern with aspects of Federal procurement and financial assistance which might inhibit private sector interest in joint ventures, but is not specific with respect to which regulations, procedures and form clauses are especially unsuitable for joint ventures between the Federal and non-Federal public and private sectors. DOE intends to investigate the applicability of innovative options to existing forms of procurement and financial assistance, including cooperative research and development agreements developed pursuant to section 12 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a). DOE encourages public comment concerning barriers to Federal joint ventures and ways to streamline Federal regulations, procedures and forms.

Advisory Committee

The Secretary will establish an Advisory Committee on Renewable Energy and Energy Efficiency Joint Ventures (Advisory Committee). The Advisory Committee will advise the Secretary on the development of the solicitation and evaluation criteria for joint ventures. Membership on the Committee will include representatives from DOE's national laboratories, the Solar Energy Research Institute, the Electric Power Research Institute, the Gas Research Institute, associations of firms in the major renewable energy and energy efficiency industries, as well as individuals from the financial and investment sectors and State government.

Within 120 days of its establishment, the Advisory Committee will provide the Secretary with recommendations regarding the structure and selection criteria for a solicitation of joint ventures. In its advisory capacity, the Advisory Committee will provide the Secretary with recommendations concerning: the feasibility of undertaking joint ventures in the five technology areas required by the Act; additional joint ventures in the renewable energy and energy efficiency areas as prescribed in the Act (42 U.S.C. 12005(6) (d) and (e)); the preparation of program plans and development of a comprehensive commercialization strategy as required by section 9 of the Act (42 U.S.C. 12006); and the terms and conditions of proposed joint venture agreements. The Advisory Committee will neither evaluate nor select the specific joint ventures supported by the program.

Comments received in response to this notice will be provided to the Advisory Committee for consideration. Recommendations of the Advisory Committee will be made available to the public. Following receipt of the Advisory Committee's input, DOE will issue a draft solicitation of joint venture proposals for public comment.

Types of Joint Venture Projects

In keeping with the intent of the law, DOE has chosen not to limit proposed joint venture projects beyond the specific technological and financial requirements contained in the Act. The report of the Senate Committee on Energy and Natural Resources states: "* * * The Committee does not intend and the bill does not authorize that conventional cooperative agreements between the Secretary and one company should qualify as a joint venture under the Act. Past arrangements of this type

have not significantly furthered the commercialization of these technologies by the private sector. The Committee intends that the Department use the joint ventures * * * to explore more action-forcing approaches to commercialization." (Senate Report 101–107, p. 7).

Projects which take advantage of multiple institutional resources, encourage industry-wide innovation, and improve the competitive advantage of U.S. manufacturers of renewable energy and energy efficiency technologies and products are encouraged. Examples of the types of projects contemplated by the Act are: (1) Joint ventures which provide needed information for investors, e.g. testing of a new invention or application or the development and dissemination of marketing information; (2) improvements in the manufacturing process; and (3) integrated resource planning programs which could provide expanded market opportunities.

In proposing projects in the future or in providing comments on this draft solicitation, the public is encouraged to base its recommendations upon the Act's intention to provide generic authority for * * * multiparty agreements that bring together institutional, capital, business, and technical capabilities that can facilitate industrial deployment of [renewable energy and energy efficiency] technology * * *." (Senate Report 100–107, p. 8). Such arrangements can enhance the value of previous Federal investments and accelerate the commercial application of renewable energy and energy efficiency technologies.

Technology Areas

Contingent upon available appropriations, DOE will solicit joint venture proposals for the demonstration of renewable energy and energy efficiency technologies in the following five areas:

(1) Photovoltaic Technology

Joint ventures will be sought to design, test and demonstrate an enabling technology for photovoltaic conversion of solar technology, to improve the reliability and conversion efficiency of, and to lower the cost of photovoltaic conversion, with emphasis on advancing the performance, stability and durability of photvoltaic materials.

The photovoltaic technology goals under the Act are: (1) To improve the operational reliability of photovoltaic modules to thirty years; (2) to increase photovoltaic conversion efficiencies by 20 percent by 1995; (3) to decrease photovoltaic module direct manufacturing costs to $800 per kilowatt by 1995; and (4) to increase the cost efficiency of photovoltaic power production to 10 cents per kilowatt hour by 1995. (42 U.S.C. 12003(a)(2)).

(2) Wind Energy Technology

Joint ventures will be sought to design, test, and demonstrate improved design methodologies and more reliable and efficient wind turbines so as to increase the cost competitiveness of wind energy. Efforts may emphasize: (i) Activities that address near-term technical problems and assist private sector exploitation of market opportunities of the wind energy industry; (ii) developing technologies such as advanced airfoils and variable speed generators to increase wind turbine output and reduce maintenance costs by decreasing structural stress and fatigue; (iii) increasing the basic knowledge of aerodynamics, structural dynamics, fatigue, and electrical systems interactions as applied to wind energy technology; and (iv) improving the compatibility of electricity produced from wind farms with conventional utility needs.

The wind energy technology goals under the Act are to: (1) Reduce average wind energy costs to 3 to 5 cents per kilowatt hour by 1995; (2) reduce capital costs of new wind energy systems to $500 to $750 per kilowatt of installed capacity by 1995; (3) reduce operation and maintenance costs for wind energy systems to less than one cent per kilowatt hour by 1995; and (4) increase capacity factors for new wind energy systems to 25 to 35 percent by 1995. (42 U.S.C. 12003(a)(1)).

(3) Solar Thermal Technology

The general solar thermal technology goal under the Act is to advance research and development so that solar thermal technology is cost-competitive with conventional energy sources, and to promote the integration of this technology into the production of industrial process heat and the conventional utility network. Proposals might emphasize development of a thermal storage technology to provide capacity for shifting power to periods of demand when full isolation is not available, improvement in receivers, energy conversion devices, and innovative concentrators using stretch membranes, lenses, and other materials; and exploration of advanced manufacturing techniques.

The specific solar thermal technology goals under the Act are to: (1) Reduce solar thermal costs for industrial process heat to $9.00 per million Btu by 1995; and (2) reduce average solar thermal costs for electricity to 4 to 5 cents per kilowatt hour by 1995. (42 U.S.C. 12003(a)(3)).

(4) Factory-Made Housing

DOE will solicit proposals for at least one joint venture to establish regional projects which develop or demonstrate techniques to improve the energy performance of factory-made housing offered by United States firms. In locating projects, the Act instructs the Secretary to consider regional differences in housing needs, housing design, construction technique, marketing practices and construction materials.

Projects supported pursuant to this program shall be designed to demonstrate state-of-the-art product quality, energy efficiency, and adaptability to renewable forms of energy of factory-made housing offered for sale in the United States.

(5) Advanced District Cooling Technology

DOE will solicit proposals for at least one joint venture for the demonstration of advanced district cooling technologies that are applicable in cities with high cooling loads. The purpose of any joint venture supported under this program shall be to develop technical strategies for decreasing the capital cost and increasing the energy efficiency of major district heating and cooling system components and to assist in making district cooling available to local governments. The Act requires the Secretary to select a city or cities for the application of advanced district cooling technologies developed by the joint venture(s). The activities to be carried out in such application shall include district cooling assessment, feasibility and engineering design studies. (42 U.S.C. 12005(c)(5)).

Proprietary Rights

DOE is aware that the success of a joint venture will depend on providing an environment attractive to industrial participation in cost-shared research with the potential for commercial returns. In an effort to provide an environment conducive to the creation of joint ventures, the Act (42 U.S.C. 12005, 6(b)(5)) makes inventions developed pursuant to the joint ventures program subject to section 5 of the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988, (Steel and Aluminum Act), (15 U.S.C. 5104).

In turn, Section 5 of the Steel and Aluminum Act cross-references section 9 of the Federal Non Nuclear Energy

Research and Development Act of 1974, as amended, (42 U.S.C. 5918), and a DOE Steel Initiative Management Plan issued on April 1, 1987. Under the Management Plan, an entity or holding company would be created or designated by each project's participants for the purpose of holding patents and licensing technology.

DOE is interested in receiving comments concerning the suitability of the approach taken in the Management Plan for protection of proprietary rights under joint ventures as provided by the Act. DOE also encourages additional comments on other issues which would be of concern to the private sector regarding the need to safeguard proprietary and other commercially sensitive data or information contained in proposals and commercially sensitive data or information generated in the course of joint venture operation.

Administrative Requirements

Nonwithstanding DOE's interest in streamlining administrative procedures and requirements regarding joint ventures, prudent administration and management of the joint venture projects will be required. In consultation with the Advisory Committee, DOE will develop administrative requirements governing the operation of joint ventures. These requirements may cover subjects such as audit and oversight, tort liability, insurance, performance bonds, and other matters pertaining to prudent business practices.

Joint ventures established pursuant to the Act will be subject to antitrust laws. However, it should be noted that joint ventures meeting the requirements of the National Cooperative Reserach Act of 1984 (15 U.S.C. 4301 et seq.) may qualify for limited antitrust immunity.

DOE encourages comment concerning these matters. Comments will be considered by the Advisory Committee and by DOE in connection with preparation of the final solicitation.

Ultimate Proposal Solicitation

Subject to public comment and contingent upon availability of appropriations, DOE will solicit proposals for the demonstration of the five renewable energy and energy efficiency technologies described above. DOE may enter at least one joint venture in each technology, unless no qualified proposal is received in a specific technology area. When proposals are sought, DOE anticipates that it will request, at a minimum, the following information:

- a Management Plan describing the structure, organization and participants in the joint venture;
- a Technical Proposal defining the technology which the joint venture proposes to commercialize;
- the contribution and nature of the contribution, e.g. cash and in-kind, of each participant in the joint venture;
- the extent to which the joint venture will exist apart from the parent participating organization;
- a detailed description of the proposed project and its duration; and
- an explanation of how the joint venture will create new technical and/or economic capabilities previously unavailable, such as:

—new production capacity;
—new technology or product;
—entry into a new market; or
—enhanced competition in the international market.

DOE will receive non-proprietary comments on the proposed program and expresssions of interest from those desiring to participate in the joint venture until close of business on October 31, 1990. Such communication should be addressed to:

Steve Morrell, U.S. Department of Energy, Procurement and Contracts Division, AD–42, P.O. Box 2001, Oak Ridge, Tennessee 37831–8757.

Issued in Washington, DC, September 26, 1990.

B. Reid Detchon,

Principal Deputy Assistant Secretary for Conservation and Renewable Energy.

[FR Doc. 90–23165 Filed 9–27–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 90–23–NG]

Granite State Gas Transmission, Inc.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Long-term Authority to Import Canadian Natural Gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 4, 1990, of an application filed by Granite State Gas Transmission, Inc. (Granite State) for authorization to import from Shell Canada Limited (Shell) up to 35,000 MMBtu of Canadian natural gas a day on a firm basis, plus an additional 14,000 MMBtu a day on an interruptible basis, beginning on or about November 1, 1991, and ending November 1, 2006. The gas would be delivered by Shell at the international border near Iroquois, Ontario, where the facilities of TransCanada PipeLines Limited (TransCanada) would interconnect with the proposed Iroquois Gas Transmission System (Iroquois). Granite State proposes to use the gas to meet the market requirements in its service area which are projected to exceed current supply in the near future.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comment are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comment are to be filed at the address listed below no later than 4:30 p.m., e.d.t., October 29, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Perry Bolger, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1789.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Granite State, a New Hampshire corporation with its principal place of business in Canton, Massachusetts, is an interstate pipeline and a wholly owned subsidiary of Northern Utilities, Inc. (Northern Utilities), which is a wholly owned subsidiary of Bay State Gas Company (Bay State). Bay State and Northern Utilities are natural gas distributors and Granite State's only wholesale customers. Bay State provides retail gas service through three divisions in southeastern, western, and northeastern Massachusetts, and serves approximately 230,000 customers. Northern Utilities distributes natural gas to residential, commercial, and industrial customers in New Hampshire and Maine, and currently serves approximately 25,000 customers.

On December 1, 1989, Granite State and Shell executed a gas purchase agreement for the purchase of up to 35,000 MMBtu a day on a firm basis, and additional "peaking" gas on an interruptible basis. The gas purchase agreement provides for a two-part, demand/commodity rate (U.S.) for firm gas supplies delivered at the border. The

demand charge is composed of the aggregate of the monthly fixed costs incurred by Shell for the transportation of the gas from the production area in the Province of Alberta to the border delivery point at the proposed interconnection between the TransCanada and Iroquois pipeline systems.

The commodity charge consists of two components less the demand charge: A constantly adjusting base price at the border plus an incremental transportation charge. The border price is derived monthly based on sales by Boundary Gas, Inc. to its repurchasers and is indexed to the weighted average price of domestic natural gas, No. 2 and No. 6 fuel oil available in New York. This component of the commodity charge is designed to make the price of the gas at the border continually responsive to competitive fuel alternatives in Granite State's markets over the life of the contract. Granite State estimates that if the agreement had been effective during the 12 months ending December 31, 1989, the average monthly border price for the Shell gas would have been $2.5761 (U.S.) per MMBtu at a 100 percent load factor.

The second component in the commodity charge is the incremental additional transportation charge on the TransCanada system, currently estimated at 3 cents per MMBtu, for transporting the Shell gas from the Niagara, New York, border point (the Boundary Gas delivery point) to the point downstream where TransCanada will interconnect with the Iroquois pipeline system.

The price of interruptible gas supplies under the contract price will be the commodity charge plus the cost of interruptible transportation.

The gas purchase agreement provides for a monthly minimum bill equal to the demand charge. There is no minimum purchase requirement under the agreement. Also, either party can request renegotiation of the price terms annually, although not the use of a two-part rate, and, if renegotiation does not result in agreement, then the contract provides for arbitration.

Granite State has executed precedent transportation agreements with Iroquois, Tennessee Gas Pipeline Company and Algonquin Gas Transmission Company for the receipt, transportation and delivery of the gas that Granite State will purchase from Shell under the December 1, 1989, gas purchase agreement. Construction and operation of the new and expanded pipeline facilities associated with these transportation arrangements are pending certification by the Federal Energy Regulatory Commission (FERC). Granite State expects the certificates will be issued in sufficient time to permit completion of the construction of the joint project facilities for deliveries to commence on or about November 1, 1991.

The decision on this application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters to be considered in making a public interest determination in a long-term import proposal such as this include the need for the gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. Granite State asserts that this import arrangement is in the public interest because the volumes are needed for its system supply, the price of the gas is competitive, and its Canadian supplier is reliable. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. On June 1, 1990, FERC issued a Final Environmental Impact Statement, FERC EIS–0054, on the impacts of constructing and operating proposed pipeline facilities necessary for Granite State to import a portion of the volumes for which it requests authority. In addition, FERC currently is assessing the impacts of additional new facilities associated with the balance of Granite States' import volumes (Docket No. CP89–661–000). DOE is a cooperating agency with FERC and any natural gas import authorization issued to Granite State would be conditioned upon completion of the environmental process. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be take on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Granite State's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above

address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.d.t., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 25, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-23020 Filed 9-27-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-69-NG]

Washington Natural Gas Co.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 31, 1990, of an application filed by Washington Natural Gas Company (Washington Natural) to import from Canada up to 10,000 MMBtu per day (9635 Mcf/d) of natural gas during the period November 1, 1990, to October 31, 1992, and 15,000 MMBtu per day (14,452 Mcf/d) commencing November 1, 1992, to October 31, 2003, on a firm basis. The proposed imports would be purchased from Canada at a point on the U.S.-Canadian border near Sumas, Washington, pursuant to a gas purchase agreement between Washington Natural and Mobil Oil Canada, Ltd. (Mobil Canada). Existing facilities would be used for the importation and transportation of the proposed imports.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., October 29, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7249.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Washington Natural is a corporation organized and existing under the laws of the State of Washington and its principal place of business is located in Seattle, Washington.

Washington Natural is a natural gas distribution company serving 61 cities and towns and adjacent unincorporated areas within its five-county service area in the State of Washington. Washington Natural provides service to approximately 330,000 customers in its service area.

The gas that Washington Natural will purchase from Mobil Canada will be supplied from Mobil Canada's Sierra Gas Field in the Province of British Columbia, Canada. Mobil Canada will be responsible for arranging the delivery of the gas on a firm basis through the facilities of Westcoast Energy Inc. (WEI) to the point of delivery under the contract at the international border near Sumas, Washington/Huntingdon, B.C. Washington Natural will be responsible for arranging the transportation of the gas from the delivery point near Sumas, Washington, through the facilities of Northwest Pipeline Corporation (Northwest) to Washington Natural's distribution system. Northwest will provide firm transportation for Washington Natural under Northwest's Rate Schedule TF-1.

Mobil Canada has filed for approval from the provincial authority in British Columbia for removal of the gas committed under the contract and to the National Energy Board of Canada (NEB) for approval to export the gas.

The primary term of the sale extends from November 1, 1990, to October 31, 2003. The contract provides for a firm daily volume of up to 10,000 MMBtu per day (9,635 Mcf/d) for the period November 1, 1990, to October 31, 1992, and up to 15,000 MMBtu per day (14,452 Mcf/d) beginning November 1, 1992. Washington Natural is not committed under the Mobil Canada contract to purchase any minimum quantities.

The contract price will be the sum of three components: a demand charge, a commodity charge, and a reservation fee. The monthly demand component for the transportation of the gas from Mobil Canada's Sierra Gas Field to the delivery point near Sumas, Washington, is the aggregate of the WEI firm service gathering, processing, and transportation demand charges as approved by the Canadian regulatory authorities. The commodity component is subject to renegotiation annually; the monthly commodity charge for the initial year of the agreement is comprised of the weighted sum of the following four elements: (i) 25% of the B.C. Gas, Inc. residential gas price at the wellhead for the prior month; (ii) 25% of the average of the weekly average of high and low price of quotations of No. 6 fuel oil in Seattle for the delivery month; (iii) 25% of the spot-market price or gas delivered into Northwest at Sumas for the prior month, subject to an adjustment during the summer season; and (iv) 25% of the spot-market price for domestic gas delivered into Northwest from U.S. supply sources. Finally, in consideration for holding the dedicated reserves available for Washington Natural, Mobil Canada will charge a reservation fee equal to the greater of (1) the product of 18 percent of the commodity price for that month times the sum of the daily contract quantity (DCQ) not taken during all days of that month, or (2) the product of nine percent of the commodity price for the month times the DCQ times the number of days in the month. The agreement includes a provision allowing Washington Natural to elect once during each of the initial two contract years not to take gas in the summer season in exchange for a 50% reduction in the reservation fee for up to three consecutive months.

The company maintains that it is purchasing the Mobil Canada gas supply primarily to supplement its system supply to meet high priority firm requirements and that the pricing terms will have a significant impact in reducing Washington Natural's average cost of gas, the benefits of which will be passed onto its customers. Washington Natural also asserts that it requires a substantial volume of new firm natural gas supplies, on a long-term basis, to replace the significant volumes of gas previously purchased from Northwest.

The decision on the application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issues of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this requested arrangement would be competitive. Parties opposing the

arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Washington Natural's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on September 20, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-23021 Filed 9-27-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3836-4]

Environment Impact Statements; of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Envionmental Impact Statements Filed September 17, 1990 Through September 21, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900352, Draft Supplement, COE, IA, Coralville Lake Flood Control, Downstream Area of Influence to Columbus Junction, Operation and Maintenance Changes, Johnson, Iowa, Louisa and Washington Counties, IA, Due: November 12, 1990, Contact: Roger Less (309) 788-6361.

EIS No. 900353, Final EIS, FHW, VA, VA-17 Bypass Extension, VA-17/29 Business to VA-17 nortwest of Warrenton, Construction, Funding, COE General Permit, Town of Warrenton, Fauquier County, VA, Due: October 29, 1990, Contact: James M. Tumlin (804) 771-2371.

EIS No. 900354, Final EIS, EPA, NC, Durham-Eno River Wastewater Treatment Facility Expansion, Durham and Orange Counties, NC, Due: October 29, 1990, Contact: Heinz J. Mueller (404) 347-3776.

EIS No. 900355, Final EIS, AFS, OR, Umpqua National Forest, Land and Resource Management Plan, Implementation, Lane, Douglas and Jackson Counties, OR, Due: October 29, 1990, Contact: Doyle V. Ward (503) 672-6601.

EIS No. 900356, Draft EIS, FHW, CA, San Joaquin Hills Transportation Corridor Improvements, CA-73 Extension between I-5 in San Juan Capistrano City to Jamboree Road in Newport Beach City, Funding and section 404 Permit, Orange County, CA, Due: November 15, 1990, Contract: James J. Bednar (916) 551-1310.

EIS No. 900357, Final EIS, HUD, TX, Harris Branch Development Project, Mortgage Insurance, section 404 Permit, City of Austin, Travis County, TX, Due: October 29, 1990, Contact: I. J. Ramsbottom (817) 885-5482.

EIS No. 900358, Final EIS, AFS, CA, Plumas National Forest Prototype Project, Augmenting Snow Pack by Cloud Seeding Using Ground Based Dispensers, Implementation, Plumas and Sierra Counties, CA, Due: October 29, 1990, Contact: R.C. Bennett (916) 283-1367.

EIS No. 900359, Final EIS, BLM, NM, Fence Lake Federal Coal Project, Lease Approval, Catron and Cibola Counties, NM, Due: October 29, 1990, Contact: Charles Hodgin (505) 525-8228.

EIS No. 900360, Draft EIS, AFS, CA, Suger Bowl Ski Resort Master Plan, Development and Expansion, Tahoe National Forest, Special Use Permit and section 404 Permit, Placer and Nevada Counties, CA, Due: November 12, 1990, Contact: Joanne Roubique (916) 587-3558.

EIS No. 900361, Final EIS, DOE, MA, NH, RI, CT, NY, TN, ADOPTION-Iroquois and Tennessee Gas Transmission Pipelines Project, Construction and Operation, MA, CT, NH, NY, RI and TN, Contact: Clifford Tomaszewsk (202) 586-9460.

The US Department of Energy has ADOPTED the US Department of Energy, Federal Energy Regulatory Commission's final EIS filed with the Environmental Protection Agency 6-1-90.

EIS No. 900362, Second Final EIS (T, BLM, WY, Great Divide Resource Areas, (Formerly Medicine Bow) Land and Mineral Management Plan, Implementation, Bennett Mountain, Encampment River Canyon and Prospect Mountain WSA's Wilderness Recommendations, Designation or Nondesignation, Larmie, Carbon, Albany and Sweetwater Counties, WY, Due: October 29, 1990, Contact: Bob Tigner (307) 324-7171.

EIS No. 900363, Final EIS, DOE, NY, MA, MI, WI, MN, RI, ADOPTION-Niagara Import Point Project, Natural Gas Pipeline Facilities, Construction and Operation, Licenses, section 10 and 404 Permits, NY, WI, MA, MN, MI and RI, Contact: Clifford Tomaszewski (202) 566-9460.

The US Department of Energy has ADOPTED the US Department of Energy, Federal Energy Regulatory Commission's final EIS filed with the Environmental Protection Agency 6-15-90.

Amended Notices

EIS No. 900265, Draft EIS, AFS, OR, Shasta Costa Timber Sale and Integrated Resource Projects, Implementation, Siskiyou National Forest, Gold Beach and Galice Ranger Districts, Curry County, OR, Due: October 10, 1990, Contract: Kurt Wiedenmann (503) 247-6651. Published FR 7-27-90—Review period extended.

EIS No. 900343, Draft EIS AFS, CA, Merced and South Fork Merced Wild and Scenic Rivers Management Plan, Implementation, Sierra and Stanislaus National Forests and Yosemite National Park, Mariposa and Madara Counties, CA, Due: November 30, 1990, Contact: James L. Boynton (209) 487-5155. Published FR 9-21-90—Review period extended.

Dated: September 25, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-23031 Filed 9-27-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3836-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 10, 1990 Through September 14, 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 FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D-AFS-L65139-ID Rating, EC2, West Moyie Decision Area Timber Sale and Road Construction, Implementation, Idaho Panhandle National Forest, Bonners Ferry Ranger District, Boundary County, ID.

Summary. EPA has environmental concerns based on potential adverse effects to water quality and fisheries and requests additional information on the proposed monitoring plan.

ERP No. D-UAF-G11017-TX, Rating EC2, Bergstrom Air Force Base Closure, 67th Tactical Reconnaissance Wing Inactivation and 36 RF-4C Aircraft Retirement, Relocation of the 712th Air Support Operations, Center Squadron to Fort Hood, Implementation, City of Austin, Travis County, TX.

Summary. EPA has environmental concerns about possible contamination of media and ask for additional RCRA information on the proposed closure of Bergstrom Air Force Base.

ERP No. D-UAF-G11018-AR, Rating LO, Eaker Air Force Base Closure, 97th Bombardment Wing Inactivation, Implementation, Mississippi County, AR.

Summary. EPA has no objection to the proposed closure of Eaker Air Force Base with proper implementation of the mitigation measures as described. The measures are appropriate and reasonable and should be incorporated into the Record of Decision following completion of the final statement.

ERP No. DS-FHW-L40167-AK, Rating EC2, University Avenue Rehabilitation and Widening, College Road to Mitchell Expressway, Original Design Revisions and Hazardous Waste Evaluation, Funding and Right-of-Way Acquisition, North Star Borough, AK.

Summary. EPA has environmental concerns with the proposed action. EPA's concerns were based on the hazardous waste evaluation presented in the supplemental draft EIS and the unresolved wetland concerns expressed in comments on the draft EIS.

Final EISs

ERP No. F-AFS-J03010-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.

Summary. EPA feels the Forest Service responded to the concerns on the selection of best management practices and selected the environmentally preferred alternative in the Record of Decision.

ERP No. F-AFS-J65156-MT, Mill/Emigrant Timber Sale, Implementation, Gallatin National Forest, Livingston Ranger District, Park County, MT.

Summary. EPA believes the selection of Alternative 9 in the Record of Decision for the Mill/Emigrant Timber Sale has a high potential for significant water quality impacts. Detailed project specific monitoring and response plans and a commitment to ensure adequate funding for monitoring prior to initiation of harvest activities are needed to ensure the effectiveness of Best Management Practices.

ERP No. F-BOP-E81029-FL, Miami Metropolitan Detention Center, Construction and Operation, Dade County, FL.

Summary. EPA believes while there is potential for adverse impacts to historical resources, the impacts of the proposed project to the natural environment are within acceptable limits.

ERP No. F-FHW-B40068-ME, Topsham-Brunswick Bypass Construction, I-95/196 Interchange to Rt-1, Funding, 404 Permit and section 9 Permit, Sagadahoc and Cumberland Counties, ME.

Summary. EPA has environmental concerns with the proposed project since the least environmentally damaging alternative was not identified and selected and since the final EIS did not adequately demonstrate compliance with section 404 of the Clean Water Act.

ERP No. F-SFW-B82009-00, Lake Champlain Sea Lamprey Control Temporary Program, Use of Lampricides and an Assessment of Effects on Certain Fish Populations and Sport Fisheries, Implementation, Clinton, Essex and Washington Counties, NY and Addison and Chittenden Counties, VT.

Summary. EPA has environmental concerns with the proposed project based on the belief that managing the lake for its indigenous species would be preferable. Additionally, since EPA has not established tolerance levels for the pesticides to be applied, alternative drinking water supplies should be provided to the public as long as any pesticides residue is detected at drinking water intakers and nearby wells.

ERP No. FS-COE-C32008-NJ, Great Egg Harbor Inlet and Peck Beach, Erosion Control and Flood Protection, Implementation, Ocean City, Cape May County, NJ.

Summary. EPA's concerns regarding the potential for the borrow material to be contaminated has been addressed. Accordingly, EPA has no objection to the implementation of the project as proposed.

Dated: September 25, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-23032 Filed 9-27-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3638-7]

Design and Construction of Wastewater Treatment and Disposal Facilities, Wellfleet and Truro, MA; Intent To Discontinue Preparation of a Draft Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency, Region I.

ACTION: Notice of intent to discontinue preparation of a draft Environmental Impact Statement (EIS).

PURPOSE: In 1985, EPA identified a need to prepare an EIS and published a Notice of Intent pursuant to 40 CFR 1501.7 in the **Federal Register** on December 15, 1985. Since that time, circumstances have eliminated the need for an EIS and therefore, EPA has decided that the preparation of the EIS should be discontinued.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Coin, Marine & Estuarine Protection Section, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203 (617) 565–4435.

SUMMARY: EPA Region I had published a Notice of Intent to prepare an Environmental Impact Statement for the construction of regional wastewater treatment and disposal facilities to serve the Towns of Wellfleet and Truro, Massachusetts.

Under the National Environmental Policy Act (NEPA), preparation of an EIS was required prior to approval of the Towns' Facilities Plan for design and construction of the treatment facilities and prior to issuance of any federal grant monies pursuant to section 201 of the Clean Water Act. Federal concern over potential use of Cape Cod National Seashore (CCNS) lands for construction of the treatment facilities also was a factor in the decision to prepare an EIS. The draft EIS was originally projected to be issued in December 1987.

Due to delays in completing facilities planning for this project, eligibility for federal construction grants expired and funding will now occur under title VI (State Water Pollution Control Revolving Funds) of the Clearn Water Act. Environmental review procedures for projects funded in accordance with title VI require that a "NEPA-like" process, based upon state laws and regulations, be implemented. Accordingly, an Environmental Impact Report (EIR) is being prepared pursuant to the Massachusetts Environmental Policy Act (MEPA) and EPA will be reviewing the EIR and the "NEPA-like" review conducted by the Commonwealth of Massachusetts under delegation of the title VI program to ensure that it satisfies the title VI requirements.

Because the federal construction grants program has expired and facilities planning efforts have led to a preliminary decision by the Towns to locate the facilities at a site outside of the CCNS, there is no longer expected to be any major federal action significantly affecting the environment. Given these circumstances, EPA Region I has concluded that a separate EIS is no longer warranted. The State EIR is expected to contain all applicable information and analyses needed for the environmental review required under title VI, and therefore, the need for a federal Environmental Impact Statement has been eliminated.

RESPONSIBLE OFFICIAL: Julie Belaga, Regional Administrator.

Dated: September 25, 1990.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 90–23033 Filed 9–27–90; 8:45 am]

BILLING CODE 6560–50–M

[OPP-00294; FRL-3804-3]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Enforcement and Certification of the State FIFRA Issues Research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Registration and Classification. This notice announces the location and times for the meetings and sets forth tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Registration and Classification will meet on Tuesday, October 2, 1990, from 8:30 a.m. to 5 p.m. and on Wednesday, October 3, 1990, beginning at 8:30 a.m. and adjourning at approximately 12 p.m. The SFIREG Working Committee on Enforcement and Certification will meet on Thursday, October 4, 1990, from 8:30 a.m. to 5 p.m. and on Friday, October 5, 1990, beginning at 8:30 a.m. and adjourning at approximately 12 p.m.

ADDRESSES: The meetings will be held at: Days Inn Scottsdale, 4710 North Scottsdale Road, Scottsdale, AZ, Telephone: (602) 947-5411.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1101, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: (703) 557-7372.

SUPPLEMENTARY INFORMATION: The agenda of the Working Committee on Registration and Classification includes the following topics:

1. Status of synthetic pyrethroid registrations.
2. Update on State Labeling Issues Committee.
3. Section 18 use as a tool in resistance management.
4. Discussion of Reregistration Workshop held on September 24 and 25, 1990.
5. Update on ground water decision criteria.
6. Status and progress on Endangered Species Protection Program.
7. Update on Diazinon registration standard.
8. Special Review status.
9. Other items as appropriate.

The agenda of the Enforcement and Certification Working Committee includes the following topics:

1. Status of certification and training regulations.
2. Status of 12(a)(2)(F) regulations.
3. Discussion of training materials and efforts.
4. Bee protection and drift labeling.
5. Discussion of enclosed cab compliance policy.
6. "Safer" pesticides.
7. Cooperative agreement guidance.
8. QA/QC compliance plan proposal.
9. Other topics as appropriate.

Dated: September 24, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-22976 Filed 9-27-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-240089; FRL-3795-6]

State Registrations of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 36 States and the District of Columbia. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**.

DATES: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Edith Minor, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number, Rm. 254, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-8978.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in April through June of 1990. Receipts of State registrations will be published periodically. Twenty-five of the following registrations involved a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AL 90 0006. Rohm and Haas. Registration is for Mancozeb to be used in-furrow on cotton seed to control fungus (*Rhizoctonia solani*). May 24, 1990.

EPA SLN No. AL 90 0007. FMC Corp. Registration is for Bifenthrin to be used on conifer seed orchards to control cone worms, seed bugs and seed worms. May 24, 1990.

EPA SLN No. AL 90 0008. FMC Corp. Registration is for Carbofuran to be used on pines to control tip moth. May 30, 1990.

EPA SLN No. AL 90 0009. Vigoro Industries. Registration is for Bayleton to be used on pine seedlings to control fusiform rust. May 30, 1990.

EPA SLN No. AL 90 0010. Vigoro Industries. Registration is for Bayleton to be used on pine seedlings to control fusiform rust. May 30, 1990.

Arizona

EPA SLN No. AZ 90 0001. Gowan Co. Registration is for Gowan Diazinon 50WP to be used on Chinese cabbage to control aphids. April 16, 1990.

EPA SLN No. AZ 90 0003. Great Lakes Chem. Registration is for Brom-O-Gas 2% to be used on turf/golf courses to control soil diseases. April 16, 1990.

EPA SLN No. AZ 90 0004. Arizona Grape Grower Association. Registration is for Fruit Doctor to be used on grapes to control grey mold. April 18, 1990.

EPA SLN No. AZ 90 0005. Arizona Apple Growers Association. Registration is for Elgetol (DNOC) to be used on apples as a thinning agent. June 9, 1990.

EPA SLN No. AZ 90 0006. Dowelanco. Registration is for chlorpyrifos to be used on asparagus to control armyworms and grasshoppers. June 6, 1990.

EPA SLN No. AZ 90 0009. Arizona Farm Bureau. Registration is for Mancozeb to be used on cotton to control cotton rust. May 30, 1990.

Arkansas

EPA SLN No. AR 90 0003. FMC Corp. Registration is for Thiodan 3EC to be used on rapeseed to control various pests. April 17, 1990.

EPA SLN No. AR 90 0004. Griffin Corp. Registration is for Mancozeb to be used on cotton to control seedling blight. May 1, 1990.

EPA SLN No. AR 90 0005. Ciba-Geigy Corp. Registration is for Metalaxyl to be used on spinach to control pythium seedling disease and rust. June 11, 1990.

EPA SLN No. AR 90 0006. FMC Corp. Registration is for Bifenthrin to be used in conifer seed orchards to control cone seed worms and seed bugs. June 11, 1990.

EPA SLN No. AR 90 0007. ICI Americas, Inc. Registration is for Gramoxone to be used on soybeans to control grasses and broadleaf weeds. June 11, 1990.

California

EPA SLN No. CA 90 0004. ICI Americas, Inc. Registration is for Gramoxone to be used on broccoli to control weeds. June 7, 1990.

EPA SLN No. CA 90 0010. Valent U.S.A. Registration is for Volck Supreme Spray to be used on kiwifruit to control scales. April 3, 1990.

EPA SLN No. CA 90 0011. Valent U.S.A. Corp. Registration is for Slug-Geta Snails to be used on citrus/avocados to control snails. April 19, 1990.

EPA SLN No. CA 90 0012. H.A. Kaprielian Farmers. Registration is for Guthion to be used on ornamental stock (matthiola) to control annual grasses and broadleaf weeds. June 18, 1990.

EPA SLN No. CA 90 0016. City of Modesto. Registration is for Ethephon to be used on pear trees (*Pyrus calleryana*) to control fruit formation. May 23, 1990.

EPA SLN No. CA 90 0017. California Grape Tree. Registration is for Gibberellic Acid to be used on red globe and calmeria grapes to control bunch rot. May 23, 1990.

EPA SLN No. CA 90 0020. Rohm and Haas Co. Registration is for myclobutanil to be used on strawberries (nursery) to control powdery mildew. May 30, 1990.

EPA SLN No. CA 90 0026. Glenn Co. Dept. of Ag. Registration is for Endosulfan to be used on clover (grown for seed only) to control aphids. July 6, 1990.

Connecticut

EPA SLN No. CT 90 0001. ICI Americas, Inc. Registration is for Paraquat Dichloride to be used on tomatoes/peppers to control weeds. April 23, 1990.

EPA SLN No. CT 90 0002. Archem Corp. Registration is for Cholorophacinone to be used on orchards to control voles. This represents a changed use pattern (CUP). May 15, 1990.

Delaware

EPA SLN No. DE 90 0002. FMC Corp. Registration is for Command 4EC to be used on pumpkins to control selected weeds. February 16, 1990.

District of Columbia

EPA SLN No. DC 90 0001. Platte Chemical Co. Registration is for sprout nip EC to be used on ginko trees to control coconut/fruiting. April 16, 1990.

Georgia

EPA SLN No. GA 90 0003. FMC Corp. Registration is for Bifenthrin to be used on conifer seed orchards to control cone seed worms and seed bugs. June 5, 1990.

Hawaii

EPA SLN No. HI 90 0001. Larry G. Jefts Farms. Registration is for Paraquat Dichloride to be used on bell peppers to control spiny amaranth. April 27, 1990.

EPA SLN No. HI 90 0002. Sandoz Corp. Registration is for Fluvalinate to be used on coffee to control green scale (*Coccus viridis*). This represents a changed use pattern (CUP). June 22, 1990.

EPA SLN No. HI 90 0003. Alcide Corp. Registration is for Sodium Chlorite, Chlorine Dioxide to be used as a disinfectant on cutting tools. This represents a changed use pattern. (CUP) June 11, 1990.

EPA SLN No. HI 90 0004. Hawaii Assoc. Registration is for Sodium Hypochlorite to be used on laundry (garments) as a disinfectant. This represents a changed use pattern. (CUP) June 26, 1990.

Indiana

EPA SLN No. IN 90 0001. Ciba-Geigy Corp. Registration is for Metalaxyl to be used on cucurbit vegetables to control pythium. May 29, 1990.

Louisiana

EPA SLN No. LA 90 0008. Fermenta ASC Corp. Registration is for Chlorothanonil to be used on peaches to control peach scab. May 7, 1990.

EPA SLN No. LA 90 0009. Griffin Corp. Registration is for Mancozeb to be used as in-furrow soil treatment to control cotton damping off. June 6, 1990.

EPA SLN No. LA 90 0010. FMC Corp. Registration is for Bifentrhin to be used on conifer seed orchards to control cone worms, seed bugs and seed worms. June 6, 1990.

Maine

EPA SLN No. ME 90 0001. Valent U.S.A. Corp. Registration is for Diquat Dibromide to be used on potatoes (Russet Burbank) to control potato vines. June 27, 1990.

EPA SLN No. ME 90 0002. Valent U.S.A. Corp. Registration is for Diquat Dibromide to be used on pototoes to control potato foilage. June 27, 1990.

Massachusetts

EPA SLN No. MA 90 0001. Dr. Frank L. Caruso. Registration is for Chlorothalonil to be used on cranberries to control berry rot. This represents a changed use pattern (CUP). June 4, 1990.

Michigan

EPA SLN No. MI 90 0001. Ciba-Geigy. Registration is for Ridomil 5G (Metalaxyl) Granular to be used on cucurbits to control pythium diseases. May 10, 1990.

EPA SLN No. MI 90 0002. FMC Corp. Registration is for Bifentrhin to be used on outdoor ornamentals to control insects and mites. May 15, 1990.

EPA SLN No. MI 90 0003. Mobay Corp. Registration is for Dyrene to be used on cucumbers to control a variety of diseases. June 19, 1990.

EPA SLN No. MI 90 0004. Mobay Corp. Registration is for Bayleton to be used on Christmas trees to control gall rust. June 16, 1990.

EPA SLN No. MI 90 0032. Fermenta ASC Corp. Registration is for MSMA to be used on cotton to control weeds. June 21, 1990.

Minnesota

EPA SLN No. MN 90 0001. Dept. of Natural Res. Registration is for Dimethoate to be used on spruce to control cone and seed insects (coneworms). May 23, 1990.

EPA SLN No. MN 90 0002 Rohm and Haas Co. Registration is for Propanil/MCPA to be used on oats to control weeds. June 18, 1990.

EPA SLN No. MN 90 0003. ICI Americas, Inc. Registration is for Fluazifop-P-Butyl to be used on fine fescue (grown for seed) to control quackgrass (*Agropyron repens*). June 26, 1990.

EPA SLN No. MN 90 0004. ICI Americas, Inc. Registration is for Gramoxone to be used on grass seed production fields to control quackgrass. June 26, 1990.

Mississippi

EPA SLN No. MS 90 0005. Setre Chemical Co. Registration is for Weed Rhap A-4D to be used on rice to control weeds. April 18, 1990.

EPA SLN No. MS 90 0006. FMC Corp. Registration is for Capture 2EC to be used on conifers/orchards to control seed worms/bugs. April 18, 1990.

EPA SLN No. MS 90 0007. Riverside/ Terra Corp. Registration is for Dimethylamine Salt of MCPA to be used on rice to control weeds. This represents a changed use pattern (CUP). May 2, 1990.

EPA SLN No. MS 90 0008. Riverside/ Terra Corp. Registration is for Dimethyl Amine of Salt 2,4-D to be used on rice to control weeds. This represents a changed use pattern (CUP). May 2, 1990.

EPA SLN No. MS 90 0009. Agrolinz, Inc. Registration is for DMA Salt of MCPA to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0010. Agrolinz, Inc. Registration is for DMA Salt of 2,4-D to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0011. Agrolinz, Inc. Registration is for N-Alkylamine Salt of 2,4-D to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0012. Platte Chemical Co. Registration is for Dimethylamine Salt of 2,4-D to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0013. Griffin Corp. Registration is for Mancozeb to be used on cotton to control damping off and seedling blight. May 2, 1990.

EPA SLN No. MS 90 0014. Fermanta ASC Corp. Registration is for 2,4-D to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0015. Rhone Poulenc AG Co. Registration is for MCPA to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0016. Rhone Poulenc. Registration is for 2,4-D to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0017. Rhone Poulenc Ag Co. Registration is for 2,4-D to be used on rice to control weeds. May 2, 1990.

EPA SLN No. MS 90 0018. Rhone Poulenc Ag Co. Registration is for 2,4-D to be used on rice to control weeds. February 5, 1990.

EPA SLN No. MS 90 0019. Universal Corp. Registration is for 2,4-D Amine Weed Killer to be used on rice to control weeds. May 8, 1990.

EPA SLN No. MS 90 0020. Red Panther Chem. Co. Registration is for 2,4-D Amine 4 to be used on rice to control weeds. May 8, 1990.

EPA SLN No. MS 90 0021. Red Panther Chem. Co. Registration is for 2,4-D Amine 4 to be used on rice to control weeds. May 8, 1990.

EPA SLN No. MS 90 0022. FMC Corp. Registration is for Cypermethrin to be used on soils to control termites. May 10, 1990.

EPA SLN No. MS 90 0023. Voluntary Purchasing. Registration is for 2,4-D Amine to be used on rice to control weeds. May 10, 1990.

EPA SLN No. MS 90 0024. Fermenta Plant. Registration is for DSMA Liquid to be used on cotton to control weeds. This represents a changed use pattern (CUP). May 18, 1990.

EPA SLN No. MS 90 0025. Fermenta Plant Prot. Registration is for Bueno to be used on cotton to control weeds. This represents a changed use pattern (CUP). May 18 1990.

EPA SLN No. MS 90 0026. Fermenta Plant. Registration is for Arsonate Liquid to be used on cotton to control weeds. This represents a changed use pattern (CUP). May 18, 1990.

EPA SLN No. MS 90 0027. Griffin Corp. Registration is for Fluometuron to be used on cotton to control broadleaf weeds (pigweed, ragweed). June 7, 1990.

EPA SLN No. MS 90 0028. Griffin Corp. Registration is for Fluometuron to be used on cotton to control broadleaf weeds (pigweed, ragweed). June 7, 1990.

EPA SLN No. MS 90 0029. Riverside/ Terra Corp. Registration is for MSMA 912 Herbicide to be used on cotton to control weeds. This represents a changed use pattern (CUP). June 4, 1990.

EPA SLN No. MS 90 0030. Riverside/ Terra. Registration is for MSMA 120 Herbicide to be used on cotton to control weeds. This represents a changed use pattern (CUP). June 4, 1990.

EPA SLN No. MS 90 0031. Riverside/ Terra Corp. Registration is for DSMA to be used on cotton to control weeds. This represents a changed use pattern (CUP). April 30, 1990.

EPA SLN No. MS 90 0032. Fermenta ASC Corp. Registration is for MSMA to be used on cotton to control weeds. This represent a changed use pattern (CUP) June 21, 1990.

EPA SLN No. MS 90 0033. Guth Corp. Registration is for Lithate 2,4-D to be used on rice to control weeds. This represents a changed use pattern (CUP). June 25, 1990.

Missouri

EPA SLN No. MO 90 0002. Rohm and Haas Co. Registration is for Mancozeb to be used on cotton seed to control fungal diseases (phythium, etc.) May 22, 1990.

Montana

EPA SLN No. MT 90 0001. Uniroyal Chem. Co. Registration is for Comite-Mint to be used on mint to control spider mite. April 13, 1990.

EPA SLN No. MT 90 0002. American Cyanamid. Registration is for Prowl Herbicide to be used on alfalfa seed to control dodder. April 19, 1990.

EPA SLN No. MT 90 0003. FMC Corp. Registration is for Capture 2EC to be used on alfalfa seed to control lygus bugs. April 12, 1990.

EPA SLN No. MT 90 0004. American Cyanamid Co. Registration is for Imazethapyr to be used on alfalfa to control weeds. May 7, 1990.

Nebraska

EPA SLN No. NE 90 0002. Platte Chemical Co. Registration is for Diazinon to be used on cranberries to control cranberry girdler. This represents a changed use pattern (CUP). June 7, 1990.

Nevada

EPA SLN No. NV 90 0002. ICI Americas, Inc. Registration is for Fusilade 2000 Herbicide to be used on alfalfa/seed to control quackgrass. April 18, 1990.

EPA SLN No. NV 90 0003. Lipha Tech., Inc. Registration is for Chlorophacinone to be used on various sites to control ground squirrels. April 23, 1990.

EPA SLN No. NV 90 0004. American Cyanamid Co. Registration is for Imazethapyr to be used on alfalfa to control weeds. May 2, 1990.

EPA SLN No. NV 90 0005. Wilbur-Ellis Co. Registration is for Dimethoate to be used on (trees) ornamental shade, nursery to control aphids, elm leaf beetle. June 6, 1990.

New Jersey

EPA SLN No. NJ 90 0003. Fairfield American Corp. Registration is for Permethrin to control mosquitoes. April 27, 1990.

EPA SLN No. NJ 90 0004. Ciba-Geigy Corp. Registration is for D-Z-N Diazinon 14G to be used on cranberries to control cranberry girdler. This represents a changed use pattern (CUP). May 2, 1990.

EPA SLN No. NJ 90 0005. ICI Americas, Inc. Registration is for Gramoxone to be used on Alfalfa (new seeding) to control (weeds) chickweed. June 5, 1990.

New Mexico

EPA SLN No. NM 90 0002. Dowelanceo. Registration is for Trifluralin (Treflan EC) to be used on chili peppers to control weeds. June 19, 1990.

EPA SLN No. NM 90 0003. Dowelanco. Registration is for Trifluralin (Treflan M.T.F.) to be used on chili peppers to control weeds. June 19, 1990.

EPA SLN No. NM 90 0004. Dowelanco. Registration is for Trifluralin (Treflan 5)

to be used on chili peppers to control weeds. June 19, 1990.

EPA SLN No. NM 90 0020. Dowelanco. Registration is for Trifluralin to be used on Chili peppers to control weeds. June 19, 1990.

New York

EPA SLN No. NY 90 0001. New York Vegetable Growers. Registration is for Metolachlor to be used on transplanted cabbage to control *Galinsoga spp.* and yellow nutsedge. April 25, 1990.

EPA SLN No. NY 90 0002. Bureau of Fisheries. Registration is for Bayluscide 5% Granular to be used in lakes to control sea lamprey larvae. This represents a changed use pattern (CUP). June 18, 1990.

North Carolina

EPA SLN No. NC 90 0002. Mobay Corp. Registration is for Bayleton 25 to be used on hemlock to control hemlock rust. May 24, 1990.

EPA SLN No. NC 90 0003. Ciba-Geigy Corp. Registration is for Diazinon 50W to be used on blueberry fields to control fire ants. May 22, 1990.

EPA SLN No. NC 90 0004. Ciba-Geigy Corp. Registration is for Metalaxyl Subdue Granular Fugnicide to be used on conifer plantations to control phytopthora root rot. May 24, 1990.

EPA SLN No. NC 90 0005. Ciba-Geigy Corp. Registration is for Metalaxyl Subdue 2E to be used on conifer plantations to control phytopthora root rot. May 24, 1990.

EPA SLN No. NC 90 0006. Ciba-Geigy. Registration is for Diazinon AG500 to be used on blueberry fields to control fire ants. June 5, 1990.

North Dakota

EPA SLN No. ND 90 0004. Rohm and Haas Co. Registration is for Propanil / MCPA to be used on oats to control foxtails and broadleaf weeds. May 1, 1990.

EPA SLN No. ND 90 0005. Uniroyal Chem. Co. Registration is for Carboxin and Thiram to be used on safflower seedlings to control seed-borne rust. June 24, 1990.

EPA SLN No. ND 90 0006. Atochem North America. Registration is for Maneb to be used on dry beans to control rust, mildew, and anthracnose. June 20, 1990.

EPA SLN No. ND 90 0007. Atochem No. America. Registration is for Mancozeb to be used on barley to control helmintosporium leaf blight. June 20, 1990.

EPA SLN No. ND 90 0008. FMC Corp. Registration is for Carbofuran to be used on small grains (wheat, oats, barley) to control grasshoppers. June 25, 1990.

Ohio

EPA SLN No. OH 90 0005. Mobay Corp. Registration is for Dyrene for use on cucumbers to control alternaria cercospora . June 18, 1990.

Oklahoma

EPA SLN No. OK 90 0002. Avitrol Corp. Registration is for Avitrol Powder Mix to be used on pecans to control crows. April 18, 1990.

EPA SLN No. OK 90 0003. FMC Corp. Registration is for Bifenthrin to be used on conifer seed orchards to control cone and seed worms and seed bugs. June 11, 1990.

Oregon

EPA SLN No. OR 90 0002. Gustafson, Inc. Registration is for Thiabendazole to be used on crimson clover for seed to control *Kabatiella caulivora.* June 26, 1990.

EPA SLN No. OR 90 0005. Ciba-Geigy Corp. Registration is for Diazinon to be used on nursery stock to control apple maggots and cherry fruit flies. February 8, 1990.

EPA SLN No. OR 90 0008. FMC Corp. Registration is for Capture 2EC to be used on alfalfa seed to control various insects. April 18, 1990.

EPA SLN No. OR 90 0009. FMC Corp. Registration is for Capture 2EC to be used on carrot seed to control various insects. April 18, 1990.

EPA SLN No. OR 90 0012. Sandoz Crop. Registration is for Fluvalinate to be used on seed alfalfa to control lygus bugs and aphids. May 10, 1990.

EPA SLN No. OR 90 0013. Sandoz Crop. Registration is for Banvel Herbicide (Dicamba) to be used on wheat as a preharvest application to control weeds. May 9, 1990.

EPA SLN No. OR 90 0015. Rohm and Haas Co. Registration is for Dicofol to be used on black berries and raspberries to control mites. June 19, 1990.

EPA SLN No. OR 90 0016. Rohm and Haas Co. Registration is for Oxyfluorfen to be used on blackberry plants to control primocane suppression. June 19, 1990.

EPA SLN No. OR 90 0017. Gowan Co. Registration is for Diazinon to be used on cranberries to control "cranberry girdler." This represents a changed use pattern (CUP). June 20, 1990.

EPA SLN No. OR 90 0018. ICI Americas, Inc. Registration is for Fluazifop-p-Butyl to be used on alfalfa grown for seed to control quackgrass. July 3, 1990.

South Carolina

EPA SLN No. SC 90 0002. FMC Corp. Registration is for Bifenthrin to be used on conifer seed orchards to control cone worms and seed bugs. May 9, 1990.

EPA SLN No. SC 90 0003. Hoechst-Roussel. Registration is for Diclofop-Methyl to be used on wheat, barley, lentils, dry peas to control goosegrass (*Eleusine Indica*). This represents a changed use pattern (CUP). June 18, 1990.

EPA SLN No. SC 90 0004. ICI Americas, Inc. Registration is for Reflex to be used on soybeans to control weeds (witchweed). July 3, 1990.

South Dakota

EPA SLN No. SD 90 0001. Agrolinz, Inc. Registration is for Isooctyl Ester, 2,4D to be used on small grains and barley to control weeds. March 27, 1990.

EPA SLN No. SD 90 0002. Agrolinz, Inc. Registration is for 2,4-D1-3Gal/ Spray/A to be used on small grains and barley to control weeds. March 27, 1990.

EPA SLN No. SD 90 0003. Sandoz Crop. Registration is for Dicamba to be used on wheat to control weeds (kochia, pigweed spp.) May 31, 1990.

EPA SLN No. SD 90 0004. E.I. DuPont. Registration is for Metsulfuron to be used on grain to control weeds. June 26, 1990.

Tennessee

EPA SLN No. TN 90 0003. Rohm & Haas Co. Registration is for Mancozeb to be used on cotton seed to control *Rhizoctonia solani.* April 27, 1990.

EPA SLN No. TN 90 0004. Valent USA Corp. Registration is for Acephate to be used on cotton in-furrow to control aphid thrips. April 27, 1990.

EPA SLN No. TN 90 0005. FMC Corp. Registration is for Bifenthrin to be used on conifer seed orchards to control cone and seed worms and seed bugs. May 9, 1990

Texas

EPA SLN No. TX 90 0006. Dowelanco. Registration is for chlorpyrifos to be used on sugar beets to control soil insects such as cutworms. April 30, 1990.

EPA SLN No. TX 90 0007. Agricultural Div. Registration is for propiconazole to be used on Texas Live Oaks to control oak wilt. May 3, 1990.

EPA SLN No. TX 90 0008. E.I. DuPont. Registration is for esfenvalerate to be used on collards, aerial application, to control cutworm, grasshopper, (insects). This represents a changed use pattern (CUP). May 10, 1990.

Utah

EPA SLN No. UT 90 0001. Dowelanco. Registration is for Treflan TR 10 to be used on alfalfa seec to control dodder. April 19, 1990.

EPA SLN No. UT 90 0002. Sandoz Crop Corp. Registration is for Banvel/Pre Harvest to be used on wheat to control annual weeds. April 19, 1990.

EPA SLN No. UT 90 0003. FMC Corp. Registration is for Capture 2EC to be used on alfalfa seed to control various weeds. April 24, 1990.

EPA SLN No. UT 90 0004. Wilbur-Ellis Co. Registration is for dimethoate to be used on trees (ornamental shade, nursery) to control aphids, elm leaf beetle. May 3, 1990.

EPA SLN No. UT 90 0005. Fairfield American. Registration is for Permethrin to be used at resting places to control flying insects (wasps, gnats). This represents a changed use pattern (CUP). June 6, 1990.

Virginia

EPA SLN No. VA 90 0002. FMC Corp. Registration is for Clomazone to be used on pumpkins to control grasses and broadleaf weeds. May 15, 1990.

Washington

EPA SLN No. WA 90 0010. E.I. Du Pont. Registration is for Harmony Extra Herb. to be used on winter wheat to control wild oats. April 16, 1990.

EPA SLN No. WA 90 0011. American Cyanamid. Registration is for Prowl Herbicide to be used on carrots for seed to control weeds. April 4, 1990.

EPA SLN No. WA 90 0012. BASF Corp. Registration is for Basagran to be used on alfalfa seed to control various weeds. April 16, 1990.

EPA SLN No. WA 90 0013. Rhone-Poulenc. Registration is for Sevin 80S to be used in oyster beds to control ghost/mud/shrimp. April 20, 1990.

EPA SLN No. WA 90 0014. Sandoz Crop Corp. Registration is for Banvel to be used on seeded barley to control weeds. April 20, 1990.

EPA SLN No. WA 90 0015. Gowan Co. Registration is for Phosphamidon to be used on apples to control green apple aphids. April 30, 1990.

EPA SLN No. WA 90 0016. Dowelanco. Registration is for Trifluralin to be used on alfalfa to control dodder. This represents a changed use pattern (CUP). May 4, 1990.

EPA SLN No. WA 90 0017. E. I. DuPont. Registration is for Linuron to be used to reduce crop rotation limit. May 2, 1990.

EPA SLN No. WA 90 0018. E.I. Du Pont. Registration is for Linuron to be used on crop rotation rye, oats for crop rotation (weed control). May 2, 1990.

EPA SLN No. WA 90 0019. Platte Chemical Co. Registration is for Phorate to be used on radishes grown for seed to control aphids and lygus. May 17, 1990.

EPA SLN No. WA 90 0020. Rohm and Haas. Registration is for Myclobutanil to be used on apples to control apple scab, rust, powdery mildew. May 17, 1990.

EPA SLN No. WA 90 0021. Platte Chemical Co. Registration is for phosphamidon to be used on apples (post bloom) to control aphids and leafhoppers. This represents a changed use pattern (CUP). May 24, 1990.

EPA SLN No. WA 90 0022. Rohm and Haas. Registration is for Dicofol to be used on raspberries and blackberries to control mites. May 23, 1990.

EPA SLN No. WA 90 0023. FMC Corp. Registration is for endosulfan to be used on potatoes to control army worms and aphids. June 25, 1990.

Wisconsin

EPA SLN No. WI 90 0001. Platte Chemical Co. Registration is for Diazinon to be used on cranberries to control cranberry girdler. This represents a changed use pattern (CUP). June 7, 1990.

EPA SLN No. WI 90 0002. Baker Performance. Registration is for Acrolein to be used in irrigation canals to reduce holding time and to control floating weeds and algae. May 11, 1990.

EPA SLN No. WI 90 0003. Riverside/Terra Corp. Registration is for Phorate 20G to be used on potatoes to control aphids, leafhoppers, and wireworms. April 27, 1990.

Wyoming

EPA SLN No. WY 90 0002. American Cyanamid Co. Registration is for Imazethapyr to be used on alfalfa grown for seed to control weeds. May 8, 1990.

Authority: Section 24, as amended, 92 Stat. 835 (7 U.S.C. 136).

Dated: September 25, 1990.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-23147 Filed 9-27-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for four new FM stations:

Applicant, City and State	File No.	MM Docket No.
I		
A. Pensacola Radio Partners; Pensacola, FL.	BPH-880323MJ	90-406
B. Gulf Coast FM General Partnership; Pensacola, FL.	BPH-880324MB	
C. Pensy Radio, Inc.; Pensacola, FL.	BPH-880324MC	
D. Bill Henry Broadcasting, Inc.; Pensacola, FL.	BPH-880324MD	
E. Vernon C. Floiyd; Pensacola, FL.	BPH-880324MK	
F. Pensacola Minority Broadcast Associates; Pensacola, FL.	BPH-880324MS	
G. Gaynell L. Fordham; Pensacola, FL.	BPH-880324MY	
H. Media Transetters for Women; Pensacola, FL.	BPH-880324NB	
I. Robert G. Kerrigan; Pensacola, FL.	BPH-880324NC	
J. George S. Flinn, Jr.; Pensacola, FL.	BPH-880324NO	
K. Kelly A. Allen and Mary Johnson General Partners in Allen/Johnson Pensacola, Ltd.; Pensacola, FL.	BPH-880324NP	
L. Chicago Broadcasting, Incorporated; Pensacola, FL.	BPH-880324NS	
M. Miracle Radio, Inc.; Pensacola, FL.	BPH-880324NU	
N. PNS Limited Partners; Pensacola, FL.	BPH-880324NW	
O. The Boyd Partnership; Pensacola, FL.	BPH-880324NZ	
P. David Earl Hoxeng d/b/a ADX Communications of Pensacola; Pensacola, FL.	BPH-880324OJ	
Q. White Sands Broadcasting Company; Pensacola, FL.	BPH-880324OK	
Issue heading and applicants		
1. Air Hazard, D,F,J,L,O,P		
2. Comparative, A-Q		
3. Ultimate, A-Q		
II		
A. Anna Slagle d/b/a/ Spectrum Broadcast Systems, Kingwood, WV.	BPH-881208MJ	90-399
B. WFSP, Inc., Kingwood, WV.	BPH-881208MK	
Issue heading and applicant		
1. Comparative, A,B		
2. Ultimate, A,B		
III		
A. Peter J. Rinaldi; Natchez, MS.	BPH-880809NA	90-401

Applicant, City and State	File No.	MM Docket No.
B. Luther Jackson Lazarus; Natchez, MS.	BPH-880812MT	
C. James Washington d/b/a/ Washington Broadcasting; Natchez, MS.	BPH-880816NG	
D. Cloud Nine, Inc.; Natchez, MS.	BPH-880816OV	
Issue heading and applicant		
1. Environmental, A		
2. Comparative, All applicants		
3. Ultimate, All applicants		
IV		
A. Helen Broadcasters, Inc. Helen, GA.	BPH-890426MI	90-402
B. Shull Broadcasting Company, Inc.; Helen, GA.	BPH-890427MC	
C. Jospeph A. Vandergriff; Helen, GA.	BPH-890427MD	
D. Anthony Lamar Canup and George M. Pass, d/b/a/ White County Broadcasting; Helen, GA.	BPH-890427ME	
Issue heading and applicants		
1. Air Hazard, A,C,D		
2. Comparative, A-D		
3. Ultimate, A-D		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is a non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appednix to this Notice. A copy of the complete HDO in this proceeding 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 duplication contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division.

[FR Doc. 90-22930 Filed 9-27-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Maritz Inc. and Maritz, Travel Company, 1375 North Highway Drive, Fenton, St. Louis Co., MO 63099.

Vessel: *VIKING SERENADE.*

Dated: September 24, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-22961 Filed 9-27-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Docket No. 6486]

Goodyear Tire & Rubber Co., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a 1961 consent order with Goodyear Tire & Rubber Co., (58 FTC 309), which prohibited the company from entering into sales commission agreements with any oil marketing company for the marketing of tires, batteries, and accessories. The Commission concluded that changes of law warranted reopening the proceeding, and that because there is little prospect that the activities prohibited by the 1961 order could now diminish competition, there was no need to maintain the order, and it should be set aside.

DATES: Order issued March 9, 1961. Set Aside Order issued August 21, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth Davidson, FTC/S-2122, Washington, DC 20580. (202) 326-2863.

SUPPLEMENTARY INFORMATION: In the Matter of Goodyear Tire & Rubber Company, *et al.* The prohibited trade practices and/or corrective actions, as set forth at 26 FR 4886, are removed.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Commissioners: Janet D. Steiger, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Deborah K. Owen.

Order Reopening and Setting Aside Final Order Issued on March 9, 1961

In the matter of Goodyear Tire & Rubber Co. a corporation, and Atlantic Refining Co. a corporation.

On April 23, 1990, the Goodyear Tire & Rubber Company ("Goodyear") filed a request to reopen and set aside the Final Order that was entered in this proceeding on March 9, 1961. Goodyear's Request was on the public record for thirty days. No comments were received. The Request was filed pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and § 2.51 of the Federal Trade Commission Procedures and Rules of Practice, 16 CFR 2.51.

The order Goodyear seeks to have set aside, Docket No. 6486, was based on a finding by the Commission that an agreement between the Atlantic Refining Company ("Atlantic") and the Goodyear Tire and Rubber Company ("Goodyear") constituted an unfair method of competition in violation of section 5 of the Federal Trade Commission Act. Under the agreement, Atlantic received commissions on the sale of Goodyear products to designated Atlantic franchisees. The order prohibited Atlantic from continuing the sales commission agreement and related business practices with Goodyear or other Atlantic suppliers. The order also prohibited Goodyear from maintaining such agreements with Atlantic or any other marketing oil company.

Docket No. 6486 was full litigated. The Commission's decision and order were affirmed and enforced by the Seventh Circuit Court of Appeals on April 24, 1964, and affirmed by the United States Supreme Court on June 1, 1965. Goodyear asserts that, since the adjudication of the Commission's order, there have been changes of law that warrant reopening the order and setting it aside.

The Atlantic Richfield Company ("Arco") was formed as a result of the merger of Atlantic with other oil companies. Arco became the successor to Atlantic and was thereby bound by the terms of the order in Docket No. 6486. On February 3, 1989, Arco filed a request to reopen and set aside that Order. On June 2, 1989, the Commission granted that request as to Arco. Order Reopening and Setting Aside Final Order Issued on March 9, 1961 ("Order Setting Aside").

The Commission has considered Goodyear's request and has concluded

that Goodyear has made a showing that warrants setting aside the entire order in Docket No. 6486. Significant changes of law since the entry of the order in this matter warrant setting aside the order.

Background

The Commission issued the complaint that initiated the adjudication of this matter on January 11, 1956. The initial decision of the hearing examiner was issued on October 23, 1959. The Commission's opinion, issued on March 9, 1961, held that the sales commission agreement concerning tires, batteries, and other automotive accessories ("TBA") between Atlantic and Goodyear and another between Atlantic and the Firestone Tire and Rubber Company ("Firestone") constituted unfair methods of competition and violated section 5 of the Federal Trade Commission Act. 58 F.T.C. 309. The Court of Appeals and the United States Supreme Court upheld the Commission's decision and order. 331 F.2d 394 (7th Cir. 1964), 381 U.S. 357 (1965).

The Decision

The factual basis for the finding that the sales commission agreement violated the Federal Trade Commission Act was explicitly set out in the Commission's decision. Prior to 1951, Atlantic had acquired TBA products and resold them to its petroleum franchisees. In 1951, it switched to a system under which Atlantic selected manufacturers of TBA to supply its franchisees. Atlantic entered into "best efforts" contracts with Goodyear and Firestone. Under these contracts Atlantic agreed that it would exert its best efforts to promote Goodyear products to all of its franchisees within a designated geographic area and Firestone products within another area. In return those companies agreed to limit TBA sales to Atlantic franchisees within the designated areas and to pay Atlantic a commission on all their sales to the franchisees. Under the sales commission plan, designated Goodyear and Firestone wholesalers were allocated geographical regions. In each region, one wholesaler was to be the sole source of TBA to each Atlantic franchisee.

The Commission's decision stated this arrangement was unlawful because it "presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)." 58 F.T.C. at 367. The Commission found that Atlantic had "sufficient economic power" to reduce competition that would have existed from suppliers of other TBA products. *Id.* at 364.

Atlantic was found to have successfully implemented its sales commission program through the use of threats and coercion *Id.* at 347. The record contains lengthy references both to complaints by franchisees that they would have purchased other TBA products absent pressure from Atlantic and to instructions by Atlantic that its pressure must be implemented in a covert manner. *Id.* at 328, 355, 357.

The decision stated that Atlantic threatened, explicitly and implicitly, to cancel franchises of gas stations that did not buy the TBA products that Atlantic recommended. *Id.* At 343–47. The gas station franchise agreements were subject to annual review and could be cancelled by Atlantic on a number of subjective grounds. *Id.* at 356.

The Commission found: "Goodyear thus appeared confident that the presence of an Atlantic salesman together with the Goodyear representative would render unnecessary any higgling or haggling over price before an initial order for TBA from Atlantic dealers." *Id.* at 355. The record before the Commission also contained evidence that, "Goodyear has sales commission contracts with a number of other marketing oil companies, and these agreements are in all material respects identical with the Goodyear-Atlantic contract * * * * The evidence of record in this case shows that oil companies other than Atlantic have employed coercive tactics in requiring their dealers to purchase Goodyear TBA." *Id.* at 352.

The Hearing Examiner found that sales of TBA were vital to service station owners. TBA provided both the products for the full services expected by customers and additional revenues that made the stations profitable. 58 F.T.C. at 313.

The Commission's decision concerning the Atlantic sales commission plan was one of three such plans that the Commission found unlawful. In the other two actions, involving Shell Oil and Texaco, the Commission decisions were also upheld on review. *See, Firestone Tire & Rubber Co.*, 58 F.T.C. 383 *aff'd sub nom. Shell Oil Co.* v. *FTC*, 360 F.2d 470 (5th Cir. 1966), *cert. denied*, 385 U.S. 1002 (1967), and *B.F. Goodrich Tire & Rubber Co.*, 69 F.T.C. 22 (1966), *rev'd sub nom. Texaco, Inc.* v. *FTC*, 383 F.2d 942 (D.C. Cir. 1967) *Rev'd sub nom. FTC* v. *Texaco, Inc.*, 393 U.S. 223 (1968). The Commission also had evidence before it concerning the use of sales commission plans for marketing TBA products to the franchises of seven other oil companies. 56 F.T.C. at 359.

Atlantic and Goodyear denied that their sales commission agreement harmed competition and asserted it was "a legitimate and competitive method of distributing TBA which benefits suppliers of TBA products, oil companies, dealers and distributors of petroleum products and the consuming public." 58 F.T.C. at 324. The Supreme Court, however, rejected the parties' claim that the Commission erred when it refused "to consider evidence of economic justification for the program." 381 U.S. 357 at 371. It also rejected the contention "that the Commission should have made a far more extensive economic analysis of the competitive effect of the sales-commission plan, examining the entire market in tires, batteries and accessories." *Ibid.* It rejected the necessity of these inquiries on the ground that "the effect of this plan is similar to that of a tie-in." *Ibid.*

In these cases, it appears the Commission was concerned about the cumulative effect of foreclosure of competition in TBA products as a result of all the agreements. While Atlantic's share of the retail gasoline market in the area served by its franchises was 6.8%, the Commission noted that gas stations as a group accounted for 37% of the sales of tires and tubes, 44% of the sales of batteries and 20% of the sales of automotive accessories. *Id.* at 325–6. In the *Shell* case, between 1948 and 1958, the market share of gas stations for TBA products had increased from 31 to 45 percent of all sales. 58 F.T.C. 371 (1961). The Commission alleged that gas stations were likely to become even more important in the sale of TBA. 58 F.T.C. at 326.

The Order

The Commission entered an order that forbade Atlantic from promoting or coordinating the sale of TBA products from any TBA vendor other than itself to Atlantic franchisees. It also forbade Goodyear from:

1. Entering into or continuing agreements with Atlantic or other marketing oil companies in connection with sales of Goodyear TBA products by distributors of any such oil company.

2. Paying or offering to pay anything of value to any marketing oil company for promoting the sale of any Goodyear TBA products by distributors of any such oil company.

3. Participating in monitoring the sales of TBA products to distributors of any marketing oil company for such oil company.

Standard for Reopening a Final Order of the Commission

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require.[1] A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986) at 4. *See*, S. Rep. No. 96–500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *see Phillips Petroleum Co.*, Docket No. C–1088, 78 F.T.C. 1573, 1575 (1971) (modification not required for changes reasonably foreseeable at time of consent negotiations); *Pay Less Drugstores Northwest, Inc.*, Docket No. C–3039, Letter to H.B. Hummelt (Jan. 22, 1982) (changed conditions must be unforeseeable, create severe competitive hardship and eliminate dangers order sought to remedy) (unpublished); *see also United States* v. *Swift & Co.*, 286 U.S. 106, 119 (1932) ("clear showing of changes that have eliminated reasons for order or such that the order causes unanticipated hardship).

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in requests to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C–2916, Letter to Joel E. Hoffman, Esq. (March 24, 1983), at 2 (hereafter "Damon Letter") (unpublished). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C–2916, 101 F.T.C. 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon Letter at 2; *see, e.g., Chevron Corp.*, Docket No. C–3147, 3 Trade Reg. Rep. (CCH) 22,239 (March 13, 1985) (public interest warrants modification where potential harm to respondent's ability to compete outweighs any further need for order). The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm. Damon Letter at 4.

The language of Section 5(b) plainly anticipates that the burden is on the requester to make "a satisfactory showing" of changed conditions to obtain reopening of the order. *See also Gautreaux* v. *Pierce*, 535 F. Supp. 423, 426 (N.D. Ill. 1982) (requester must show "exceptional circumstances, new, changed or unforeseen at the time the decree was entered"). The legislative history also makes clear that the requester has the burden of showing, by means other than conclusory statements, why an order should be modified.[2] If the Commission determines that the requester has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the requester fails to meet its burden of making the satisfactory showing of changed conditions required by the statute. The requester's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality); *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 296 (1974) ("sound basis for * * * [not reopening] except in the most extraordinary circumstances"); *RSR Corp.* v. *FTC*, 656 F.2d 718, 721–22 (D.C. Cir. 1981) (applying *Bowman Transportation* standard to FTC order).

Goodyear asserts that there have been changes of law that require the Commission to reopen and set aside the order.

Changes of Law Warrant Reopening the Order

Goodyear urges that, since the order was entered, court and Commission decisions have significantly changed the antitrust law that applies to tying and other non-price vertical restraints. Specifically it cites two lines of cases that would require the Commission to consider issues that the Commission did not address when it found the Goodyear-Atlantic sales commission plan was an unfair method of competition. The issues are:

> A requirement, pursuant to *United States Steel Corp.* v. *Fortner*, 429 U.S. 610 (1977), that "economic power" concerning the tying product be demonstrated in terms of market power, and
>
> A requirement, pursuant to *Continental T.V. Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977), to consider efficiencies resulting from the vertical restraints that might enhance interbrand competition.

Request at 34 *et seq.*

These arguments track the Commission's decision in setting aside this Order as to Arco. The Commission concluded these changes of law were relevant to its original decision:

> [f]or purposes of reopening the order, the important point is that the Commission made no inquiry concerning the market power of Atlantic and that today such an inquiry would be mandatory * * *. *Fortner* and subsequent cases established criteria that changed the law of tying in ways that are central to the determination of this case. Accordingly, there has been a change of law that warrants reopening this order.

Order Setting Aside at pp. 6–7. It further concluded that:

> If the Commission's finding was not that the sales commission plan was an unlawful tie, the plan was, nevertheless, held to be a *per se* unlawful vertical restraint of some other type. Since the Supreme Court's decision in *Continental T.V. Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977), it has been clear that non-price vertical restraints generally are to be evaluated under a rule of reason standard. That standard requires consideration of whether interbrand competition may be enhanced by efficiencies resulting from vertical restraints. But as the Supreme Court noted in affirming the order in this case, the Commission refused to consider "evidence of economic justification" or to analyze "the competitive effect of the sales commission

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[1] Section 5(b) provides, in part:

> [T]he Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part.

The 1980 amendment to section 5(b) did not change the standard for order reopening and modification, but "codifie[d] existing Commission procedures by requiring the Commission to reopen an order if the specified showing is made," S. Rep. No. 96–500, 96th Cong., 2d Sess. 9–10 (1979), and added the requirement that the Commission act on petitions to reopen within 120 days of filing.

[2] The legislative history of amended section 5(b), S. Rep. No. 96–500, 96th Cong., 2d Sess. 9–10 (1979), states:

> Unmeritorious, time-consuming and dilatory requests are not to be condoned. A mere facial demonstration of changed facts or circumstances is not sufficient * * * The Commission, to reemphasize, may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order.

plan, examining the entire market in tires, batteries and accessories." 381 U.S. 357 at 371 (1965). Thus, to the extent the Commission's decision rests on an analysis of vertical restraints, it appears that this change of law also requires reopening the order.

Id. at 7.

The same conclusion applies to Goodyear. There have been no subsequent developments in the antitrust law that would warrant a different outcome, therefore the Order is reopened as to Goodyear also.

The Order Will Be Set Aside

Having concluded that changes of law warrant reopening the Order, the question remains whether modification of the Order is appropriate. An order is not set aside automatically on the grounds that the law has changed, even if, as here, the Commission refused to consider issues that later become mandatory. Having satisfied itself on a record of adequate proof under then prevailing standards, the Commission does not have to reprove its case to maintain a final order. The Order remains in force unless the requester can show either that there is no basis in current law on which such a case could be brought and no need for the Order or that the current effect of the Order is detrimental to competition. *See, Louisiana Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986).

In the context of this request, Goodyear has made no showing of harm to competition resulting from the restraints the Order imposes on it. It must, therefore, persuade the Commission that there is no need for the Order. Goodyear urges that the Commission's decision setting aside the Order as to Arco made the findings necessary when it determined that "gas stations as a group, and Arco in particular, probably have too small a market share to produce substantial competitive effects on TBA distribution." Order Setting Aside at pp. 7–8. The Commission's decision noted that the market share of gas stations had declined from 37 percent in 1961 to sales of "8 percent of replacement tires in 1987." Order Setting Aside at n. 3.

Goodyear's request may appear to deserve a closer look at possible competitive effects, because it has a much larger share of the TBA market than Arco, or all gas stations, and Goodyear could augment that share through agreements with marketing oil companies. Goodyear concedes that it produces a substantial share of replacement tires in the American market, including tires sold by gas stations. (Goodyear's share of the battery and accessories market is negligible. Request at n. 10.)

However, even if Goodyear were to capture all tire sales to gas stations that would not satisfy the standard for unlawful tying set out in *Fortner, supra.* An unlawful tie requires the existence of a tying product that has market power and use of that market power to tie the sale of the tied product. *See also Jefferson Parish Hospital District No. 2* v. *Hyde*, 446 U.S. 2 (1984). In this Order, the gas station franchise is the tying product, not tires.

In any case, gas station franchises do not appear at this time to have the potential to create market power in the sale of tires. Their once substantial share has been lost to mass marketers and specialty automotive stores. *See* Arco Request, Tables 1 and 2. As a result, if Goodyear were to engage in the activities currently prohibited by the Order, it appears that there is little prospect that such activities could diminish competition. There is, therefore, no need to maintain the Order.

Accordingly, *it is ordered* that this matter be reopened and that the Commission's order in Docket No. 6486 issued on March 9, 1961, be set aside as to Goodyear as of the date of this Order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-22977 Filed 9-27-90; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. 9040]

The Kroger Co.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the 1977 consent order (90 FTC 459) which, with certain limitations, required respondent to keep advertised sale items on hand and to sell them at no more than the advertised price. Respondent's petition was based on the 1989 amendment to the Commission's Retail Food Store Advertising & Marketing Practices Rule (the "Unavailability Rule"). The Commission concluded that its action in amending the Unavailability Rule constituted a changed condition of law and fact, requiring that the proceeding be reopened and the order modified.

DATES: Consent Order issued November 11, 1977. Modifying Order issued August 21, 1990.

FOR FURTHER INFORMATION CONTACT: Jerry McDonald, FTC/S-4631, Washington, DC 20580. (202) 326-2971.

SUPPLEMENTARY INFORMATION: In the Matter of The Kroger Co. The prohibited trade practices and/or corrective actions, as set forth at 42 FR 62912, are changed.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: Janet D. Steiger, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Deborah K. Owen.

Order Reopening the Proceeding and Modifying Cease and Desist Order

In the matter of The Kroger Co., a corporation.

On April 23, 1990, The Kroger Co., a corporation, filed a request to reopen the proceeding and modify the consent order entered against it by the Commission on November 11, 1977, in Docket No. 9040 (90 FTC 459).

The request to reopen the proceeding and modify the consent order was placed on the public record on April 23, 1990, and a press release regarding the request was issued on May 10, 1990. The public comment period ended on June 11, 1990, and no comments were filed. On July 31, 1990, Petitioner withdrew its request that part III.A.(1) of the consent order be deleted. The deadline to rule on Petitioner's request was August 21, 1990.

Petitioner is one of the nation's largest food retailers. The order prohibits it from failing to have advertised items readily available for sale, from failing to mark each item with a price no higher than the advertised price, and from failing to sell each item at a price no higher than the advertised price. Petitioner may, however, avoid liability for its failure to comply with these proscriptions if it discloses in its sale advertisements specific exceptions, limitations or restrictions with respect to store, item and price. Petitioner must also maintain a continuing surveillance program which entails surveys of its stores to ascertain the rates of unavailability, over price marking and overcharging. Defenses and presumptions applicable to those defenses are based on tolerance levels of unavailability, over price marking and overcharging.

The order also requires Petitioner to post in each of its stores a copy of its advertisement and a statement that all items advertised are required to be available for sale at or below the advertised price, except as specifically noted in the advertisement. The statement must also advise consumers

that a raincheck may be obtained if an item is unavailable. Additionally, Petitioner's advertisements for sale items must disclose that each item is required to be available, except as specifically noted in the advertisement. Petitioner is further required by the order to deliver a copy of the order to specified supervisory employees.

Petitioner's Request

Petitioner requests that the Commission reopen and modify the order so that it is not inconsistent with the Commission's Retail Food Store Advertising and Marketing Practices Rule ("the Rule"), as amended on August 28, 1989. Petitioner states that changes in law, fact and public interest considerations warrant the requested relief.

Petitioner state that the Commission's action in amending the Rule constitutes a change of law and fact requiring that the order be reopened and modified so that it is not inconsistent with the amended Rule. Both the order and the original Rule required the Petitioner to have advertised items readily available, at or below the advertised prices, and both permitted similar defenses. The amendments permit new defenses to unavailability that were not permitted under the original Rule or the order.

Petitioner relates that it filed a request to reopen the proceeding and vacate the order on July 1, 1988, which was based on similar alleged changes and public interest considerations as in the instant request. It states that the Commission denied its request on August 18, 1989, because the amendments to the Rule did not constitute changes in law or fact requiring that the order be vacated. The Commission did indicate, however, that changes in the Rule "may require that the order be modified so that it is not inconsistent with the amended Rule." Petitioner quotes from the Commission's letter advising it of its denial of the request:

> It may be in the public interest, however, to reopen and modify the order to enable Petitioner, and ultimately the consumer, to benefit from the Rule's amendments."

Under the amended Rule, Petitioner says, rainchecks, items of comparable value, other compensation of equivalent value and general disclaimers of limited availability of advertised items will provide an "absolute defense" to its competitiors, while Petitioner will be subject to higher costs. When it consented to the order, Petitioner states, it could not have forseen that its competitors "would be relieved of any realistic concern about potential penalties and would consequently be spared from the excessive costs of ensuring compliance."

Pointing out the inconsistencies between the order and the amended Rule, Petitioner states that, if the order is not modified, it will be left in the position or violating the order by complying with the amended Rule of violating the amended Rule by complying with the order. As an illustration, Petitioner says that parts I and III of the order would not permit it to follow the amended Rule's standards regarding advertising items in limited supply. Conversely, it says that it would violate the amended Rule if it refused to offer substitutes for out-of-stock items even though such refusal would be in compliance with the order if it was within the tolerance levels permitted by the order.

Petitioner is also asking that specified provisions of the order that were never part of the Rule be stricken from the order. It argues that the advertising disclosure and store notices relating to availability, which are required by the order, are inconsistent with the amended Rule since they do not reflect the defenses to unavailability provided by the amendments.

Petitioner states that the provisions of the order requiring a surveillance program, entailing surveys of its stores to determine levels of unavailability, will not be needed if the order is modified so that it is not inconsistent with the amended Rule. Under the amended Rule, Petitioner maintains, compliance may be achieved through advertising disclosures of limited availability, or by offering rainchecks, comparable items or other compensation for unavailable items.

Petitioner argues that surveillance and surveys of pricing impose heavy burdens that are inconsistent with the "fundamental functions" of the amended Rule to eliminate costs. Because of the widespread use of scanners, Petitioner says, it "would necessitate examination, correlation and recordation of every 'identification code' and associated 'display' prices for many, if not most advertised items." "In addition", Petitioner continues, "audits would be needed to calculate and document the 'ultimate price' in transactions involving total dollar purchase, couponing or other promotional items."

Arguing that it is in the public interest to reopen and modify the order as requested, Petitioner notes that it estimated in its prior request that the order be vacated that compliance with the original Rule and the order costs it approximately $7 million per year and that, if it were required to comply only with the amended Rule, these costs could be reduced by $3 to $4 million. If it is compelled to endure these "costly compliance measures while other food retailers are free of them", Petitioner states, "its competitive effectiveness will be impaired." The consequences, it says, will be detrimental to consumers served by its 11,400 supermarkets throughout the United States.

The Commission's Decision

Under section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), the Commission must reopen an order to consider whether it should be altered, modified or set aside if a respondent files a request that makes a satisfactory showing that changed conditions of law or fact require the order to be altered, modified or set aside in whole or in part. This provision also permits the Commission to reopen an order for the purpose of altering, modifying or setting aside some or all of its terms whenever it believes that such an action would be required in the public interest. Rule 2.51(b) of the Commission's Rules of Practice implements this provision of law and states that to be satisfactory, a request may not be "merely conclusory" but must "set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modifications."

The Commission has concluded that its action in amending the Retail Food Store Advertising and Marketing Practices Rule constitutes a changed condition of law and fact, requiring that the order be reopened and modified. When Petitioner entered into the consent order, the original Rule was in effect and it and its competitors were subject to civil penalty liability for failing to have advertised specials available at or below the advertised prices. Similar defenses were provided for Petitioner under the order and for its competitors under the Rule. With the amendments to the Rule, which it could not have foreseen when it entered into the consent order, Petitioner is no longer in the same position as its competitors because it may not avail itself of the same defenses that they may invoke. In addition, the amendments to the Rule have brought the terms of the order into conflict with that Rule.

On August 28, 1989, the Commission amended the Rule in order to reduce costs on the retail food store industry that are passed along to consumers. The Commission concluded that the amended Rule would not significantly reduce consumer protection because instances of unavailability would be mitigated by the amended Rule's

requirement that consumers be offered rainchecks or comparable substitute items. The Commission believes that it is in the public interest that Petitioner, and ultimately its customers, should be entitled to the cost savings that the amended Rule will provide.

A separate prohibition in the original Rule against failing to have advertised specials available at or below the advertised prices was omitted from the amended Rule. However, over pricing continues to be prohibited by the amended Rule since it is implicit in the requirement that products offered for sale at a stated price be available. This will be true even if the pricing provisions of the order are eliminated to coincide with the amended Rule. The order also has pricing proscriptions. The order also requires Petitioner to maintain a program of surveillance, including surveys to its individual stores, with tolerance levels for over price marking and overcharging. The Commission believes that such costly procedures are inconsistent with the amended Rule's stated purpose of reducing compliance costs.

The Commission is persuaded by the Petitioner's argument that the order's costly compliance procedures to protect against unacceptable levels of unavailability will not be needed when the order is modified so that it is not inconsistent with the amended Rule. The amendments will enable Petitioner to comply with the order by disclosing limited availability in its advertising or by offering "rainchecks", comparable items or other compensation in unexpected instances of unavailability. Petitioner has shown that provisions of the order requiring disclosures in advertisements and the posting of statements in Petitioner's stores concerning unavailability and pricing are inconsistent with the amended Rule and should be stricken from the order.

Conclusion

Petitioner has demonstrated that changed conditions of law and fact, and public interest considerations require that the proceeding be reopened and the order modified as requested.

It is therefore ordered that the proceeding is hereby reopened and the Decision and Order issued on November 11, 1977, is hereby modified to read as follows:

Order

Definitions: For purposes of this order, "respondent" means The Kroger Co., a corporation, its successors or assigns, its officers, agents, representatives and employees.

For purposes of this order, "retail food store" shall mean all of respondent's food stores, but shall not include convenience stores (stores less than 4,000 square feet in total area) and drug stores.

I. Prohibited Activities

It is ordered that respondent, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of food or grocery products or other merchandise, hereafter sometimes referred to as items, offered or sold in its retail food stores, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

Offering any such products for sale at a stated price, by means of an advertisement disseminated in an area served by any stores which are covered by the advertisement, if these stores do not have the advertised products in stock and readily available to customers during the effective period of the advertisement, unless the advertisement clearly and adequately discloses that supplies of the advertised products are limited or the advertised products are available only at some outlets;

Provided, however, that no violation of this modified order shall be found if respondent

(a) Ordered the advertised products in adequate time for delivery in quantities sufficient to meet reasonably anticipated demand;

(b) Offers a "raincheck" for the advertised product;

(3) Offers at the advertised price or at a comparable price reduction a similar product that is at least comparable in value to the advertised product; or

(d) Offers other compensation at least equal to the advertised value.

II. Additional Obligations of Respondent

It is further ordered:

A. That throughout each advertised sale period in each of its retail food stores covered by an advertisement, respondent shall post a copy of the advertisement conspicuously (1) At or near each doorway affording entrance to the public, and (2) at or near the place where customers pay for merchandise.

B. Respondent shall forthwith deliver a copy of this order to each of its operating divisions and to each of its present and future officers and other personnel in its organization down to the level of and including assistant store managers who, directly or indirectly, have any supervisory responsibilities relating to (a) Availability or price marking of advertised items in respondent's retail food stores, and (b) check stand operations, or who are engaged in any aspect of preparation, creation, or placing of advertising, and respondent shall secure a signed statement acknowledging receipt of said order from each such person.

C. Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondent which may affect compliance obligations arising out of this order.

D. At such times as the Commission may require, respondent shall file a report in writing setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-22978 Filed 9-27-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the package submitted to OMB since the last publication on August 10, 1990.

(For a copy of a package, call the FSA, Report Clearance Officer 202-252-5604).

Worksheet for Integrated AFDC, Adult, Food Stamps and Medicaid Quality Control Reviews—FSA-4340—0970-0072—The integrated worksheet serves to document the findings of state quality control reviewers who review the correctness of a sample of eligibility decisions made by the states for the AFDC, Food Stamp and Medicaid programs. The findings are used to identify areas where corrective action is needed. Respondents: State or local governments; Number of Respondents: 63,000; Frequency of Response: 1; Average Burden per Response: 11.0236

hours; Estimated Annual Burden: 694,487 hours.

OMB Desk Clearance Officer: Shannah Koss McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officers designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: September 19, 1990.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management and Information Systems.

[FR Doc. 90-22960 Filed 9-27-90; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Arkansas Micro Specialties; Simonsen Mill-Rendering Plant, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADA's), one held by Simonsen Mill-Rendering Plant, Inc., for the use of a tylosin Type A medicated article, and two held by Arkansas Micro Specialties, one for the use of a tylosin Type A medicated article and the second for the use of a tylosin/sulfamethazine Type A medicated article. The firms requested withdrawal of approval of the NADA's. In a final rule published elsewhere in this issue of the Federal Register, FDA is amending its animal drug regulations to remove those portions reflecting approval of the applications.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Simonsen Mill-Rendering Plant, Inc., Box 157, Quimby, IA 51049, is the sponsor of NADA 96-776 which provides for the use of a tylosin Type A medicated article to make a Type C medicated swine feed. By letters of October 23, 1989, and July 26, 1989, FDA was informed that the firm no longer manufactures the product and wishes to withdraw approval of the NADA.

Arkansas Micro Specialties, Inc., Highway 71 North, P.O. Box 308, Lowell, AR 72745, is the sponsor of NADA 139-600 which provides for the use of a tylosin Type A medicated article to make a Type C medicated swine, beef cattle, and chicken feed, and NADA 139-601 which provides for the use of a tylosin/sulfamethazine Type A medicated article to make a Type C medicated swine feed. In its reports of January 3, 1990, the firm requested withdrawal of approval of the NADA's.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 96-776, 139-600, and 139-601 and all supplements and amendments thereto is hereby withdrawn, effective October 9, 1990.

In a final rule published elsewhere in this issue of the Federal Register, FDA is amending 21 CFR 510.600 (c)(1) and (c)(2), 558.625 (b)(26) and (b)(86), and 558.630(b)(10) to reflect the withdrawal of approval of the NADA's.

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-23039 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

Countrymark, Inc.; Nutri-Basics, Co.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADA's), one held by Countrymark, Inc., for the use of a tylosin Type A medicated article, and another held by Nutri-Basics Co. for the use of a tylosin/sulfamethazine Type A medicated article. The firms requested withdrawal of approval of the NADA's. In a final rule published elsewhere in this issue of the Federal Register, FDA is amending its regulations to reflect the withdrawal of these approvals.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammed I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Countrymark, Inc., 4565 Columbus Pike, P.O. Box 1206, Delaware, OH 43015-1206, formerly The Ohio Farmers Grain and Supply Association, 455 West 45th St., P.O. Box M, Fostoria, OH 44830, is the sponsor of NADA 137-051, which provides for the use of a tylosin Type A medicated article to make Type C medicated swine, beef cattle, and chicken feeds. By letter dated June 2, 1988 (received October 26, 1989), the firm requested withdrawal of approval of the NADA.

Nutri-Basics Co., P.O. Box 5406, 3801 North Hawthorne, Chattanooga, TN 37406, formerly Southern Micro-Blenders, Inc., is the sponsor of NADA 138-453, which provides for the use of a tylosin/sulfamethazine Type A medicated article to make a Type C medicated swine feed. By letter dated March 19, 1990, the firm requested withdrawal of approval of the NADA.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA's 137-051 and 138-453 and all supplements and amendments thereto is hereby withdrawn, effective October 9, 1990.

In a final rule published elsewhere in this issue of the Federal Register, FDA is amending 21 CFR 510.600 (c)(1) and (c)(2), 558.625(b)(82), and 558.630(b)(10) of the regulations to reflect the withdrawal of these approvals.

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-23035 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

Fort Dodge Laboratories; Withdrawal of Approval of a New Animal Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Fort Dodge Laboratories. The NADA provides for the use of a dichlorophene/toluene capsule in dogs and cats as an anthelmintic. The firm requested withdrawal of approval. In a final rule published elsewhere in this issue of the Federal Register, FDA is amending the animal drug regulations by removing the regulation reflecting the approval.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for

Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Fort Dodge, IA 50501, is the sponsor of NADA 101–715, which provides for the use of Trivex (dichlorophene/toulene) Worm Capsule. The product is indicated for the removal of ascarids and hookworms and as an aid in removing tapeworms from dogs and cats. The NADA was approved on April 2, 1976.

By letter dated February 5, 1990, the sponsor requested the agency to withdraw the approval because the product is no longer being manufactured or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA 101–715 and all supplements thereto is hereby withdrawn, effective October 9, 1990.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 520.580(b)(1) to reflect the withdrawal of approval of the NADA.

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90–23037 Filed 9–27–90; 8:45 am]

BILLING CODE 4160–01–M

Decoquinate for Use in Sheep; Availability of Data

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of limited human safety and environmental data to be used as partial support of a new animal drug application (NADA) or supplemental NADA for the use of decoquinate in Type C medicated sheep feed. The data, contained in Public Master File (PMF) 5258, were compiled under Interregional Research Project No. 4 (IR–4), a national agriculture program for obtaining clearances for use of agricultural products for minor or special uses.

ADDRESSES: Submit NADA's to the Document Control Section (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Decoquinate, when used in sheep feed, is a new animal drug under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug, decoquinate is subject to section 512 of the act (21 U.S.C. 360b). Therefore, its uses in sheep must be covered by an approved NADA or supplemental NADA. The IR–4 Project, Northeastern Region, New York State College of Veterinary Medicine, Cornell University, Ithaca, NY 14853–6401, has filed data gathered from metabolism studies involving the use of decoquinate in chickens, quail, heifers, and sheep. The purpose of the studies is to furnish limited human food safety data to provide partial support for agency approval of the use of decoquinate in finished feed for the prevention of coccidiosis in sheep. (As noted below, effectiveness and other data for this use are required to obtain NADA or supplemental NADA approval.) The human food safety studies provided for this PMF were funded by FDA's Center for Veterinary Medicine.

IR–4 also provided an environmental assessment of possible impacts at the site of use of the animal drug product.

The data and information submitted by IR–4 are contained in PMF 5258. Sponsors of NADA's or supplemental NADA's may, without further authorization, reference the PMF to support approval. An NADA or supplemental NADA must include, in addition to a reference to the PMF (and, if necessary, authorized reference to data in previously approved NADA's), drug labeling, and other information needed for approval, such as data concerning target animal safety and effectiveness, human food safety, manufacturing methods, facilities and controls, and an abbreviated environmental assessment addressing the potential environmental impacts of the manufacturing process. More information concerning the PMF or requirements for approval of an NADA may be obtained from the contact person (address above).

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

Dated: September 21, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90–22956 Filed 9–27–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90P–0255]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Texas Supermarkets Dairy Production, Inc., to test market a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than December 27, 1990.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, Dc 20204, 202–485–0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Texas Supermarkets Dairy Production, Inc., 10010 Clay Rd., Houston, TX 77080.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1.5 percent, and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer consumers a product that is nutritionally equivalent but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog."

The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ fewer calories" and "75% less fat than regular eggnog."

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 18,000 ½-gallons (1,500 cases) and 24,000 quarts (1,000 cases) of the test product. The test product is to be manufactured at Texas Supermarkets Dairy Production, Inc., 10010 Clay Rd., Houston TX 77080, and will be distributed in south central and east Texas.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than December 27, 1990.

Dated: September 18, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-22957 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Veterinary Medicine Advisory Committee

Date, time, and place. October 31, 1990, 8:30 a.m., and November 1, 1990, 8 a.m., Versailles I, Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, October 31, 1990, 8:30 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 4:30 p.m.; open committee discussion, November 1, 1990, 8 a.m. to 9 a.m.; open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 11:30 a.m.; Gary E. Stefan, Center for Veterinary Medicine (HFV-244), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0830.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should communicate with the contact person.

Open committee discussion. The committee will discuss animal drug screening methods, the role of the Veterinary Medicine Advisory Committee, and limiting salmonella exposure of food animals.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in wirting, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 20, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-22954 Filed 9-27-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPO-092-GNC]

Criteria and Standards for Evaluating Intermediary and Carrier Performance

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

ACTION: General notice with comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program beginning October 1, 1990. The results of these evaluations are considered whenever HCFA enters into, renews, or terminates an intermediary agreement or carrier contract or takes other contract actions; assigns or reassigns providers of services to an intermediary; or designates regional or national intermediaries.

This notice is published in accordance with sections 1816(f) and 1842(b)(2) of the Social Security Act, which requires us to publish for public comment in the **Federal Register** those criteria and standards against which we evaluate intermediaries and carriers.

DATES: *Effective Date:* The criteria and standards are effective October 1, 1990. We will consider revising the criteria and standards based on public comments. Comments will be considered if we receive them at the appropriate address as provided below no later than 5 p.m. (EDT) on October 29, 1990.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-092-GNC, 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 limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPO-092-GNC. Comments will be available for public inspection as they are received, generally beginning approximately three weeks after publication, in Room 309-G of the Department's office at 200 Independence Avenue, SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Lawrence R. Pratt, (301) 966-7403.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 1816 of the Social Security Act, public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with the Secretary of Health and Human Services. These agencies or organizations, known as fiscal intermediaries, perform bill processing and benefit payment functions for the Medicare program. Most providers of services (such as hospitals, skilled nursing facilities (SNFs), and home health agencies (HHAs)) submit bills to these intermediaries, which determine whether the services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the providers on behalf of the beneficiaries.

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the payable amount (usually on the basis of reasonable charges) for the services or supplies and then make payment to the appropriate party.

Under section 1816(f) of the Act, we are required to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement with us. We evaluate intermediary performance through the Contractor Performance Evaluation Program (CPEP). Our regulations at 42 CFR 421.120 and 421.122 provide for publication of a **Federal Register** notice to announce criteria and standards prior to implementation.

Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract with us. Since 1981, we have evaluated carrier performance under CPEP using criteria and standards similar to those used for intermediaries. Under section 1842(a) of the Act, the Secretary is authorized to enter into contracts with carriers, including carriers with which agreements under section 1816 are in effect, to perform some or all of the Medicare Part B functions.

As a result of section 2326(c) of Public Law 98-369, the Deficit Reduction Act of 1984 (DEFRA), we publish in the **Federal Register** the criteria and standards used to evaluate both intermediaries and carriers in order to allow the public an opportunity to comment before implementing the criteria and standards. This notice announces the criteria and standards to be used to measure the effectiveness and efficiency of both intermediaries and carriers, beginning October 1, 1990. The criteria and standards applicable until October 1, 1990 were published in the **Federal Register** May 2, 1990, (55 FR 18391).

B. Incentive Payments to Carriers

This notice also describes the methodology that will be used to award incentive payments to carriers that successfully increase the proportion of physicians in the carrier's service area who are participating physicians, or the proportion of payments to participating physicians. This information is published in accordance with the Omnibus Budget Reconciliation Act of 1987 (OBRA 87, Pub. L. 100-203) which requires us to publish a description of our system for providing payment of a bonus to carriers based on their performance in increasing the proportion of physicians in the carrier's service area who are participating physicians or the proportion of payments for participating physicians' services in their service area.

We intend to issue carrier incentive payments by the September 30 following each annual enrollment period. The amount of these payments will be included in line 10 of the Notice of Budget Approval Form HCFA-1524. In this way, the amount of incentive payments are excluded from all claims processing unit cost calculations since unit costs are one of the measured used under the CPEP to evaluate carriers' acceptable performance in claims processing.

Section 2306 of DEFRA established the Medicare participating physician program. Participating means accepting assignment on all Medicare claims. Accepting assignment means physicians accept Medicare's approved charge as full payment. The main goal of the program is to reduce the impact of medical costs upon beneficiaries by establishing incentives for physicians to accept assignment on all Medicare claims. The provisions give all physicians an opportunity annually to

enroll or disenroll as a Medicare participating physician.

Section 9332(a) of Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986 (OBRA 86), and section 4085(i)(21)(B) of OBRA 87 require Medicare carriers to implement programs to recruit and retain physicians as participating physicians. These programs include educational and outreach activities and the use of profressioal relating to payment of claims of participating physicians; and programs to familiarize beneficiaries with the participating physicians; and programs to familiarize beneficiaries with the participating physician program and to assist the beneficiaries inlocating participating physicians.

We intend to pay incentive bonuses to any carrier that achieved an increase of at least one-tenth of one percent in the participating physicians rate or proportion of total payments for participating physicians' services in the carrier's total service area. As required by section 9332(a) of OBRA 86 and section 4085 of OBRA 87, the amount of the total incentive payable to carriers is one percent of their total claims processing costs for the fiscal year. The total incentive pool is calculated by summing the total claims processing costs reported by each carrier in the fiscal year and multiplying the total by one percent.

For the purpose of determining each carrier's eligiblity for an incentive payment, we make two comparisons. We compare the carrier's physician participation rate after the latest enrollment period with its physician participation rate after the prior enrollment date. We make a similar comparison of the proportion of covered charges for services by participating physicians during the quarter following the enrollment period with those of the quarter following the prior enrollment period. We intend to use whichever difference yields the higher percentage increase to determine eligibility for award of the incentive payment.

C. Criteria and Standards—General

We have retained the FY 1990 design of CPEP (Dee 55 FR 18391) and have made changes only where necessary to improve the standards already existing, or to comply with recent legislative mandates. In maintaining the basic design of CPEP, we have retained the same functional criteria for both intermediaries and carriers. For intermediaries, there are 11 separate functional criteria, and for carriers, there are 10. Within each functional criterion we have identified the performance standards which, when measured, will evidence how well each contractor is performing. Each of these standards will fall into one of the three basic key indicators or categories (cost, quality (accuracy of contractor's decisions, correspondence, reports, and documentation) or timeliness).

To the extent possible, we make every effort to publish the criteria and standards prior to the beginning of the Federal fiscal year; *i.e.*, October 1st, in which case the evaluation period which the criteria and standards measure is the Federal fiscal year. If we do not publish a **Federal Register** notice before the new fiscal year begins, readers may presume that until and unless notified otherwise, the criteria and standards which were in effect for the previous fiscal year remain in effect.

In those instances where we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the fiscal year, we reserve the right to publish the criteria and standards notice at any subsequent time during the year. If we choose to publish a notice in this manner, the evaluation period for any such standards and criteria which are the subject of the notice will be revised to be effective no earlier than the first day of the first month following publication. Hence, any revised standards and criteria will measure performance prospectively; that is, we will not apply new measurements to assess performance on a retroactive basis.

Also, it is not our intention to revise either the evaluation period or the standards and criteria which will be used during the evaluation period once this information has been published in a **Federal Register** notice. However, on occasion, either because of Administrative mandate or Congressional action, there may be a need for changes which have direct impact upon the criteria and standards previously published, or which require the addition of new criteria and standards, or which cause the deletion of previously published standards and criteria. Should such changes be necessitated, we will issue a **Federal Register** notice prior to implementation of the changes. The evaluation period for any new standards and criteria or for any standards and criteria which have been changed will not be effective any earlier than the first day of the first month following publication.

In all instances, necessary manual issuances will be published each year to ensure that the criteria and standards are implemented uniformly and accurately. Also, as in previous years due to the time constraints, the **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the standards and criteria.

Action Based on Performance Evaluations

We may initiate administrative actions as a result of the evaluation of intermediary and carrier performance based on these performance criteria and standards. Under sections 1816 and 1842 of the Social Security Act, we consider the results of the evaluation in our determinations on:

1. Entering into, renewing, or terminating agreements or contracts with contractors; and

2. Decisions concerning other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, they depend on:

a. Relative overall performance compared to other contractors;

b. Number of standards in which superior, average, or deficient performance occurs;

c. Extent of each deficiency; and

d. Relative significance of the standards for which superior or deficient performance occurs within the overall CPEP.

In addition, we consider the results of the intermediary evaluation in determinations we make concerning assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers. We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare Program.

D. Scoring System

For both intermediaries and carriers, the maximum score attainable is 1000 points. Each of the CPEP's functional criteria is assigned a given portion of the 1000 available points. One of the requirements for passing CPEP is that 70 percent of the available points *for each criterion* must be attained.

In addition, within a functional criterion is one or more standards categorized as either a cost, quality, or timeliness measure. Each of the standards is assigned a portion of the total points for that functional criterion. Each standard has a method of evaluation that is used to calculate a rating based on a contractor's performance in that standard. The second requirement for passing CPEP is

that 70 percent of the total points assigned to the cost standards, quality/accuracy standards, and timeliness standards must also be attained.

A contractor's performance is evaluated against each applicable standard. In general, if a contractor exactly meets the passing level established for a standard, it achieves 70 percent of the points (or in a few instances, more than 70 percent of the points) allocated to that standard, to which we refer as the threshold score (the passing level). Any rating below that threshold constitutes a deficiency. The contractor may be required to develop and implement a corrective action plan when performance problems are identified. The contractor will be monitored to assure effective and efficient compliance with the corrective action plan and improved performance where criteria and/or standards are not met.

E. Criteria and Standards for Intermediaries

As stated previously, we will use 11 criteria to evaluate the overall performance of an intermediary. They are: (1) Unit Cost; (2) Process Claims; (3) Audit; (4) Medical Review; (5) Medicare Secondary Payer; (6) Financial Management; (7) Beneficiary and Provider Services; (8) Reporting; (9) Fraud and Abuse; (10) Reimbursement; and (11) Management of Change.

The 11 criteria contain a total of 64 standards. There are 2 for Unit Cost, 6 for Process Claims, 4 for Audit, 5 for Medical Review, 3 for Medicare Secondary Payer, 6 for Financial Management, 5 for Beneficiary and Provider Services, 20 for Reporting, 3 for Fraud and Abuse, 5 for Reimbursement, and 5 for Management of Change.

1. Unit Cost Criterion (Total Points = 95)

An intermediary must process all bills at an acceptable unit cost. We will use the standards below to evaluate the criterion.

Standard 1=75 points. Process bills at an acceptable unit cost. (Cost)

Passing Level and Points

Group 1: Contractors at or below National Average Unit Cost
Actual unit cost is at or below 100% of the FY 1991 NOBA.....75.0

Group 2: Contractors above National Average Unit Cost
Actual unit cost 98.1%–100.0% of the FY 1991 NOBA.....67.5

Standard 2=20 points. Process appeals at an acceptable unit cost. (Cost)

Passing Level and Points

Actual unit costs 100.1%–101% of NOBA.....14.0

2 Process Claims Criterion (Total Points=135)

An intermediary must properly control and process bills from providers. We will use the standards below to evaluate the criterion.

Standard 1=40 points. Pay clean non-periodic interim payment (PIP) bills within mandated timeframes. (Timeliness)

Passing Level and Points

95.0%–97.4% paid within mandated timeframe.....28.0

Standard 2=18 points. Process all bills within 60 days. (Timeliness)

Passing Level and Points

95.0%–95.9% processed within 60 days after the date of receipt.....12.6

Standard 3=18 points. Process all bills within 90 days. (Timeliness)

Passing Level and Points

99.0%–99.3% processed within 90 days after the date of receipt.....12.6

Standard 4=12 points. Control payment of interest on clean bills. (Cost)

Passing Level and Points

Interest maintained at .004%–.007% of benefit payments.....8.4

Standard 5=7 points. Process adjustment records timely and return the adjusted records to the Peer Review Organization (PRO). (Timeliness)

Passing Level and Points

95.0%–97.4% of the adjustments processed and returned to the PRO within 60 days.....4.9

Standard 6=40 points. Process bills accurately. (Quality)

Passing Level and Points

95.0%–96.9% of test claims are accurate.....28.0

3. Audit Criterion (Total Points=100)

An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance for the Medicare trust funds. We will use the standards below to evaluate the criterion.

Standard 1=20 points. Administer a cost-effective provider audit program. (Cost)

Passing Level and Points

6.00/1–6.99/1 audit return ratio.....14.0

Standard 2=40 points. Perform properly when reviewing, auditing, adjusting, settling, and completing cost reports/statements. (Quality)

Passing Level and Points

85.0%–89.5% of work performed properly.....28.0

Standard 3=24 points. Settle cost reports timely. (Timeliness)

Passing Level (3-part standard) and Points

90.0%–94.9% of hospital cost reports settled timely.	70% of points allocated.
80.0%–89.9% of freestanding HHA cost reports settled timely.	70% of points allocated.
86.3%–92.9% of freestanding SNF cost reports settled timely.	70% of points allocated.

Note: Points are allocated based upon contractor level of effort by provider types.

Standard 4=16 points. Complete work requirements in accordance with budget authority. (Cost)

Passing Level (2-part standard) and Points

90.0%–94.9% of desk reviews completed as budgeted.....5.6
90.0%–94.9% of field audits completed as budgeted.....5.6

4. Medical Review Criterion (Total Points=100)

An intermediary must perform necessary Medical Review (MR) activities as required by HCFA instructions in a timely, accurate, and cost effective manner. We will use the standards below to evaluate the criterion.

Standard 1=40 points. Make accurate coverage determinations. (Quality)

Passing Level and Points

93.7%–97.5% of cases reviewed are accurate.....28.0

Standard 2=10 points. Assure the review of the HCFA mandated level of skilled nursing facility (SNF) demand bills. (Quality)

Passing Level and Points

Intermediary in compliance with all requirements with minor modifications recommended.....7.0

Standard 3=15 points. Apply and update HCFA MR instructions. (Quality)

Passing Level and Points

Minor problems have been identified in the intermediary's compliance with HCFA instructions.....10.5

Standard 4=15 points. Perform budgeted reviews. (Cost)

Passing Level and Points

97.5%–98.9% of overall budgeted reviews and 95% of budgeted reviews for each bill type are performed.....10.5

Standard 5=20 points. Establish and implement appropriate Focused Review Program. (Quality)

Passing Level and Points

In areas where the intermediary has flexibility to select claims for medical review, the intermediary used selection criteria which were based on the collection and analysis of data sufficient to reflect unusual or questionable patterns or trends in the provision of Medicare services. In 90% of all cases the selection criteria were determined to be effective or were modified.....14.0

5. Medicare Secondary Payer Criterion (Total Points=100)

An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance to the Medicare trust funds. We will use the standards below to evaluate the criterion.

Standard 1=30 points. Achieve Medicare Secondary Payer (MSP) savings goal. (Cost)

Passing Level and Points

If 50% or more of each subgoal is achieved:

Achieved 95.0%–96.6% of targeted MSP goal....21.0

If less than 50% of any subgoal is achieved:

Achieved 100.0%–105.0% of targeted MSP goal....21.0

Standard 2=35 points. Maintain and exchange accurate MSP data with the Common Working File (CWF). (Quality)

Passing Level and Points

Contractor has complied with all provisions of part 3, section 3696, of the intermediary manual and has an acceptable level of effort at identification of possible MSP sources....24.5

Standard 3=35 points. Take actions to prevent inappropriate billings to the Medicare program. (Quality)

Passing Level and Points

Contractor has fully met all manual requirements for preventing inappropriate billings to the Medicare program....24.5

6. Financial Management Criterion (Total Points=65)

An intermediary must take measures to protect the Medicare program and the public interest. It must manage Federal funds for both benefit payments and cost of administration in accordance with its agreement with the Secretary, the Federal Acquisition Regulations (48 CFR chapter 1), the HHS Acquisition Regulations (48 CFR chapter 3), and HCFA instructions. We will use the standards below to evaluate the criterion.

Standard 1=10 points. Ensure that costs are allowable, allocations are consistent (provide reasonable assurance that comparable transactions are treated alike) and chargeable to a particular cost objective in accordance with the relative benefits received or other equitable relationship. (Quality)

Passing Level and Points

The contractor has implemented or scheduled corrective action for only *minor* changes in its cost accounting system in the agreed upon timeframe....7.0

Standard 2=15 points. Ensure administrative funds drawn are in line with monthly expenditures. (Quality)

Passing Level and Points

The contractor has made a decrease adjustment on the next administrative draw, within 30 calendar days, following the submission of a monthly Interim Expenditure Report (IER) or a Final Administrative Cost Proposal (FACP), where applicable....15.0

Standard 3=20 points. Control actual expenditures on lines 1–12 of the HCFA 1523 to the latest approved budget. (Cost)

Passing Level and Points

Total cost Lines 1–12 is less than or equal to 100% of NOBA and the contractor has shifted no more than 5% into or out of any line....20.0

Standard 4=5 points. Manage the benefit and time accounts properly and in accordance with the Medicare bank agreement. (Quality)

Passing Level and Points

Contractor responds to the Regional Office (RO) request to initiate corrective action....3.5

Standard 5=10 points. Ensure proper expenditure of Payment Safeguard Funds. (Cost)

Passing Level and Points

Expended at least 95.0% of funds in *each* payment safeguard category....7.0

Standard 6=5 points. Deposit overpayment refund checks timely. (Timeliness)

Passing Level and Points

Contractor deposited all overpayment refund checks in a timely manner....5.0

7. Beneficiary and Provider Services Criterion (Total Points=100)

An intermediary must ensure that, in Medicare matters, beneficiaries and providers are treated according to law, regulations, and general instructions covering such areas as responding to correspondence and processing reconsiderations timely and accurately. We will use the standards below to evaluate the criterion.

Standard 1=35 points. Process reconsiderations accurately. (Quality)

Passing Level and Points

89.8%–95.0% of reconsiderations processed accurately....24.5

Standard 2=20 points. Process reconsiderations timely. (Timeliness)

Passing Level 3=part standard and Points

75.0%–84.9% of reconsiderations processed in 60 days....5.6

90.0%–94.9% of reconsiderations processed in 90 days....4.9

96.0%–98.9% of reconsiderations processed in 120 days....3.5

Standard 3=25 points. Process correspondence accurately. (Quality)

Passing Level and Points

93.7%–97.5% of correspondence processed accurately....17.5

Standard 4=15 points. Process correspondence timely. (Timeliness)

Passing Level and Points

89.8%–95.0% of correspondence answered within 30 calendar days....10.5

Standard 5=5 points. Assure reversal rate on appeals is appropriate. (Quality)

Passing Level and Points

89.8%–95.0% of cases are not in error....3.5

8. Reporting Criterion (Total Points=68)

An intermediary must manage Federal funds for both benefit payments and cost of administration in accordance with its agreement with HHS and HCFA. We will use the standards below to evaluate the criterion.

Standard 1=3 points. Submit accurate Plan of Expenditure (POEs) reports. (Quality)

Passing Level and Points

Two reports containing errors....2.1

Standard 2=3 points. Submit timely Plan of Expenditure (POEs) reports. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 3 to 4 calendar days late....2.1

Standard 3=6 points. Submit accurate Interim Expenditure Reports (IERs) and variance analyses. (Quality)

Passing Level and Points

Two reports containing errors....4.2

Standard 4=6 points. Submit timely Interim Expenditure Reports (IERs) and variance analyses. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 4 to 6 calendar days late....4.2

Standard 5=2 points. Submit the Final Administrative Cost Proposal (FACP) accurately. (Quality)

Passing Level and Points

Report substantially in compliance with HCFA instructions....2.0

Standard 6=2 points. Submit the Final Administrative Cost Proposal (FACP) timely. (Timeliness)

Passing Level and Points

Report submitted on or before due date....2.0

Standard 7=3 points. Submit an accurate budget request. (Quality)

Passing Level and Points

Budget submitted substantially in compliance with budget guidelines....3.0

Standard 8=3 points. Submit the budget request timely. (Timeliness)

Passing Level and Points

All reports submitted on or before due date....3.0

Standard 9=3 points. Submit Payment Voucher on Letter of Credit Transmittals (HCFA–1521) and Monthly Contractor Financial Reports (HCFA–1522) accurately. (Quality)

Passing Level and Points

90.0%–94.9% of reports submitted accurately....2.1

Standard 10=3 points. Submit Payment Voucher on Letter of Credit Transmittals (HCFA–1521) and Monthly Contractor Financial Reports (HCFA–1522) timely. (Timeliness)

Passing Level and Points

6–9 reports submitted after due date.....2.1

Standard 11=1 point. Submit Intermediary Benefit Payment Reports (HCFA–456) accurately. (Quality)

Passing Level and Points

One report containing errors..... 0.7

Standard 12=1 point. Submit Intermediary Benefit Payment Reports (HCFA–456) timely. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 1 to 3 calendar days late.....0.7

Standard 13=6 points. Submit the Contractor Audit and Settlement Report (CASR) timely. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 1 to 3 calendar days late.....4.2

Standard 14=5 points. Submit an accurate Provider Overpayment Report (POR). (Quality)

Passing Level and Points

93.0%—95.7% of entries accurate..... 3.5

Standard 15=5 points. Submit the Provider Overpayment Report (POR) timely. (Timeliness)

Passing Level and Points

93.0%—95.7% of entries submitted timely..... 3.5

Standard 16=7 points. Submit Intermediary Workload Report (HCFA–1566) and Quarterly Supplement (HCFA–1566A) timely. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 4 to 6 calendar days late.....4.9

Standard 17=2 points. Submit accurate Reports of Benefit Savings (Quality)

Passing Level and Points

One report submitted with material error(s)..... 1.4

Standard 18=1 point. Submit Reports of Benefit Savings timely. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 1 to 3 days late.....0.7

Standard 19=4 points. Enter reconsideration data timely. (Timeliness)

Passing Level and Points

90.1%—98.5% of data entered into Reconsideration Information Management System (RIMS) timely..... 3.0

Standard 20=2 points. Submit provider specific payment data timely. (Timeliness)

Passing Level and Points

Required file is submitted within 15 calendar days of the end of the reporting period and corrections submitted within 10 calendar days of notification.....1.4

9. Fraud and Abuse Criterion (Total Points=70)

An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance for the Medicare trust funds. We will use the standards below to evaluate the criterion.

Standard 1=35 points. Detect fraud and abuse situations. (Quality)

Passing Level and Points

Demonstrates basic compliance with minor improvements needed..... 24.5

Standard 2=25 points. Develop potential fraud and abuse cases. (Quality)

Passing Level and Points

18–20 sample cases reviewed, 6–7 in error..... 17.5

14–17 sample cases reviewed, 4–5 in error..... 17.5

8–13 sample cases reviewed, 2–3 in error..... 17.5

4–7 sample cases reviewed, 1 in error..... 17.5

1–3 sample cases reviewed, 0 in error..... 25.0

Standard 3=10 points. Ensure that no payments are made to excluded providers and physicians. (Quality)

Passing Level and Points

Contractor's procedures require minor modifications and corrective action is being, or is scheduled to be, taken..... 7.0

10. Reimbursement Criterion (Total Points=80)

An intermediary must administer the program in a manner that achieves maximum savings and costs avoidance for the Medicare trust funds. We will use the standards below to evaluate the criterion.

Standard 1=50 points. Establish interim payments to approximate reimbursable costs. (Quality)

Passing Level (3-part standard) and Points

(96.0%)96.9% or (101.3%–101.8%) of Medicare reimbursable costs for hospitals.	70% of points allocated.
(86.0%–88.4%) or (103.1%–104.0%) of Medicare reimbursable costs for freestanding SNFs.	70% of points allocated.
(94.0%–95.4%) or (101.9%–102.5%) of Medicare reimbursable costs for freestanding HHAs.	70% of points allocated.

Note: Points are allocated based upon contractor level of effort by provider type.

Standard 2=15 points. Collect provider overpayments timely. (Timeliness)

Passing Level and Points

30—32 Days..... 10.5

Standard 3=5 points. Submit timely cost report data for the Hospital Cost Report Information System (HCRIS). (Timeliness)

Passing Level and Points

93.0%—97.0% of cost reports received timely..... 3.5

Standard 4=5 points. Submit accurate cost report data for the Hospital Cost Report Information System (HCRIS). (Quality)

Passing Level and Points

94.0%–97.9% of cost reports submitted accurately..... 3.5

Standard 5=5 points. Collect provider overpayments from interim rate adjustments timely. (Timeliness)

Passing Level and Points

22.4–25.0 Days..... 3.5

11. Management of Change Criterion (Total Points=87)

An intermediary must take measures to protect the Medicare program and the public interest. It must effectively manage Federal funds for both benefit payments and cost of administration in accordance with HCFA instructions. We will use the standards below to evaluate the criterion.

Standard 1=25 points. Implement Priority I critical tasks accurately. (Quality)

Passing Level and Points

All tasks implemented with only 1 task requiring major changes corrected within the date negotiated with the RO and/or all tasks implemented accurately with no more than 7 tasks requiring minor RO-initiated changes.....17.5

Standard 2=27 points. Implement Priority I critical tasks timely. (Timeliness)

Passing Level and Points

Cumulative late days do not exceed 30.....18.9

Standard 3=10 points. Implement "other tasks" from the HCFA Contractor Task Management Plan accurately. (Quality)

Passing Level and Points

7–10 tasks reviewed, 3 with minor errors.....7.0

2–6 tasks reviewed, 1 with minor errors.....7.0

1 task reviewed, 0 errors.....10.0

Standard 4=10 points. Implement "other tasks" from the HCFA Contractor Task Management Plan timely. (Timeliness)

Passing Level and Points

7–10 tasks reviewed, 3 implemented after due date.....7.0

2–6 tasks reviewed, 1 implemented after due date.....7.0

1 task reviewed, implemented on or before due date.....10.0

Standard 5=15 points. Comply with RO requests and instructions timely. (Timeliness)

Passing Level and Points

Two or more directives not

implemented timely but the length of delay(s) did not adversely affect the program initiative(s)..... 10.5

F. Criteria and Standards for Carriers

We will use 10 criteria to evaluate overall carrier performance. They are: (1) Unit Cost; (2) Process Claims; (3) Medical Review; (4) Medicare Secondary Payer; (5) Pricing and Coding; (6) Financial Management; (7) Beneficiary and Provider Services; (8) Reporting; (9) Fraud and Abuse; and (10) Management of Change. The 10 criteria contain a total of 79 standards. There are 3 for Unit Cost, 12 for Process Claims, 6 for Medical Review, 3 for Medicare Secondary Payer, 8 for Pricing and Coding, 6 for Financial Management, 14 for Beneficiary and Provider Services, 17 for Reporting, 5 for Fraud and Abuse, and 5 for Management of Change.

1. Unit Cost Criterion (Total Points = 95)

A carrier must process all claims at an acceptable unit cost. We will use the standards below to evaluate the criterion.

Standard 1 = 75 points. Process claims at an acceptable unit cost. (Cost)

Passing Level and Points

Group 1: Contractors at or below National Average Unit Cost

Actual unit cost is at or below 100% of the FY 1991 NOBA..... 75.0

Group 2: Contractors above National Average Unit Cost

Actual unit cost 98.1%–100.0% of the FY 1991 NOBA..... 67.0

Standard 2 = 10 points. Process appeals at an acceptable unit cost. (Cost)

Passing Level and Points

Actual unit cost 100.1%–101% of NOBA..... 7.0

Standard 3 = 10 points. Process inquiries at an acceptable unit cost. (Cost)

Passing Level and Points

Actual unit cost 100.1%–101% of NOBA..... 7.0

2. Process Claims Criterion (Total Points = 156)

A carrier must process Part B Medicare claims to determine allowance or disallowance in accordance with general instructions. We will use the standards below to evaluate the criterion.

Standard 1 = 20 points. Process clean participating physician claims within mandated timeframes. (Timeliness)

Passing Level and Points

95.0%–97.4% processed within mandated timeframe..... 14.0

Standard 2 = 25 points. Process other clean claims within mandated timeframes. (Timeliness)

Passing Level and Points

95.0%–97.4% processed within mandated timeframe..... 17.5

Standard 3 = 15 points. Process all claims within 60 days. (Timeliness)

Passing Level and Points

95.0%–95.9% processed within 60 days after the date of receipt.....10.5

Standard 4 = 10 points. Process all claims within 90 days. (Timeliness)

Passing Level and Points

98.5%–98.9% processed within 90 days after the date of receipt.....7.0

Standard 5 = 10 points. Control payment of interest on clean claims. (Cost)

Passing Level and Points

Interest maintained at .022%–.035% of benefit payments.....7.0

Standard 6 = 25 points. Maintain satisfactory underpayment deductible error rate. (Quality)

Passing Level and Points

Error rate of .51–.70.....17.5

Standard 7 = 25 points. Maintain satisfactory overpayment deductible error rate. (Quality)

Passing Level and Points

Error rate of .71–1.00.....17.5

Standard 8 = 4 points. Update and maintain physician identification system accurately. (Quality)

Passing Level and Points

85.1%–90.0% of physicians accurately identified.....2.8

Standard 9 = 4 points. Conduct annual survey of group practices. (Quality)

Passing Level and Points

Carrier has conducted an annual survey in compliance with Part 4, section 1005.1 of the Carrier Manual.....4.0

Standard 10 = 9 points. Update Unique Physician Identification Number (UPIN) Registry accurately. (Quality)

Passing Level and Points

95.0%–97.4% of records accepted.....6.3

Standard 11 = 4 points. Resolve exceptions from the UPIN Registry timely. (Timeliness)

Passing Level (2-part standard) and Points

Percent of exceptions resolved:
90.0%–94.9% exceptions resolved within 15 days.....2.8

Percent of exceptions pending:
5.1%–10.0% exceptions pending 30 days or more..... 2.8

The point totals for each part of this standard are averaged to arrive at the standard's total points.

Standard 12 = 5 points. Generate Explanations of Medicare Benefits (EOMBs) properly. (Quality)

Passing Level and Points

Error rate of 0.4–2.0.....3.5

3. Medical Review Criterion (Total Points = 125)

A carrier must perform necessary Medical Review (MR) activities in accordance with HCFA instructions accurately, timely, and in a cost-effective manner. We will use the standards below to evaluate the criterion.

Standard 1 = 30 points. Make accurate coverage decisions based on carrier's guidelines. (Quality)

Passing Level and Points

93.7%–97.5% of cases reviewed are accurate.....21.0

Standard 2 = 12 points. Administer a cost effective Medical Review (MR) program. (Cost)

Passing Level and Points

$5.00/1–$6.00/1 Medical Review return ratio.....8.4

Standard 3 = 30 points. Conduct an effective postpayment program. (Quality)

Passing Level and Points

Carrier in compliance with all requirements.....21.0

Standard 4 = 15 points. Apply appropriate HCFA MR policies. (Quality)

Passing Level and Points

Carrier in compliance with all but one significant requirement..... 10.5

Standard 5 = 30 points. Develop effective medical coverage guidelines. (Quality)

Passing Level and Points

Carrier in compliance with all requirements.....21.0

Standard 6 = 8 points. Issue physician profile notices. (Quality)

Passing Level and Points

Carrier in compliance with all but one significant requirement..... 5.6

4. Medicare Secondary Payer Criterion (Total Points = 80)

A carrier must administer the Medicare program in a manner that achieves maximum savings and cost avoidance to the Medicare trust funds. We will use the standards below to evaluate the criterion.

Standard 1 = 30 points. Achieve Medicare Secondary Payer (MSP) savings goal. (Cost)

Passing Level and Points

Achieved 95.0% – 95.9% of targeted MSP goal..... 21.0

Standard 2 = 30 points. Maintain and exchange accurate MSP data with the Common Working File (CWF). (Quality)

Passing Level and Points

Contractor has complied with all provisions of Part 3, section 4307 of the Carrier Manual, and has an acceptable level of effort for identification of possible MSP sources.....21.0

Standard 3 = 20 points. Take actions to prevent inappropriate claims to the Medicare program. (Quality)

Passing Level and Points

Contractor has fully met all manual requirements for preventing inappropriate payments to the

Medicare program.....14.0

5. Pricing and Coding Criterion (Total Points=100)

A carrier must accurately determine the amount of program payments allowed for covered services. We will use the standards below to evaluate the criterion.

Standard 1=20 points. Install and implement appropriate pricing accurately for Medicare covered new and cross-referenced HCFA Common Procedure Coding System (HCPCS) codes. (Quality)

Passing Level and Points

93.7%–97.5% of the codes correct.....14.0

Standard 2=10 points. Install HCPCS annual update timely. (Timeliness)

Passing Level and Points

Update installed on or before the due date.....10.0

Standard =25 points. Perform reasonable charge determinations accurately. (Quality)

Passing Level and Points

Complied with all but 2 requirements.....17.5

Standard 4=5 points. Properly calculate physician fee schedules. (Quality)

Passing Level and Points

Fee schedules calculated correctly.....5.0

Standard 5=10 points. Properly calculate fee schedule for non-physician services. (Quality)

Passing Level and Points

Complied with all requirements.....10.0

Standard 6=5 points. Properly calculate special limits. (Quality)

Passing Level and Points

Complied with all requirements.....5.0

Standard 7=15 points. Update reasonable charges and install by due date. (Timeliness)

Passing Level and Points

Reasonable charge screens updated after the due date but before any claims with dates of service on or after the due date are paid.....10.5

Standard 8=10 points. Install correction of reasonable charge screens by RO due date. (Timeliness)

Passing Level and Points

No errors to correct or errors corrected on or before the RO due date.....10.0

6. Financial Management Criterion (Total Points=65)

A carrier must take measures to protect the Medicare program and the public interest. It must manage Federal funds for both benefit payments and the cost of administration in accordance with its contract with the Secretary, the Federal Acquisition Regulations (48 CFR Chapter 1), the HHS Acquisition Regulations (48 CFR Chapter 3), and HCFA instructions. We will use the standards below to evaluate the criterion.

Standard 1=10 points. Ensure that costs are allowable, allocations are consistent (provide reasonable assurance that comparable transactions are treated alike) and chargeable to a particular cost objective in accordance with the relative benefits received or other equitable relationship. (Quality)

Passing Level and Points

The contractor has implemented or scheduled corrective action for only *minor* changes in its cost accounting system in the agreed upon timeframe.....7.0

Standard 2=15 points. Ensure adminsitrative funds drawn are in line with monthly expenditures. (Quality)

Passing Level and Points

The contractor has made a decrease adjustment on the next administrative draw, within 30 calendar days, following the submission of a monthly Interim Expenditure Report (IER) or a Final Administrative Cost Proposal (FACP), where applicable.....15.0

Standard 3=20 points. Control actual expenditures on lines 1–11 of HCFA 1523 to the latest approved budget. (Cost)

Passing Level and Points

Total cost lines 1–11 is less than or equal to 100% of NOBA and the contractor has shifted no more than 5% into or out of any line.....20.0

Standard 4=5 points. Manage the benefit and time accounts properly and in accordance with the Medicare bank agreement. (Quality)

Passing Level and Points

Contractor responds to RO request to initiate corrective action.....3.5

Standard 5=10 points. Ensure proper expenditure of Payment Safeguard Funds. (Cost)

Passing Level and Points

Expended at least 95.0% of funds in *each* payment safeguard category.....7.0

Standard 6=5 points. Deposit overpayment refund checks timely. (Timeliness)

Passing Level and Points

Contractor deposited all overpayment refund checks in a timely manner.....5.0

7. Beneficiary and Provider Services Criterion (Total Points=150)

A carrier must ensure that, in Medicare matters, beneficiaries and providers are treated according to law, regulations, and general instructions covering areas such as responding to correspondence, issuing notices of determinations, and providing impartial reviews. We will use the standards below to evaluate the criterion.

Standards 1=15 points. Maintain proper level of telephone service. (Timeliness)

Passing Level and Points

17 reports received with all trunks busy (ATB) level at or below 20%.....10.5

Standard 2=10 points. Respond timely to telephone inquiries. (Timeliness)

Passing Level and Points

95.0%–97.4% answered within 120 seconds.....7.0

Standard 3=25 points. Complete reviews accurately. (Quality)

Passing Level and Points

89.8%–95.0% of reviews completed accurately.....17.5

Standard 4=18 points. Furnish readable notice to beneficiary of review determinations. (Quality)

Passing Level and Points

89.8%–95.0% of notices with FOG index below 8th grade level.....7.0

Standard 5=20 points. Complete review timely. (Timeliness)

Passing Level and Points

95.0%–97.0% of reviews completed within 45 calendar days.....14.0

Standard 6=20 points. Respond accurately to correspondence. (Quality)

Passing Level and Points

93.7%–97.5% of correspondence answered accurately.....14.0

Standard 7=10 points. Furnish readable response to beneficiary correspondence. (Quality)

Passing Level and Points

89.8%–95.0% of responses with FOG index below 8th grade level.....7.0

Standard 8=10 points. Respond timely to all correspondence. (Timeliness)

Passing Level and Points

89.8%–95.0% of correspondence answered within 30 calendar days.....7.0

Standard 9=5 points. Send out participation letters and reasonable charge/Maximum Allowable Actual Charge (MAAC) disclosure information timely to physicians and suppliers. (Timeliness)

Passing Level and Points

Letters and disclosure information sent within 5 days of due date.....3.5

Standard 10=5 points. Prepare the Medicare Participating Physician/Supplier Director (MEDPARD) timely. (Timeliness)

Passing Level and Points

MEDPARD prepared within 5 days of due date.....3.5

Standard 11=5 points. Determine liability and properly dispose of beneficiary overpayment cases. (Quality)

Passing Level and Points

85.1%–90.0% of cases properly handled.....3.5

Standard 12=5 points. Determine liability and properly dispose of physician/supplier overpayment cases. (Quality)

Passing Level and Points

85.1%–90.0% of cases properly

handled.....3.5

Standard 13=5 points. Complete carrier hearings timely. (Timeliness)

Passing Level and Points

90.0%–95.0% of hearings completed within 120 calendar days.....3.5

Standard 14=5 points. Furnish a complete hearing decision letter. (Quality)

Passing Level and Points

1–7 sample cases reviewed, 0 in error..... 5.0
8–16 sample cases reviewed, 1 in error.....3.5
17–32 sample cases reviewed, 2–3 in error.....3.5
33–48 sample cases reviewed, 4–5 in error.....3.5
49–60 sample cases reviewed, 6–8 in error.....3.5

8. Reporting Criterion (Total Points=64)

A carrier must manage Federal funds for both benefit payments and cost of administration in accordance with its agreement with HHS and HCFA. We will use the standards below to evaluate the criterion.

Standard 1=3 points. Submit accurate Plan of Expenditure Reports (POEs). (Quality)

Passing Level and Points

Two reports containing errors.....2.1

Standard 2=3 points. Submit timely Plan of Expenditure Reports (POEs). (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 3 to 4 calendar days late.....2.1

Standard 3=6 points. Submit accurate Interim Expenditure Reports (IERs) and variance analyses. (Quality)

Passing Level and Points

Two reports containing errors.....4.2

Standard 4=6 points. Submit timely Interim Expenditure Reports (IERs) and variance analyses. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative tool of 4 to 6 calendar days late.....4.2

Standard 5=2 points. Submit the Final Administrative Cost Proposal (FACP) accurately. (Quality)

Passing Level and Points

Reports substantially in compliance with HCFA instructions.....2.0

Standard 6=2 points. Submit the Final Administrative Cost Proposal (FACP) timely. (Timeliness)

Passing Level and Points

Report submitted on or before due date..... 2.0

Standard 7=3 points. Submit an accruate budget request. (Quality)

Passing Level and Points

Budget submitted substantially in compliance with budget guidelines.....3.0

Standard 8=3 points. Submit the budget request timely. (Timeliness)

Passing Level and Points

All reports submitted on or before due date..... 3.0

Standard 9=4 points. Submit Payment Voucher on Letter of Credit Transmittals (HCFA–1521) and Monthly Contractor Financial Reports (HCFA–1522) accurately. (Quality)

Passing Level and Points

90.0%–94.9% of reports submitted accurately..... 2.8

Standard 10=4 points. Submit Payment Voucher on Letter of Credit Transmittals (HCFA–1521) and Monthly Contractor Financial Reports (HCFA–1522) timely. (Timeliness)

Passing Level and Points

6–9 reports submitted after due date.....2.8

Standard 11=7 points. Submit Carrier Performance Report (HCFA–1565) and Quarterly Supplements (HCFA–1565A and HCFA 1565C) timely (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 4 to 6 calendar days late.....4.9

Standard 12=2 points. Submit accurate Quarterly Medical Review Reports. (Quality)

Passing Level and Points

Report submitted with one statistical error.....1.4

Standard 13=1 point. Submit Quarterly Medical Review Reports timely. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 1 to 3 calendar days late.....0.7

Standard 14=3 points. Accurately enter data on physician/supplier overpayments into the Physician/Supplier Overpayment Report (PSOR). (Quality)

Passing Level and Points

93.7%–97.5% of overpayment data accurately entered into PSOR..... 2.1

Standard 15=3 points. Submit timely physician/supplier overpayment data. (Timeliness)

Passing Level and Points

93.7%–97.5% of overpayments entered into the Physician/Supplier Overpayment Report system within 10 calendar days of the date of determination..... 2.1

Standard 16=8 points. Submit Part B Medicare (BMAD) files timely. (Timeliness)

Passing Level and Points

All BMAD files submitted on or before the required due dates with one requiring resubmittal *and* the resubmittal returned within 21 calendar days and accepted..... 5.6

Standard 17=4 points. Submit Carrier Appeals Report (HCFA–2590) timely. (Timeliness)

Passing Level and Points

Report(s) submitted with a cumulative total of 4 to 6 calendar days late.....2.8

9. Fraud and Abuse Criterion (Total Points=70)

A carrier must administer the program in a manner that achieves maximum savings and cost avoidance for the Medicare trust funds. We will use the standards below to evaluate the criterion.

Standard 1=25 points. Detect fraud and abuse situations. (Quality)

Passing Level and Points

Demonstrates basic compliance with minor improvements needed..... 17.5

Standard 2=25 points. Develop potential fraud and abuse cases. (Quality)

Passing Level and Points

18–20 sample cases reviewed, 6–7 in error.....17.5
14–17 sample cases reviewed, 4–5 in error.....17.5
8–13 sample cases reviewed, 2–3 in error.....17.5
4–7 sample cases reviewed, 1 in error..... 17.5
1–3 sample cases reviewed, 0 in error..... 25.0

Standard 3=10 points. Ensure that no payments are made to excluded physicians/suppliers. (Quality)

Passing Level and Points

Contractor has made payment to two excluded physicians/suppliers.....7.0

Standard 4=5 points. Monitor claims submission requirements. (Quality)

Passing Level and Points

Complied with each requirement.....5.0

Standard 5=5 points. Monitor nonparticipating physicians' charge limits violations. (Quality)

Passing Level and Points

89.8%–95.0% of violations processed accurately..... 3.5

10. Management of Change Criterion (Total Points=95)

A carrier must take measures to protect the Medicare program and the public interest. It must effectively manage Federal funds for both program payments and cost of administration in accordance with HCFA instructions. We will use the standards below to evaluate the criterion.

Standard 1=25 points. Implement Priority I critical tasks accurately. (Quality)

Passing Level and Points

All tasks implemented with only 1 task requiring major changes corrected within the date negotiated with the RO and/or all tasks implemented accurately with no more than 7 tasks requiring minor RO-initiated changes.....17.5

Standard 2=35 points. Implement Priority I critical tasks timely. (Timeliness)

Passing Level and Points

Cumulative late days do not exceed 30.....24.5

Standard 3=10 points. Implement "other tasks" from the HCFA Contractor Task Management Plan accurately. (Quality)

Passing Level and Points

7–10 tasks reviewed, 3 with minor errors....7.0
2–6 tasks reviewed, 1 with minor errors....7.0
1 task reviewed, 0 errors....10.0

Standard 4=10 points. Implement "other tasks" from the HCFA Contractor Task Management Plan timely. (Timeliness)

Passing Level and Points

7–10 tasks reviewed, 3 implemented after due date....7.0
2–6 tasks reviewed, 1 implemented after due date....7.0
1 task reviewed, Implemented on or before due date....10.0

Standard 5=15 points. Comply with regional office (RO) requests and instructions timely. (Timeliness)

Passing Level and Points

Two or more directives not implemented timely but the length of delay(s) did not adversely affect the program initiative(s)....10.5

G. Contractor Replacement Methodology

The Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Public Law 101–239, extended through FY 1993 the authority of section 2326(a) of the Deficit Reduction Act of 1984 (DEFRA), Public Law 99–369, whereby each year up to two intermediaries and up to two carriers, which over a period of time have been in the lowest 20th percentile of contractors, may be replaced. OBRA 89 also redefined "over a period of time" to be "over a 2-year period of time." Consequently, the methodology for separately identifying Part A and Part B contractors for potential replacement under Section 2326(a) of DEFRA, as amended, will be as follows:

- Performance, as measured by the Secretary's criteria and standards, will be considered for the most recent 2 evaluation periods.
- Each evaluation period's overall performance will be captured in the form of an unweighted efficiency rating—points earned as a percentage of points available, as determined by the performance criteria and standards used during some or all of the fiscal year. For example, FY 1991 efficiency ratings will be calculated based upon the criteria and standards used for the October 1990—September 1991 review period. In addition, efficiency ratings for the FY 1990 review period (June 1990—September 1990) will be used.
- Each period's efficiency rating will be weighted to provide extra emphasis for the most recent performance. The weights, to be multiplied by each period's efficiency rating, are:

Weight

Most Recent Period....3
Prior Period....2

- For each contractor, the weighted efficiency rating for each of the two periods will be summed and the contractors will be ranked (Part A and Part B separately) from highest points to lowest points.
- Careful study of the bottom 20th percentile of contractors will be undertaken to fully assess considerations such as performance that is improving/deteriorating, factors beyond the contractor's control, and other factors pertinent to a particular territory.

H. Response to Public Comments

Becuase of the large number of items of correspondence we normally receive on a proposed notice, we are unable to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATE" section of this preamble and if we proceed with a final notice, we will respond to the comments in the preamble of that notice.

I. Regulatory Impact Statement

1. Executive Order 12291

Executive order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any general notice that meets one of the E.O. criteria for a "major rule"; that is, that would 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 effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Preliminary analyses reveal that the FY 1991 CPEP may reduce the Federal resources required to administer these criteria and standards as more efficient evaluation methodologies are being used. We expect minimal effects on the contractor costs due to this notice since the criteria and standards measure functional responsibilities that the contractor must be performing as a Medicare contractor. This general notice does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this general notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

2. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, intermediaries and carriers are not small entities. We treat all providers and suppliers as small entities. In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

This notice sets forth the criteria and standards to be used for evaluation of Medicare intermediaries and carriers which are not considered small entities. This notice does not require specific performance of the operations being evaluated. It may have an effect on contractor operations such as bill processing, beneficiary services and provider services which could indirectly affect a substantial number of providers and suppliers.

The most important indirect effect on providers and suppliers as a result of this notice will be to ensure that they are paid timely and accurately. We, therefore, do not believe these criteria and standards will have any negative effects on providers and suppliers.

As stated above, this notice primarily affects intermediaries and carriers, which are not considered small entities for purposes of the RFA. For these reasons, we have determined, and the Secretary certifies, that this general notice will not have a significant economic impact on a substantial number of rural hospitals. Therefore, we have not prepared analyses for either the RFA or small rural hospitals.

Authority: (Sec. 1102, 1816, 1842, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395h, 1395u, and 1395hh)).

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

Dated: June 18, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-23117 Filed 9-27-90; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on September 14, 1990 (55 FR 37969).

(Call Reports Clearance Officer on (301) 965-4149 for copies of package.)

1. Report of New Information in Disability Cases—0960-0071—The information collected on the form SSA-612 is used by the Social Security Administration to determine whether an individual's entitlement to disability benefits should be continued based on a change he or she has reported. The respondents are disability beneficiaries who report changes in their medical or living conditions.

Number of respondents: 200,000
Frequency of response: 1
Average burden per response: 5 minutes
Estimated annual burden: 16,667 hours
OMB desk officer: Allison Herron

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: September 21, 1990.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 90-22918 Filed 9-27-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-90-3153]

Privacy Act of 1974; New System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of new system of records.

SUMMARY: The Department is giving notice of a system of records it intends to maintain which is subject to the Privacy Act of 1974.

EFFECTIVE DATE: This proposal shall become effective without further notice in 30 calendar days (October 28, 1990) unless comments are received during or before that date which would result in a contrary determination.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer *total* pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will *not* be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: For Privacy Act: Donna L. Eden, Departmental Privacy Act Officer, Telephone Number (202) 708-0050. (This is not a toll-free number.) For Program: Gwen M. Wells, Office of Ethics, Telephone Number (202) 708-3815. (This is not toll-free number.)

SUPPLEMENTARY INFORMATION: The system is the Ethics Filings, HUD/DEPT-81. It will contain information on the activities of lobbyists and consultants who may be engaged in influencing the outcome of decisions made by the Department. This information is collected pursuant to section 112 of the HUD Reform Act of 1989, 42 U.S.C. 3531, and the Byrd Amendment (section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, Pub. L. 101-121), 31 U.S.C. 1352; and the Housing and Community Development Act of 1987, 42 U.S.C. 3543.

Under section 112, each person who makes or agrees to make an expenditure to influence the decision of any officer or employee of the Department is required to disclose: (1) The total expenditures made by or on behalf of such person during the year, (2) the name and address of every person to whom any such expenditure is made, and (3) the date of the expenditure. Each person who is retained for the purpose of influencing the decision of any officer or employee of the Department is required to disclose: (1) His/her name and business address, (2) the name and address of his/her employer and of any person or entity in whose interest he/she appear or work, and (3) a statement of whether he/she has been employed by the Federal Government during the 2-year period ending on the date of the registration, and in what capacity.

Under the Byrd Amendment, a recipient of, or applicant for, a Federal contract, loan, grant, loan insurance or cooperative agreement who makes an expenditure to influence the decision of any officer or employee of the Department is required to disclose the name and address of each person paid, to be paid, or reasonably expected to be paid; the name and address of each individual performing the services for which such payment is made, to be made, or reasonably expected to be made; the amount paid, to be paid, or reasonably expected to be paid; how the person was paid, is to be paid, or is reasonably expected to be paid; and the activity for which the person was paid, is to be paid, or is reasonably expected to be paid.

The system will improve HUD's ability to assure that the award of financial assistance is conducted in a manner that is fair and open, and free from improper influence. Information concerning applicants for HUD programs, including organizations, such as a corporation or partnership—to include developers, contractors, and other principal parties—also will be included. The system will assist management in complying with legislative requirements which are aimed at ensuring greater accountability and integrity in HUD's grant and loan processes.

A report of the Department's intention to establish the system has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Authority: 5 U.S.C. 552a, 88 Stat. 1896; section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Issued at Washington, DC September 14, 1990.

Michael F. Hill,

Acting Assistant Secretary for Administration.

HUD/DEPT–81

SYSTEM NAME:

Ethics Filings.

SECURITY CLASSIFICATION:

Sensitivity—S2. Disclosure or alteration of data rated S2 represents a small but unimportant risk to the orgainzation and its mission.

Criticality—C2. Since systems rated C2 will be needed eventually, security officers should write a contingency plan. Management should attempt recovery only after restoring the more critical systems.

SYSTEM LOCATION:

Headquarters, Office of Ethics.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Section 112:

A. Any person who makes or agrees to make an expenditure to influence the decision of any officer or employee of the Department, through communications with such officer or employee, with respect to: (1) The award of any financial assistance within the jurisdiction of the Department, or (2) any management action involving a change in the terms and conditions or status of financial assistance awarded to any person; and,

B. Any person who receives payment or is retained for the purposes described in A. above.

Byrd Amendment: Any person who requests or receives a Federal contract, grant, loan, cooperative agreement or loan insurance commitment from HUD.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files consist of applicant information and information regarding lobbyist/consultant activity. The documents may include reporting individuals/entities' or lobbyists' names, addresses, payments made, types of payment, compensation received, and services performed; officers, employees or Members of Congress contacted; previous Government employment; Social Security Numbers (SSNs) or Employer Identification Numbers (EINs); and Federal Action Numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 112 of the HUD Reform Act of 1989, 42 U.S.C. 3531; the Byrd Amendment (section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990, Pub. L. 101–121), 31 U.S.C. 1352; and the Housing and Community Development Act of 1987, 42 U.S.C. 3543.

PURPOSE(S):

The information collected under section 112 of the HUD Reform Act and the Byrd Amendment will identify those lobbyists and consultants who may be engaged in influencing the outcome of decisions made by the Department. This information will improve HUD's ability to assure that the award of financial assistance is conducted in a manner that is fair and open, and free from improper influence.

The system will assist management in complying with legislative requirements, and will ensure greater accountability and integrity in HUD's grant and loan processes.

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

Section 112 information will be compiled in a report to be published in the **Federal Register**, shall constitute part of the public records of the Department, and shall be open to public inspection. This information will enable the Secretary to meet statutory requirements.

The Byrd Amendment information will be compiled in a report for submission to the Secretary of the Senate and the Clerk of the House of Representatives on a semi-annual basis. This information will also enable the Secretary to meet statutory requirements. The report, including the compilation, shall be available for public inspection 30 days after the receipt of the report by the Secretary and the Clerk.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders; in computers with limited access.

RETRIEVABILITY:

Name of reporting individual/entity; SSN; EIN, any project number or grant or loan number, name of person or entity in whose interest the registrant appears or works, federal action number, and registration number.

SAFEGUARDS:

File folders and computers kept in a secured area; access restricted to authorized individuals.

RETENTION AND DISPOSAL:

Records will be retained for two years in accordance with section 13, 42 U.S.C. 3537b. Records will be destroyed in accordance with HUD Handbook 2225.6, Records Disposition Management: HUD Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Officer of Ethics, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contract - the Privacy Act Officer at the Headquarters location, in accordance with 24 CFR part 16. This location is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the Headquarters location. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Department Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

[FR Doc. 90–23017 Filed 9–27–90; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-91]

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 DATES: September 28, 1990.

ADDRESSES: For further information, contact James Forsberg, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telehpone 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 is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

Ther Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested providers an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; Room 1E671 Pentagon, Washington, DC 20360-2600; (202) 693-4583; Corps of Engineers: Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue NW, Washington, DC 20415-1000; (202) 272-1750; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Street NW, Washington, DC 20405; (202) 501-0067. (These are not toll-free numbers.)

Dated: September 20, 1990.

Audrey E. Scott,

Deputy Assistant Secretary for Progam Development.

Suitable Land (by State)

Massachusetts

Por. of Former Navy Ammo. Plt.
Fort Hill Street
Hingham, MA, *Co:* Plymouth
Location: Across from Bus Company Parking Garage.
Landholding Agency: GSA
Property Number: 549030017
Status: Excess
Comment: 1.129 acres; gravel pavement; most recent use—parking lot.
GSA No. 2-GR-MA-591B

Maine

Bucks Harbor GATR Site
GATR Road
Machias Port, ME, *Co:* Washington
Location: 8 miles southeast of Machias off Highway 92
Landholding Agency: GSA
Property Number: 549030015
Status: Surplus
Comment: 5.5 acres; with 2,900 sq. ft. concrete block building; potential utilities; secured area with alternate access.
GSA No. 2-U-ME-611B

Suitable Buildings (by State)

Hawaii

T-1124
Schofield Barracks
Beaver Road
Wahiawa, HI, *Co:* Wahiawa
Landholding Agency: Army
Property Number: 219030372
Status: Unutilized
Comment: 4000 sq. ft.; 1 story; steel-three sided building; restricted entry; next to firing range; most recent use—motor pool maintenance.

Louisiana

Federal Building—Post Office
Polk and Third Streets
Jonesboro, LA, *Co:* Jackson Parish
Landholding Agency: GSA
Property number: 549030018
Status: Excess
Comment: 15107 sq. ft.; 2 story with basement; 35% of space is occupied by Post Office and GSA.
GSA No. 7-G-LA-540

New York

Bldg. P-232
Dry Hill Family Housing
Route 3, Box 232
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030015
Status: Unutilized

Base Closure
Comment: 1022 sq. ft.; 1 story wood frame residence.

Bldg. P–233,
Dry Hill Family Housing,
Route 3, Box 233
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030016
Status: Unutilized
Base Closure
Comment: 816 sq. ft.; 1 story wood frame residence.

Bldg. P–234
Dry Hill Family Housing
Route 3, Box 234
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030017
Status: Unutilized
Base Closure
Comment: 1022 sq. ft.; 1 story wood frame residence.

Bldg. P–235
Dry Hill Family Housing
Route 3, Box 235
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030018
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–236
Dry Hill Family Housing
Route 3, Box 236
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030019
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–237
Dry Hill Family Housing
Route 3, Box 237
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030020
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–238
Dry Hill Family Housing
Route 3, Box 238
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030021
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–239
Dry Hill Family Housing
Route 3, Box 239
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030022
Status: Unutilized
Base Closure
Comment: 1300 sq. ft.; 1 story wood frame residence.

Bldg. P–240
Dry Hill Family Housing
Route 3, Box 240
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030023
Status: Unutilized
Base Closure
Comment: 1300 sq. ft.; 1 story wood frame residence.

Bldg. P–241
Dry Hill Family Housing
Route 3, Box 241
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030024
Status: Unutilized
Base Closure
Comment: 1300 sq. ft.; 1 story wood frame residence.

Bldg. P–242
Dry Hill Family Housing
Route 3, Box 242
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030025
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–243
Dry Hill Family Housing
Route 3, Box 243
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030026
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–244
Dry Hill Family Housing
Route 3, Box 244
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030027
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–245
Dry Hill Family Housing
Route 3, Box 245
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030028
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–246
Dry Hill Family Housing
Route 3, Box 246
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030029
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–247
Dry Hill Family Housing
Route 3, Box 247
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030030
Status: Unutilized
Base Closure
Comment: 1500 sq. ft.; 1 story wood frame residence.

Bldg. P–248
Dry Hill Family Housing
Route 3, Box 248
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030031
Status: Unutilized
Base Closure
Comment: 1300 sq. ft.; 1 story wood frame residence.

Bldg. P–249
Dry Hill Family Housing
Route 3, Box 249
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030032
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–250
Dry Hill Family Housing
Route 3, Box 250
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030033
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–251
Dry Hill Family Housing
Route 3, Box 251
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030034
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–252
Dry Hill Family Housing
Route 3, Box 252
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030035
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–253
Dry Hill Family Housing
Route 3, Box 253
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030036
Status: Unutilized
Base Closure
Comment: 1235 sq. ft.; 1 story wood frame residence.

Bldg. P–254
Dry Hill Family Housing
Route 3, Box 254
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030037
Status: Unutilized
Base Closure
Comment: 816 sq. ft.; 1 story wood frame residence.

Bldg. P–255
Dry Hill Family Housing
Route 3, Box 255
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030038
Status: Unutilized
Base Closure
Comment: 816 sq. ft.; 1 story wood frame residence.

Bldg. P–256
Dry Hill Family Housing
Route 3, Box 256
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030039
Status: Unutilized
Base Closure
Comment: 1022 sq. ft.; 1 story wood frame residence.

Bldg. P–257
Dry Hill Family Housing
Route 3, Box 257
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030040
Status: Unutilized
Base Closure
Comment: 1022 sq. ft.; 1 story wood frame residence.

Bldg. P–258
Dry Hill Family Housing
Route 3, Box 258
Watertown, NY, *Co:* Jefferson
Landholding agency: COE
Property number: 319030041
Status: Unutilized
Base Closure
Comment: 816 sq. ft.; 1 story wood frame residence.

(NIKE 99)
Spring Valley Housing
1 Grandview Avenue
Ramapo, NY, *Co:* Rockland
Landholding agency: COE
Property number: 319030063
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

(NIKE 99)
Spring Valley Housing
2 Grandview Avenue
Ramapo, NY, *Co:* Rockland
Landholding agency: COE
Property number: 319030064
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

(NIKE 99)
Spring Valley Housing
3 Grandview Avenue
Ramapo, NY, *Co:* Rockland
Landholding agency: COE
Property number: 319030065
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

(NIKE 99)
Spring Valley Housing
4 Grandview Avenue
Ramapo, NY, *Co:* Rockland
Landholding agency: COE
Property number: 319030066
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

(NIKE 99)
Spring Valley Housing
5 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030067
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

(NIKE 99)
Spring Valley Housing
6 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030068
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

(NIKE 99)
Spring Valley Housing
7 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030069
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

(NIKE 99)
Spring Valley Housing
8 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030070
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

(NIKE 99)
Spring Valley Housing
9 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030071
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

(NIKE 99)
Spring Valley Housing
10 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030072
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

(NIKE 99)
Spring Valley Housing
11 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030073
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

(NIKE 99)
Spring Valley Housing
12 Grandview Avenue
Ramapo, NY, Co: Rockland
Landholding agency: COE
Property number: 319030074
Status: Unutilized
Base Closure
Comment: 897 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/91.

Pennsylvania

S–29–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA Co: Allegheny
Landholding agency: COE
Property number: 319030051
Status: Unutilized
Base Closure
Comment: 1,307 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

S–30–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA Co: Allegheny
Landholding agency: COE
Property number: 319030052
Status: Unutilized
Base Closure
Comment: 1,121 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

S–31–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA Co: Allegheny
Landholding agency: COE
Property number: 319030053
Status: Unutilized
Base Closure
Comment: 1,121 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

S–32–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA Co: Allegheny
Landholding agency: COE
Property number: 319030054
Status: Unutilized
Base Closure
Comment: 1,121 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

S–33–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 319030055
Status: Unutilized
Base Closure
Comment: 1013 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

S–34–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 319030056
Status: Unutilized

Base Closure
Comment: 1013 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

S–35–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 319030057
Status: Unutilized
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

S–36–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 319030058
Status: Unutilized
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

S–37–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 319030059
Status: Unutilized
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

S–38–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 319030060
Status: Unutilized
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

S–39–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding agency: COE
Property number: 319030061
Status: Unutilized
Base Closure
Comment: 117 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

S–40–Q
Monroeville Area Site 25
C.E. Kelly Support Fac.; Lindsey Lane R.D. #2
Monroeville, PA, *Co:* Allegheny
Landholding Agency: COE
Property number: 319030062
Status: Unutilized
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence with playground area; possible asbestos; scheduled to be vacated 8/91.

Texas

Marine Safety Detachment
Brownsville Ship Channel
Brownsville, TX, *Co:* Cameron
Landholding agency: GSA
Property number: 549030018
Status: Excess
Comment: 3008 sq. ft. and 900 sq. ft.; 2—1 story cinder block buildings; off-site use only. Property previously reported under HUD #879010005.
GSA NO. 7–U–TX–1005

Virginia

Family Housing Quarters No. 1
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 319030042
Status: Unutilized
Base Closure
Comment: 1053 sq. ft.; 1 story 3-bedroom residence; scheduled to be vacated 8/91.

Family Housing Quarters No. 2
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 319030043
Status: Unutilized
Base Closure
Comment: 1053 sq. ft.; 1 story 3-bedroom residence; scheduled to be vacated 8/91.

Family Housing Quarters No. 3
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 319030044
Status: Unutilized
Base Closure
Comment: 1053 sq. ft.; 1 story 3-bedroom residence; scheduled to be vacated 8/91.

Family Housing Quarters No. 4
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 319030045
Status: Unutilized
Base Closure
Comment: 1053 sq. ft.; 1 story 3-bedroom residence; scheduled to be vacated 8/91.

Family Housing Quarters No. 5
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 319030046
Status: Unutilized
Base Closure
Comment: 1053 sq. ft.; 1 story 3-bedroom residence; scheduled to be vacated 8/91.

Family Housing Quarters No. 6
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 319030047
Status: Unutilized
Base Closure
Comment: 844 sq. ft.; 1 story 2-bedroom residence; scheduled to be vacated 8/91.

Family Housing Quarters No. 7
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 319030048
Status: Unutilized
Base Closure
Comment: 844 sq. ft.; 1 story 2-bedroom residence; scheduled to be vacated 8/91.

Family Housing Quarters No. 8
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 319030049
Status: Unutilized
Base Closure
Comment: 844 sq. ft.; 1 story 2-bedroom residence; scheduled to be vacated 8/91.

Family Housing Quarters No. 9
Manassas Family Housing
7801 Aden Road
Manassas, VA, *Co:* Prince William
Location: Located 1 block east of SR 234 at the intersection of SR 619 and SR 646.
Landholding agency: COE
Property number: 319030050
Status: Unutilized
Base Closure
Comment: 844 sq. ft.; 1 story 2-bedroom residence; scheduled to be vacated 8/91.

Universe of Properties:

Total	67
Suitable	65
Suitable Buildings	63
Suitable Land	2
Unsuitable	2
Unsuitable Buildings	1
Unsuitable Land	1
Number of Resubmissions	1

[FR Doc. 90–22828 Filed 9–27–90; 8:45 a.m.]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–00–5101–09–XBHA; CACA 24320]

Intent To Prepare an EIS Proposed Specified Hazardous Waste Facility

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) in coordination with the County of San Bernardino will prepare an Environmental Impact Report/Environmental Impact Statement

(EIR/EIS) for the proposed Specified Hazardous Waste Facility in the Cady Mountains approximately 40 miles east of Barstow, California.

The applicant, Hidden Valley Resources, Inc. (HVR), has applied to the County for a Conditional Use Permit and a General Plan Amendment to develop a specified hazardous waste facility on land owned by HVR for the permanent storage of treated hazardous wastes. HVR has applied to BLM for a right-of-way for access road and a railroad spur from Hector and Interstate 40 into Hidden Valley of the Cady Mountains and for access across public lands to lands owned by HVR within the project boundary. The off-site access is for a proposed 60 foot wide right-of-way for road only and 300 foot wide right-of-way for road and rail spur combined. The off-site right-of-way would be approximately 10 miles in length across public lands, of which about 8 miles are across lands within the Cady Mountains Wilderness Study Area.

SUPPLEMENTARY INFORMATION: Development of the hazardous waste facility is proposed in two phases on private lands involving a total of approximately 1,300 acres with an estimated storage capacity of 120 years. A range of alternatives to be analyzed include, alternative access routes, facility designs, disposal methods, and site locations, as well as the no action alternative.

Initially, HVR proposed to acquire public land from BLM for an enlarged facility site totaling 11,500 acres. The acquisition of public lands was determined to be in nonconformance with BLM land use plans and is rejected from further analysis.

Public Participation

Pre- and post-application public meetings were held by the County in Newberry Springs, California. Comments presented during these meetings will serve to define the scope of the EIR/EIS. Issues identified at the scoping meetings included the need for interagency/regional planning, the relationship to adjacent land uses, impacts to wilderness qualities, water, air, and threatened and endangered species, risk assessment, health and safety, geology and faults in the area, means of transportation, flooding problems, and construction of storage containers.

A Local Assessment Committee (LAC) was established which meets on the first and third Tuesdays of each month in Newberry Springs, 20 miles east of Barstow, to discuss with the proponent details of the project. The LAC reports to the County Board of Supervisors and represents generally, the interests of the residents of the County and adjacent communities. The LAC meetings are open to the public and provide for continual public involvement in the scoping and analysis process of this proposal.

Public meetings on this proposal will be held upon release of the draft EIR/EIS and will be announced in a Notice of Availability in the **Federal Register.**

Formal comments on this Notice will be accepted by BLM for 30 days after date of publication. Comments are specifically requested on issues, concerns, and alternatives, which will be considered in the EIR/EIS.

ADDRESSES: Send comments to BLM, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, Attn: Sharon Paris. Further information on this proposal, on the LAC meetings, or to be placed on the mailing list for the EIR/EIS may also be requested through this address or by telephone at (619) 256-3591.

Dated: September 20, 1990.

Donald Sasseville,

Acting Area Manager.

[FR Doc. 90-22922 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-40-M

[CO-030-90-4320-10-1784]

Montrose District Grazing Advisory Board Meeting

September 19, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR subpart 1784, that a meeting of the Montrose District Grazing Advisory Board will be held on October 17, 1990, in Montrose, Colorado.

DATES: A meeting is scheduled October 17, 1990.

FOR FURTHER INFORMATION CONTACT: Bill Hensley, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, telephone (303) 249-7791.

SUPPLEMENTARY INFORMATION: The Board will convene at 9:30 a.m. on October 17, 1990, in the conference room of the Montrose District BLM Office in Montrose, Colorado. Agenda items will include: minutes of the previous meeting, public presentations and requests, range improvement project review, new Board project proposals, updates on current issues, and arrangements for the next meeting. The meeting will adjourn at 5 p.m.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the above address prior to the meeting date. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: September 18, 1990.

Kenneth D. Herman,

Acting District Manager.

[FR Doc. 90-22928 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-00-4212-11; N-52671]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Reigster.**

Mount Diablo Meridian, Nevada

T. 21 S., R. 62 E.,
Sec. 19, N½NW¼NE¼SW¼.
Aggregating 5 acres (gross).

This parcel of land contains approximately 5 acres. Clark County intends to use the land for Las Vegas Metropolitan Police Department Substation. The lease and/or patent, when issued will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

2. Those rights for transmission line purposes which have been granted to Nevada Power Company by Permit No. CC-018425 under the Act of December 21, 1928.

3. Those rights for road and sewerline purposes which have been granted to Clark County by Permit No. N-35306 under the Act of October 21, 1976.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: September 17, 1990.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 90-22924 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-11; N-51400 and N-51824]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., sec. 22: W½W½NE¼NW¼SE¼.

T. 20 S., R. 60 E., sec. 22: E½NE¼NW¼SE¼, E½W½NE¼NW¼SE¼.

Aggregating 10 acres (gross).

This parcel of land contains approximately 10 acres. The City of Las Vegas plans to construct a Metropolitan Police station with associated buildings, parking areas, etc. on 7.5 acres of land. Also, the Frontier Girl Scouts propose to use 2.5 acres of the land to construct a one-story facility for staff and volunteers to manage the area's Girl Scouting Program. The scouts will also use the area as an interpretive center and outdoor recreation/training area. The leases and/or patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way there on for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Las Vegas.

2. The lease to the City of Las Vegas would be subject to those rights for highway purposes which have been granted to Nevada Department of Transportation (NEV-062275) under the Act of August 27, 1958.

The land is not required for any federal purpose. The leases/purchases are consistent with the Bureau's planning for this area.

Detailed information concerning these actions is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days for the date of publication in the **Federal Register**.

Dated: September 17, 1990.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 90-22925 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-11; N-51437]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,

Sec. 15, W½W½SW¼SW¼, NE¼NW¼SW¼SW¼, W½SE¼NW¼SW¼SW¼, W½E½SW¼SW¼SW¼.

Aggregating 16.25 acres (gross).

This parcel of land contains approximately 16.25 acres. Clark County intends to use the land for a multi-use civic facility.

Total development encompasses 43.75 acres. The additional 27.50 acres was previously classified for public purposes under a Clark County School District application. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

2. Those rights for water pipeline purposes which have been granted to Las Vegas Valley Water District by Permit No. N-24659 under the Act of October 21, 1976.

3. Those rights for power distribution and telephone line purposes which have been granted to Nevada Power Company/Centel by Permit No. N-24663 under the Act of October 21, 1976.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the Federal Register.

Dated: September 17, 1990.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 90-22926 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-11; N-51517]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec. 22, SE SW SE.

Aggregating 10 acres (gross).

This parcel of land contains approximately 10 acres. The City of Las Vegas intends to use the land for a park site. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Las Vegas.

2. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. N-38148 under the Act of October 21, 1976.

3. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. N-51899 under the Act of October 21, 1976.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the Federal Register.

Dated: September 17, 1990.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 90-22927 Filed 9-27-90; 8:45 am]

BILLING CODE 4310-HC-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31736]

Exemption; K. Earl Durden, Control Exemption

K. Earl Durden has filed a notice of exemption to acquire control of Wilmington Terminal Railroad, Inc. (WTR), operating in North Carolina and Georgia. Mr. Durden already controls a non-connecting Class III rail carrier, Galveston Railway, Inc. (GRI), operating in Texas. Mr. Durden owned all of the voting stock of WTR when he acquired GRI. In order to consummate the GRI acquisition without violating 49 U.S.C. 11343, he placed his WTR stock into a voting trust. Mr. Durden now seeks to dissolve the voting trust and assume direct control of WTR.

After the transaction is consummated, Mr. Durden will control two carriers, WTR and GRI. Mr. Durden indicates that: (1) The properties operated by WTR and GRI will not connect with each other; (2) the acquisition of WTR is not part of a series of anticipated transactions that would connect the rail carriers with each other or with any other railroad he might own; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves the control of nonconnecting carriers and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

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. Pleadings must be filed with the Commission and served on: Donald G. Avery, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

Decided: September 14, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-22889 Filed 9-27-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m., Sunday, October 28, 1990.

Place: J.W. Marriott Houston Galleria, 5150 Westheimer, Houston, Texas.

Status: Open.

Matters to be Considered: An update on the BJA/NIC Drug Task Force, a report from the Interdivisional Team on Intermediate Sanctions, an update on technical assistance requests from foreign countries, a report on the

nutrition for inmates survey, a discussion of collaborative programs/training for juvenile corrections practitioners between OJJDP and NIC, election of Advisory Board officers, and the impact of sequestration on NIC programs and operations.

Contact Person for More Information: Larry Solomon, Deputy Director, (202) 307–3106.

M. Wayne Huggins,

Director.

[FR Doc. 22947 Filed 9–27–90; 8:45 am]

BILLING CODE 4410–36–M

Drug Enforcement Administration

Abbott Laboratories; Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 6, 1990, and published in the **Federal Register** on August 14, 1990, (55 FR 33183), Abbott Laboratories, ATTN: D–209, Abbott Park, Abbott Park, Illinois 60064–3500, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of benzoylecgonine (9187), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: September 21, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90–22967 Filed 9–27–90; 8:45 am]

BILLING CODE 4410–09–M

Johnson Matthey; Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 6, 1990, and published in the **Federal Register** on August 14, 1990, (55 FR 33183), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Fentanyl (9801)	II
Sufentanil (9740)	II
Thebaine (9333)	II
Methylphenidate (1724)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 21, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90–22968 Filed 9–27–90; 8:45 am]

BILLING CODE 4410–09–M

Mallinckrodt Specialty Chemicals Co.; Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 23, 1990, and published in the **Federal Register** on March 5, 1990 (55 FR 7783), Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine hydrochloride (9059).	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-di-methylamino-4, 4-diphenyl butane (9254).	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extracts (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 21, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90–22969 Filed 9–27–90; 8:45 am]

BILLING CODE 4410–09–M

Sigma Chemical Co.; Importer of Controlled Substances; Notice of Registration

By Notice Dated June 14, 1990, and published in the **Federal Register** on July 3, 1990, (55 FR 27519), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315).	I
Marijuana (7360)	I
Tetrahydrocannabinols (7370).	I
Mescaline (7381)	I
4-bromo-2,5-Dimethoxyamphetamine (7391).	I
4-methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-dimethoxyamphetamine (DMA) (7396).	I
3,4-methylenedioxyampheta-mine.	I
3,4-methylenedioxymetham-phetamine (MDMA) (7405).	I
4-methoxyamphetamine (7411).	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Ethiylamine analog of phen-cyclidine (7455).	I
Pyrrolidine analog of pohen-cyclidine (7458).	I
Thiophene analog of phency-clidine (7470).	I
Etorphine (except HCL) (9056).	I
Difenoxin (9168)	I
Heroin (9200)	I
Morphine-N-Oxide (9307)	I

Drug	Schedule
Normorphine (9313)	I
1-Methyl-4-phenyl-4-proplonoxypiperidine (MPPP) (9661).	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Fenethylline (1503)	II
Pentobarbital (2270)	II
Saecobarbital (2315)	II
Phencyclidine (7471)	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603).	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Methadone (9250)	II
Dextropropoxphene, bulk (9273).	II
Morphine (9300)	II
Morphine-3-Glucuronide (9329).	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to Section 1008 (a) of the Controlled Substance Import and Export Act and in accordance with Title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: September 21, 1990.

Gene R. Haislip,

Deputy Assistant Administrator Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 90-22970 Filed 9-27-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its reponsibilities 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 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.

NEW

Pension and Welfare Benefits Administration Transactions Between Individual Retirement Accounts and Authorized Purchasers of American Eagle Coins Recordkeeping; Other (one-time disclosure) Individuals or households; Businesses or other for-profit 2,000,000 responses; 66,678 burden hours. This proposed class exemption provides relief from certain taxes imposed by the Internal Revenue Code on broker-dealers who are disqualified persons under the Code with respect to certain individual retirement accounts, regarding transactions involving American Eagle Coins.

Extension

Employment and Training Administration, Unemployment Compensation for Ex-servicemembers (UCX) Handbook 1205-0176; ETA 841, 842 and 843.

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 841	State or local governments	121,614	One-time	2 minutes.
ETA 843	State or local governments	6,081	One-time	1 minute.
ETA 842	None	0	None	0

3,174 total hours.

Federal law (5 U.S.C. 8521 et seq.) provides unemployment insurance protection, to former members of the Armed Forces (ex-servicemembers) and is referred to in abbreviated form as "UCX." The forms in Chapter V through VIII of the UCX *Handbook* are used in connection with the provisions of this benefit assistance.

Signed at Washington, DC this 25th day of September, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-22991 Filed 9-27-90; 8:45 am]

BILLING CODES 4510-29; 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages 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.

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:

West Virginia
- WV90-2 (Jan. 5, 1990)..... p. 1391, pp. 1395, 1401.
- WV90-3 (Jan. 5, 1990)..... 1415, p. 1418.

Volume II:

Iowa
- IA90-4 (Jan. 5, 1990)..... p. 33, p. 34.

Michigan
- MI90-2 (Jan. 5, 1990)..... p.441, pp. 442-452.

Minnesota
- MN90-5 (Jan. 5, 1990)..... p. 553, pp. 554, 556, 559.
- MN90-7 (Jan. 5, 1990)..... p. 563, pp. 564-566, pp. 571-572.
- MN90-8 (Jan. 5, 1990)..... p. 583, pp.584-587, 593.
- MN90-12 (Jan. 5, 1990)..... p. 605, pp. 606-607.
- MN90-15 (Jan. 5, 1990)..... p. 613, pp. 614-617.

Missouri
- MO90-1 (Jan. 5, 1990)..... p. 627, pp. 629, 532.

Ohio
- OH90-2 (Jan. 5, 1990)..... p. 791, pp. 793, 796.
- OH90-29 (Jan. 5, 1990)..... p. 873, pp. 877, 881.
- OH90-35 (Jan. 5, 1990)..... p. 918c, p. 918d.

Texas
- TX90-3 (Jan. 5, 1990)..... p. 987, p. 988.

Volume III:

California
- CA90-4 (Jan. 5, 1990)..... p. 71, pp. 75-76, 80, pp. 83-84, 87, 89.

Colorado
- CO90-1 (Jan. 5, 1990)..... p. 107, pp. 108-110.
- CO90-2 (Jan. 5, 1990)..... p. 117, p. 118.

Idaho
- ID90-1 (Jan. 5, 1990)..... p. 147, pp. 148, 150-152, pp. 157-158.

Oregon
- OR90-1 (Jan. 5, 1990)..... p. 309, pp. 312-314, pp. 324-326.

Washington
- WA90-1 (Jan. 5, 1990)..... p. 369, pp. 372-374, 378.

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 21st day of September 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-22831 Filed 9-26-90; 8:45 am]

BILLING CODE 4510-27-M

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

[Note: This notice was intended for publication on September 21, 1990. It was apparently lost in transit from the Department of Labor to the Federal Register and, as a result, not published. The wage determination changes listed were in fact published in General Wage Determinations Issued Under the Davis-Bacon and Related Acts on September 21, 1990, and should be considered effective on that date.]

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 or 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, 50 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 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 supersedes 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 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 Consititution 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 number(s.)

Volume III

Utah:

UT90-6	p. 368e p. 368f
UT90-7	p. 368g pp. 368h-368j

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:

Connecticut: CT90-1 (Jan. 5, 1990).	p. 63, pp. 64-65
Florida: FL90-17 (Jan. 5, 1990).	p. 143, pp. 144-145
Massachusetts: MA90-1 (Jan. 5, 1990).	p. 399, pp. 401, 408
Pennsylvania:	
PA90-1 (Jan. 5, 1990)	p. 909, pp. 910-913, pp. 916-917
PA90-2 (Jan. 5, 1990)	p. 921, p. 922

Volume II:

Arkansas: AR90-1 (Jan. 5, 1990).	p. 3 p. 4
Illinois:	
IL90-12 (Jan. 5, 1990)	p. 161 p. 162
IL90-14 (Jan. 5, 1990)	p. 185 p. 186
Indiana:	
IN90-2 (Jan. 5, 1990)	p. 249, pp. 250, 252-254
IN90-4 (Jan. 5, 1990)	p. 279, pp. 280, 282-283

Volume III:

Colorado:	
CO90-4 (Jan. 5, 1990)	p. 125, p. 126
CO90-6 (Jan. 5, 1990)	p. 132e, p. 132f
North Dakota: ND90-2 (Jan. 5, 1990).	p. 229, p. 231
Utah: UT90-1 (Jan. 5, 1990)	P. 343, pp. 347, 351-352

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:

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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

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Signed at Washington DC This 14th Day of September 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-23065 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-90-135-C]

Bee Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bee Coal Company, 3915 5th Street Road, Corbin, Kentucky 40701-9597 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-16869) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors as outlined in the petition.

3. In support of this request, petitioner states that:

(a) No methane has been detected in the mine;

(b) Each three-wheel tractor would be equipped with a handheld continuous methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

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 October 29, 1990. Copies of the petition are available for inspection at that address.

Dated: September 20, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-22985 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-136-C]

Bridger Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bridger Coal Company, P.O. Box 2068, Rock Springs, Wyoming 82902, has filed a petition to modify the application of 30 CFR 77.1304 (blasting agents; special provisions) to its Jim Bridger Mine (I.D. No. 48-00677) located in Sweetwater County, Wyoming. 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 sensitized ammonium nitrate blasting agents, and the components thereof prior to mixing, shall be mixed and stored in accordance with the recommendations in Bureau of Mines Information Circular 8179, "Safety Recommendations for Sensitized Ammonium Nitrate Blasting Agents," or subsequent revisions.

2. As an alternate method, the petitioner proposes to blend recycled oil with fuel oil to create a blasting agent. In support of its request, the petitioner states:

(a) The system has been extensively and successfully field tested and evaluated;

(b) The used oil was evaluated to assure that it met EPA recycling requirements and is not a hazardous waste fuel; and

(c) Precautions are taken against harmful exposure to fuel oil or fumes.

3. The proposed alternate method would at all times guarantee no less than the same measure of protection as that afforded by the standard

4. For these reasons, the petitioner request a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 29, 1990. Copies of the petition are available for inspection at that address.

Dated: September 20, 1990.

Patricia W. Silvey,

Director, Office of Standards Regulations and Variances.

[FR Doc. 90-22986 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-16-M]

Homestake Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754, has filed a petition to modify the application of 30 CFR 57.6076 (hosting in adjacent shafts) to its Homestake Mine Lead (I.D. No. 39-00055) located in Lawrence County, South Dakota. 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 hoisting in adjacent shaft compartments be stopped when explosives are being handled.

2. As an alternate method, the petitioner requests that the lowering of explosives be allowed during one shift each week in shafts that are totally partitioned from the ore hoisting compartment.

3. The proposed method will not result in a diminution of safety for the workers.

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 October 29, 1990. Copies of the petition are available for inspection at that address.

Dated: September 20, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-22987 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-137-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, 301 North Memorial Drive, P.O. Box 373, St. Louis, Missouri 63166 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Sinclair Underground Mine (I.D. No. 15-17166) located in Muhlenburg 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 seals be examined on a weekly basis.

2. Due to a roof fall, the seals in the 1st southeast or sub-main section of the mine at the No. 1 seal cannot be examined. To require weekly examination of the seals would expose examiners to unnecessary risks.

3. As an alternate method, petitioner proposes that—

(a) Methane and oxygen would be monitored weekly by a certified person in a crosscut 100 feet from the seal in front of the fall;

(b) The operator would maintain a continuous monitoring system with an audible warning device set to activate when methane is detected at 1 percent and low oxygen at 18 percent; and,

(c) The operator would maintain an air current passing through the crosscut and going to the main return air shaft.

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 October 29, 1990. Copies of the petition are available for inspection at that address.

Dated: September 24, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-22988 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-132-C]

Pinckneyville Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pinckneyville Mining Company, P.O. Box 286, Pinckneyville, Illinois 62274-0286, has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 1 Mine (I.D. No. 11-02886) located in Perry County, Ilinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary to the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations be housed in fire proof structures or areas, and that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, the petitioner proposes to use a fire-proof room with an automatic fire suppression system to isolate its belt transformers in longwall panels. In addition to other precautions specified in the petition, a monitoring system and thermal protection devices would be installed.

3. The proposed method would not result in a diminution of safety for the miners.

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 October 29, 1990. Copies of the petition are available for inspection at that address.

Dated: September 20, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-22989 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-15-M]

Riverside Cement Co.; Petition for Modification of Application of Mandatory Safety Standard

Riverside Cement Company, P.O. Box 832, Riverside, California 92502 has filed a petition to modify the application of 30 CFR 56.14107 (moving machine parts) to its Crestmore Plant (I.D. No. 04-00010) located in Riverside County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that moving machine parts be guarded to protect persons from gears, sprockets, shafts and similar moving parts that can cause injury.

2. As an alternate method, the two palletizers are equipped with a permanent safety system surrounding all moving parts. The guards surrounding the machine are monitored by safety switch interlocks and electric eyes. The electric eyes are set up with transmitters such that if they are damaged or fail in any way, the machines will shut down.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 29, 1990. Copies of the petition are available for inspection at that address.

Dated: September 24, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-22990 Filed 9-27-90; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 90–67; Exemption Application No. D–7776 et al.]

Grant of Individual Exemptions; Mutual Life Insurance Co. of New York (MONY), et al

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and respresentations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Mutual Life Insurance Co. of New York (MONY) Located in New York, NY

[Prohibited Transaction Exemption 90–67; Application No. D–7776]

Exemption

The restrictions of section 406(a), (b)(1), and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) by Pooled Account No. 7 (PA–7), a polled equity real estate account maintained by MONY for pension plan investors, of its interest in a parcel of commerical real estate to MONY; provided that the terms of conditions of the Sale are at least as favorable to PA–7 as those obtainable in an arm's length transaction with an unrelated party.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published at 55 FR 31250.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523–8881. (This is not a toll-free number).

Ausherman Construction Co. Employees' Profit Sharing Plan (the Plan) Located in Frederick, MD

[Prohibited Transaction Exemption 90–68; Application No. D–8114]

Exemption

The restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease by the Plan to Ausherman Construction Company, the Plan sponsor and, as such, a party in interest with respect to the Plan, of certain improved real property located in Walkersville, Maryland; provided that the terms and conditions of the transaction are at least as favorable to the Plan as those obtainable in an arm's-length transaction between unrelated parties.

EFFECTIVE DATE: This exemption will be effective June 22, 1990.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 5, 1990 at 55 FR 7792.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department of Labor, telephone (202) 523–8881. (This is not a toll-free number.)

IDS International, Inc. Located in Minneapolis, MN

[Prohibited Transaction Exemption 90–69; Exemption Application No. D–8379]

Exemption

IDS International, Inc. (IDSII) shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984) solely because of IDSII's failure to satisfy Section I(g) of PTE 84–14 as a result of its affiliation with E. F. Hutton & Company, Inc. (Hutton) and Shearson Lehman Hutton, Inc. (Shearson).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 5, 1990 at 55 FR 27709.

EFFECTIVE DATE: This exemption is effective as of the date on which IDSII became an affiliate of Hutton and Shearson.

WRITTEN COMMENTS: The Department received one comment and no requests for a hearing. The comment was submitted jointly by American Express Company, IDS Financial Services, Inc. and IDSII (the Commentors). The Commentors request that the Summary of Facts and Representatives (the Summary) in the Notice of Proposed Exemption be clarified and supplemented as follows:

1. The Commentors note that as of August 9, 1990 Shearson Holdings is wholly owned by American Express Company. Accordingly, the Commentors represent that the reference in Section 1 of the Summary, to Shearson Holdings as a publicly-owned company whose stock is traded on the New York Stock Exchange, is no longer accurate.

2. The Commentors request that Section 6 of the Summary be clarified to state that Shearson has never been found guilty of any criminal activity.

3. The Commentors wish to add the representation that IDSII is an extremely remote affiliate of Hutton. The Commentors state that the Chief Executive Officer of IDSII has recently been named Vice Chairman of American Express Company. The Commentors represent that while there may be further management changes within th

American Express controlled group, they do not anticipate that any such changes will result in Shearson personnel exercising management authority or control over IDSII.

After consideration of the entire record, the Department has determined to grant the exemption as supplemented.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transition is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 25th day of September, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–22933 Filed 9–27–90; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–8294 et al.]

Proposed Exemptions; Norman B. Pester CPA, P.C. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state the reasons for the writer's interest in pending exemption.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Norman B. Pester CPA, P.C. Profit Sharing Plan (the Plan) Located in Denver, CO.

[Application No. D–8294]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedure set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale by the account of Mr. Norman Pester (the Account) in the Plan of an interest in two parcels of real estate (the Interests) to Mr. Pester, a participant and trustee of the Plan, for a sales price equal to the fair market value of the Interests.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan with two participants and approximately $477,247.00 in assets as of July 31, 1989. Mr. Pester is the Plan sponsor and is a participant in the Plan. He also serves as Plan Trustee.

2. The property consists of two contiguous parcels of undeveloped real estate (Parcel A and Parcel B) which comprise 3.2 acres. The Account owns a 17.004% interest in Parcel A, which consists of 77,821 square feet, and a 14.4818% interest in Parcel B, which consists of 81,949 square feet. The Interests were originally held in a defined benefit plan in which Mr. Pester was the only participant. Upon termination of the defined benefit plan, the Interests were rolled over to the current profit-sharing plan where they are maintained in a separate rollover Account.

The property was purchased from Columbine Coastal Corporation (the Seller), an unrelated party, on September 23, 1981. The property was purchased by Clinton Court Company, a general partnership, in which the Account is one of three partners in relation to Parcel A and one of four partners in relation to Parcel B. The Plan is unrelated to each partner in the partnership. The aggregate purchase price for the property was $1,140,000.00, which was paid by a purchase money mortgage of $684,000.00 payable to the Seller, with the balance of $456,000.00 paid in cash. The $684,000.00 mortgage was paid off in 24 months, on September 23, 1983.

The property was purchased for investment purposes. It is represented that current economic conditions for the real estate market in the area make development of the property as retail, office or industrial space infeasible.

3. An appraisal of the property was performed by John V. Winslow, President of Dresco Consulting Group in Denver, Colorado, at $3.00 a square foot Mr. Winslow has worked as a commercial real estate broker specializing in land and investment properties in the specific area in which the property is located, and has provided comparable sales search services to clients in the Denver metropolitan area for ten years. The applicant represents that Mr. Winslow is independent of and is in no way related to Mr. Pester. On December 6, 1989, the property was subject to a property tax valuation arbitration proceeding by the Board of County Commissioners of Arapahoe County, Colorado, which resulted in an appraised value of the property at $3.50 a square foot, for a total value of the Interests of $87,851.00.

4. Mr. Pester proposes to purchase the Interests at their appraised fair market value of $87,851.00. It is represented that there will be no expenses or commissions associated with the transfer of the Interests. Mr. Pester maintains that the sale will benefit the Account because it will be selling an unproductive assets for cash, which can be invested in productive assets earning current income.

In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale of the Interests by the Account to Mr. Pester is a one time transaction for cash;

(b) The Account will receive an amount equal to not less than the current fair market value of the Interests;

(c) The Account will incur no expenses or commissions as a result of the sale;

(d) The Account will be able to divest itself of assets which produce no income and invest the proceeds in income-producing assets; and

(e) The sale will affect the Account only, and Mr. Pester desires to consummate the transaction.

Notice to Interested Persons: Because Mr. Pester is the sole participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

City Wide Management Co. Pension Plan and Trust (the Plan) Located in Baltimore, MD

[Application No. D–8391]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a sale for cash of certain ground rent leases (the Property) to the Plan by City Wide management Company (City Wide) and certain related entities, parties in interest with respect to the Plan, provided that the Plan pays no more than fair market value for the Property and that the transaction accounts for no more than 25 percent of the assets of the Plan at the time of sale.

Summary of Facts and Representations

1. City Wide is a real estate firm which is owned and operated by the Myerberg family. The Myerberg family has created separate entities for various real estate projects, although none of the entities other than City Wide currently has employees. City Wide and the various entities are collectively referred to as the Employer. The Plan is a defined benefit pension plan that has been adopted by certain of the entities. The trustees of the Plan are Alvin J. Myerberg and Wendy M. Jachman, both members of the Myerberg family. As of June 30, 1990, the Plan had 136 participants and total assets of approximately $1,972,000.

2. The Employer previously purchased and developed large parcels of land and subsequently created 178 ground rent leases for various residential properties located in the Baltimore area. As completed houses on the parcels of land were sold, the homeowners purchased title to the dwellings but not to the underlying land. The Employer kept the fee simple title to the land and entered into a ground rent lease arrangement with each tenant, who is usually the homeowner. The tenants are responsible for paying a semi-annual ground rent for the use of the land plus all property taxes and other assesments. The amount of the annual ground rent remains constant for the entire lease duration, i.e., 99 years and renewable. However, the lessee can terminate the ground lease after the lease is five years old by making a lump sum payment equal to the annual rent capitalized at six percent. Under the lease arrangement, the Employer has certain remedies in the event of a default in payment of rent. For example, if the rental payment is six months or more in arrears, the Employer could bring an action to take possession of the land and the corresponding dwelling. The applicant represents that ground rent leases of this kind are usually readily marketable assuming that they are competitively priced.

3. The Employer proposes to sell the Property, which consists of 178 ground rent leases, to the Plan in a one-time transaction for cash. The Plan will pay no more than fair market value for the Property at the time of sale, based on an updated appraisal to be made by an independent fiduciary of the Plan, as discussed below. The Employer will incur all the costs involved in transfering the Property to the Plan. In addition, the Employer will be responsible for collecting the semi-annual payments required under the terms of the ground rent leases. The applicant represents that the tenants on the ground rent leases are all unrelated to the Plan and the Employer. The transaction will account for well under 25 percent of the assets of the Plan at the time of sale. The applicant estimates that the Property will provide a rate of return of approximately 12 percent per year to the Plan.

4. M. Ronald Lipman (Lipman) of the real estate consulting firm of Lipman, Frizzell and Mitchell of Baltimore will serve as the independent fiduciary in regard to the proposed transaction. The applicant represents that Lipman is

unrelated to the Employer and the Plan. Lipman states that he understands the duties of a fiduciary under the Act and that he will accept the fiduciary responsibility related to the proposed transaction. Lipman will insure that the Property is sold to the Plan at current fair market value and that the Plan receives clear title to the Property. Lipman further states that, based on his professional experience, he understands the nature of the ground rent market. Lipman has reviewed the facts surrounding the proposed transaction and has made an analysis of the subject ground rents. He also has considered alternative investment vehicles available to the Plan. Accordingly, he believes that acquisition of the Property by the Plan represents an excellent investment opportunity for the Plan.

Lipman states that, because of the senior position of the ground rents (over any mortgages placed on the properties, including first and second mortgages and home equity lines of credit) and because of the relatively substantial value of the improvements on the ground rent lots, the income stream from these capital assets is extremely secure. Also, there exists an organized market for disposition of the ground rents, generally through an auction held by one of a small group of actioneers who specialize in such transactions.

5. Lipman has examined the results of five auctions of ground rent leases during the past three years in which over 200 ground rents were sold. Of that total, approximately 100 ground rents were considered to be comparable to the subject rents as to location, leasehold improvements and marketability.

Lipman capitalized the annual rental amounts (which range between $90 and $240 per year) on the 178 gound leases comprising the Property by rates which reflect the market's response to that rent in terms of appropriate yield. Utilizing this approach to value and considering the results of the above mentioned ground rent auctions, Lipman concludes that the Property had a market value of approximately $235,000 as of June 22, 1990.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The Plan will pay no more than fair market value for the Property at the time of sale; (2) the fair market value will be established by an appraisal to be made by an independent fiduciary who is experienced in real estate matters involving ground rent leases; (3) the independent fiduciary has determined that the transaction is an excellent investment opportunity for the Plan; (4) the sale will be a one-time transaction for cash; and (5) the transaction will account for well under 25 percent of the assets of the Plan.

For further information contact: Paul Kelty of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Dean Witter Reynolds Inc. (Dean Witter) Located in New York, NY

[Application No. D–8473]

Proposed Exemption

I. Transactions

A. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interest therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisiton or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective November 1, 1985, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) An obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective November 1, 1985, the restrictions of sections 406(a), 406(b), and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificates price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) for which Dean Witter or any of its affiliates is either (i) The sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent. For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) *Guaranteed governmental mortgage pool certificates*, as defined in 29 CFR 2510.3–101(i)(2);

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreements, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) Dean Witter;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Dean Witter; or

(3) Any member of an underwriting syndicate or selling group of which Dean Witter or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any sub-servicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded plans* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)-(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person , or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified administrative fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified equipment note secured by a lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the

equipment note were secured only by the equipment and not the lease.

U. *Qualified motor vehicle lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and servicing agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

EFFECTIVE DATE: This exemption, if granted, will be effective for transactions occurring on or after November 1, 1985.

Summary of Facts and Representations

1. Dean Witter, an indirect wholly owned subsidiary of Sears, Roebuck and Company, is an international financial services company involved in securities brokerage, asset management, investment banking, research and market-making. Dean Witter is one of the largest broker-dealers in the securities industry. The firm maintains offices throughout the United States and it also has an active presence overseas through offices located in Europe, Canada and the Far East. Dean Witter has extensive experience in underwriting and trading mortgage-backed and asset-backed securities such as the certificates.

Trust Assets

2. Dean Witter seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [4] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificates investment trusts.[5]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[6]

Trust Structure

4. Each trust is established under a pooling and servicing agreement among a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Dean Witter, along or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. The majority of the public offerings of certificates made to date have been underwriting on a firm commitment basis. In addition, Dean Witter has privately placed certificates on both a firm commitment and an agency basis. Dean Witter may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. Dean Witter requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to

[4] The Department notes that Prohibited Transaction Exemption (PTE) 83-1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. Dean Witter requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Dean Witter has stated that it may still avail itself of the exemptive relief provided by PTE 83-1.

[5] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts are plan assets.

[6] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90-32, involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990) at 23150.

disproportionate payments of principal and interest.[7]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. In the case of classes of securities having different stated maturities, interest and/or principal payments received on the underlying receivables are generally distributed first to the class of certificates having the earliest stated maturity of principal and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only differences this multi-class pass-through arrangement and a single-class pass-through arrangement are the order in which distributions are made to certificateholders and the payment schedules of the classes of certificates. Regardless of whether a multi-class or single-class pass-through arrangement is utilized, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[8]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a limited time after the issuance of trust certificates. Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trust will be entities that originate receivables in the ordinary course of their business, including finance companies, for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) A special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (ii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Dean Witter, the trust sponsor or the servicer. Dean Witter represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which generally will be paid by the sponsor or servicer. In some transactions, however, the trustee's fee is not paid by the sponsor or servicer, but rather is paid out of trust assets. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records or payments received on receivables and instituting foreclosure or similar procedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and pases them through to certificateholders.

In most cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Dean Witter. In some cases, however, affiliates of Dean Witter may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. Where the sponsor of a trust is not the originator of receivables included in a trust, the sponsor generally purchases the receivables in the secondary market, either directly from the originator or from another secondary market participant. The price the sponsor pays for a receivable is determined by competitive market forces, taking into account payment terms, interest rate, quality, and forecasts as to future interest rates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives

[7] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[8] If a trust issues subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

certificates from the trust, the sponsor sells these certificates for cash to investors or securities underwriters. In some transactions, the sponsor or an affiliate may retain a portion of the certificates for its own account. In addition, in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale to pay the originator for the receivables sold to the trust. The transfer of the receivables to the trust by the sponsor, the sale of certificates to investors, and the receipt of the cash proceeds by the sponsor generally take place simultaneously.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[9] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon rate, together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceeding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. Dean Witter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, which is usually done in a public offering, this fee would consist of the difference between what Dean Witter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In some public offerings, however, Dean Witter may sell certificates on an agency basis, in a best efforts underwriting. In those cases, Dean Witter would receive an agency commission paid by the sponsor. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables included in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial balance. The terms of such repurchase are specified in the pooling and servicing agreement.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be either: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1), or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the certificates in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e., act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) Out of late payments by the obligors, (b) from the credit support provider (which may

[9] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on affected assets.

If the master servicer fails to advance funds, when it is obligated to advance such funds, fails to call upon the credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to gaurd against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (usually monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee, annually, a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, where the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the certificates by a typical investor;

(i) A description of the underwriters' plan for distributing the certificates to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount

and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Secondary Market Transactions

24. It is Dean Witter's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is Dean Witter's intention to attempt to make a market for any certificates for which Dean Witter is lead or co-managing underwriter.

Retroactive Relief

25. Dean Witter represents that it has engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would not be granted. However, since November 1, 1985, it is possible that some transactions may have occurred that would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(f)). These problems are compounded as transactions occur in the secondary market. In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3–101(b)), it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which Dean Witter seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Dean Witter has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

I Differences between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party in interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-

family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[10]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

Dean Witter represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[11] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of propety under section 406(a)(1)(A) of the Act.[12] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Dean Witter represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. Dean Witter, represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Dean Witter represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited section 406(a) and 407(a) relief as specified in the proposed exemption.

For further information contact: Ms. Jan. D. Broady of the Department, telephone (202) 523–8831. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an examption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 25th day of September, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–22994 Filed 9–27–90; 8:45 am]

BILLING CODE 4510–29–M

[10] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

[11] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Dean Witter or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[12] Dean Witter represents that where a trust sponsor is a Dean Witter affilate, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Dean Witter is not a fiduciary with respect to plan assets to be invested in certificates.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals 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 on or before October 29, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202–786–0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202–786–0494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are reinstatements of a previously approved collection for which approval has expired. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

Category: Reinstatement

Title: NEH—Division of Fellowships and Seminars—Guidelines and Application Instructions for Participants, Summer Seminars for School Teachers Program.
Form Number: 3136–0097.
Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.
Respondents: School Teachers and other school personnel.
Use: The guidelines and application instructions provide direction for preparing applications for grant funds and request additional information regarding grants recently received by applicants.
Estimated Number of Respondents: 8,630.
Frequency of Response: Once.
Estimated Hours for Respondents to Provide Information: 3 per respondent.
Estimated Total Annual Reporting and Recording Burden: 26,350 hours.

Thomas S. Kingston,
Assistant Chairman for Operations.
[FR Doc. 90–22996 Filed 9–27–90; 8:45 am]
BILLING CODE 7536–01–M

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals 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 on or before October 29, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202–786–0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room, 3002, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202–786–0494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are reinstatements of a previously approved collection for which approval has expired. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

Category: Reinstatement

Title: NEH—Division of Fellowships and Seminars—Guidelines and Application Instructions for Directors, Summer Seminars for School Teachers Program.
Form Number: 3136–0095.
Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.
Respondents: University and college faculty.
Use: The guidelines and application instructions provide direction for preparing narrative and budgetary parts of applications for grant funds and request additional information regarding grants recently received by applicants.
Estimated Number of Respondents: 625.
Frequency of Response: Once.
Estimated Hours for Respondents to Provide Information: 5 per respondent.
Estimated Total Annual Reporting and Recording Burden: 3152.5 hours.

Thomas S. Kingston,
Assistant Chairman for Operations.
[FR Doc. 90–22997 Filed 9–27–90; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Literary Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Creative Writing: Poetry Fellowships Section) to the National Council on the Arts will be held on October 17–18, 1990 from 9 a.m.–6:30 p.m. and October 19 from 9 a.m.–4 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 19 from 1 p.m.–4 p.m. The topic will be policy discussion.

The remaining portions of this meeting on October 17–18 from 9 a.m.–6:30 p.m. and October 19 from 9 a.m.–1 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of August 7, 1990, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which ar open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's

discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: September 20, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-22963 Filed 9-27-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Pursuant to the Nuclear Waste Technical Review Board's (NWTRB) authority under section 5051 of Public Law 100-203 of the Nuclear Waste Policy Amendment Act (NWPAA) of 1987, the NWTRB Transportation & Systems Panel will hold a panel meeting from 9 a.m.-4 p.m. on October 22, 1990, at the Holiday Inn Capitol, Columbia South Room, 550 C Street, SW., Washington, DC 20024; (202) 479-4000. The focus will be on transportation issues pertinent to the Department of Energy's (DOE) program for the disposal of spent nuclear fuel and defense high-level waste.

Topics of discussion with the DOE will include (1) DOE response to prior NWTRB transportation recommendations; (2) spent fuel transportation protection and safeguards; (3) transportation operational planning; and (4) minimizing waste handling within the waste management system.

The public is welcome to participate as observers. Those who wish to attend should contact the NWTRB office (703-235-4473) on or before October 15, 1990. The meeting will be transcribed, and transcripts will be available beginning November 16, 1990, through the NWTRB library on a two-week loan basis. Those interested should contact Ms. Victoria Reich, NWTRB librarian, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209 (703) 235-4473.

The NWTRB was established by the Nuclear Waste Policy Amendments Act (NWPAA) of 1987 (Pub. L. 100-203) to evaluate the scientific and technical validity of activities undertaken by the DOE in its civilian nuclear waste disposal program. The board is also charged with evaluating activities relating to the packaging or transportation of high-level waste or spent fuel. In the same law, the U.S. Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for a possible location of a permanent underground repository for spent nuclear fuel and defense high-level waste.

For further information please contact the NWTRB office at 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209, (703) 235-4473.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 90-23016 Filed 9-27-90; 8:45 am]

BILLING CODE 6820-AM-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440]

The Cleveland Electric Illuminating Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58, issued to The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to the definition of Primary Containment Integrity-Shutdown to provide limited flexibility during performance of 10 CFR part 50 appendix J Type C leak rate testing of containment isolation valves to allow up to six (6) ¾-inch vent and drain lines to be open on those penetrations that would otherwise not be testable when this specification is applicable.

The proposed action is in accordance with the licensees' application for amendment dated March 16, 1990.

The Need for the Proposed Action

The proposed change to the TS is needed in order to allow the licensees the flexibility to perform Type C local leak rate tests, as required by 10 CFR part 50, appendix J, which would otherwise not be able to be performed when Primary Containment Integrity-Shutdown is required. Performance of local leak rate testing activities when this specification is applicable has the potential to reduce outage durations by increasing the time available to perform this potential critical path testing activity and to permit additional time for isolation valve repair and retesting, if required, subsequent to initial testing and surveillance.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to TS and concludes that the calculated offsite doses, assuming a postulated fuel handling accident while the six lines are open and using a 7-day delay time (minimum time between start of the refueling outage and conduct of Type C local leak rate testing) are well within the dose reference values of 10 CFR part 100 and are within the acceptance criteria given in Standard Review Plan § 15.7.4. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on April 5, 1990 (55 FR 12756). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential nonradiological impacts, the proposed change to the TS involves a change to surveillance and testing requirements, specifically with regard to maintaining containment integrity while moving fuel. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This

would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements Related to Operation of Perry Nuclear Power Plant, Units 1 and 2, dated August 1987.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 16, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 20th day of September 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-22971 Filed 9-27-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

The Union Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 57 to Facility Operating License No. NPF-30, issued to the Union Electric Company (the licensee), which revised the Technical Specifications for operation of the Callaway Plant Unit 1 located in Callaway County, Missouri. The amendment was effective as of the date of issuance.

The amendment modified the Technical Specification Tables 2.2-1, 3.3-4, and 4.3-1 and associated Bases to accommodate the replacement of the current Resistance Temperature Detector (RTD) bypass system with an RTD/thermowell system mounted directly into the hot and cold legs of the reactor coolant system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opprotunity for Prior Hearing in connection with this action was published in the **Federal Register** on June 14, 1990 (55 FR 24172). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and had determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) The application for amendment dated April 12, 1990, and supplemented by letter dated July 7, 1990, (2) Amendment No. 57 to License No. NPF-30, (3) the Commission's related Safety Evaluation dated September 20, 1990, and (4) the Environmental Assessment dated September 5, 1990. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building 2120 L Street NW., Washington, DC and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 20th day of September 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-22971 Filed 9-27-90; 8:45 am]

BILLING CODE 7590-01-M

Potassium Iodide

AGENCY: Nuclear Regulatory Commission.

SUMMARY: The purpose of this notice is to inform the public that, because of new information, the analysis supporting the current federal policy regarding the distribution and use of Potassium Iodide (KI) as a thyroidal blocking agent during accidents at nuclear power plants in being revised. Preliminary analysis of this new information indicates that the cost-benefit ratio associated with stockpiling KI may have narrowed. As a result of this new information and a request by the American Thyroid Association to establish a national stockpile of KI, the current federal policy regarding the stockpiling and use of KI is undergoing a reexamination.

FOR FURTHER INFORMATION CONTACT: Leonard Soffer, Severe Accident Issues Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301-492-3916).

BACKGROUND: On July 24, 1985 the present federal policy (50 FR 30258) on distribution of Potassium Iodide (KI) around nuclear power sites for use as a thyroidal blocking agent was issued. In summary, the federal policy recommends the stockpiling of KI and its distribution for emergency workers and institutionalized persons, but does not recommend requiring predistribution or stockpiling for the general public. The basis for this policy is that, in the event of an accident, protective actions are planned and would be taken for the general public that are capable of reducing doses to all body organs, and not merely the thyroid gland. This policy is advisory for state and local governments which can, within the limits of their authority, take measures beyond those recommended or required nationally. In this regard, two states (Alabama and Tennessee) have decided to stockpile or predistribute KI tablets for use by the public in the event of a serious reactor accident.

Since issuance of this policy, new information regarding KI has become available. Information is now becoming available on the experience during the Chernobyl accident in the Soviet Union in April 1986 where significant quantities of KI were administered by Polish and Soviet authorities. Additionally, since completion of the original analysis in 1980 supporting the federal policy (NUREG/CR-1433),

information has become available indicating a reduction in iodine releases associated with a severe reactor accident and a reduced cost and increased shelf-life of KI. Preliminary analysis of this information indicates that the cost-benefit ratio which supports the current federal policy may have narrowed from the 1980 analysis. Further, in September 1989, representatives of the American Thyroid Association (ATA) requested that a national stockpile of KI be established. In view of this request and the availability of new information which affects the underlying analysis, an effort to reexamine the federal policy on KI has been undertaken.

ACTIVITIES UNDERWAY: The Nuclear Regulatory Commission (NRC) is presently preparing an update of the original 1980 analysis (NUREG/CR–1433). The updated report will consider the latest available research on estimated iodine releases from severe reactor accidents, will incorporate the most recent estimates on risk to the thyroid from internal radioiodine exposure, and will factor in revised values for cost and shelf-life of KI. This report is expected to be issued by July 1991 to state and local authorities and to the public.

In parallel, as a result of the request by the ATA to establish a national stockpile of KI, the Federal Radiological Preparedness Coordinating Committee (FRPCC) has requested that the Department of Health and Human Services, through the Centers for Disease Control (CDC), convene an *ad hoc* meeting of experts in this field to solicit and review relevant scientific information on this issue, and to provide its recommendations to the FRPCC. Accordingly, a workshop on the scientific and medical aspects of KI was held in Atlanta on July 24, 1990. The review by CDC will consider the available new information noted above. The CDC is expected to provide its recommendations to the FRPCC on whether the current federal policy should be reassessed by November 1990. Should the FRPCC determine that the federal policy warrants reassessment by all involved federal agencies, an associated schedule for accomplishing this would be established.

Dated at Rockville, Maryland, this 21st day of October 1990.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 90–22974 Filed 9–27–90; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended September 21, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47183.
Date filed: September 20, 1990.
Parties: Members of the International Air Transport Association.
Subject: Composite Resolutions R–1 to R–21.
Proposed Effective Date: April 1, 1991.

Docket Number: 47184.
Date filed: September 20, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 428—Fares from Ecuador to Central America.
Proposed Effective Date: October 1, 1990.

Docket Number: 47185.
Date filed: September 20, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 429—PEX fares from Japan to Southeast Asia.
Proposed Effective Date: October 28, 1990.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90–22919 Filed 9–27–90; 8:45 am]

BILLING CODE 4910–62–M

Notice of Applications for Certificates of Public Convenience and Neecessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 21, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in approrpiate cases a final order without further proceedings.

Docket Number: 47176.
Date filed: September 17, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 5, 1990.
Description: Application of Robiton Aereo, C. Por A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit authorizing the carriage of property and mail on a scheduled basis between a point or points in the Domincan Republic and Miami, Florida and San Juan, Puerto Rico. Robiton also requests that it be granted authority to operate cargo charters subject to the Department's rules and regulations.

Docket Number: 47180.
Date filed: September 19, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 3, 1990.
Description: Conforming Application of America West Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests a new or amended certificate of public convenience and necessity authorizing it to provide service between Phoenix, Arizona, Las Vegas, Nevada and Los Angeles, California, on the one hand, and Mexico City, Mexico, on the other.

Docket Number: 47181.
Date filed: September 19, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 3, 1990.
Description: Conforming Application of United Air Lines, Inc., pursuant to section 401 and subpart Q of the Regulations, requests a certificate of public convenience and necessity to authorize service between Los Angeles, California, and Mexico City, Mexico.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90–22920 Filed 9–27–90; 8:45 am]

BILLING CODE 4910–62–M

[Docket No. 47090]

United States-United Kingdom Regional Airport Case; Notice of Hearing

Notice is hereby given that the hearing in the above entitled matter will begin at 10 a.m. on October 9, 1990 and run for the necessary consecutive weekdays. The hearing site is in room 5332, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Questions concerning this proceeding that require a telephonic discussion should be telephoned to (202) 366–2144.

Notice is also given that in the event that funding for the Department of Transportation for Fiscal Year 1991 has not been effected by the Congress by October 4, 1990, thereby (1) precluding the timely procurement of a court reporter for the transcription of the hearing and/or (2) requiring the furloughing of Department employees

who are participating in this proceeding, a further notice postponing the hearing will then issue as will a subsequent notice extending the target date for issuance of the judge's recommended decision.

Burton S. Kolko,

Administrative Law Judge.

Attachment: *Revised* Service List

Service List

Carl B. Nelson, Jr., American Airlines, Inc., 1101 17th Street NW., suite 600, Washington, DC 20036
Robert P. Silverberg, Esq., Timothy J. Lynes, Esq., Condon & Forsyth, 1100 Fifteenth Street NW., Washington, DC 20005
Richard B. Jamison, Director of Airports, Detroit Metropolitan Wayne County Airport, L.C. Smith Terminal, Detroit, MI 48242
James R. Weiss, Preston, Gates Ellis & Rouvelas Meeds, 1735 New York Avenue NW., suite 500, Washington, DC 20590
Susan E. Neugent, Director, Regional Development Department, Atlanta Chamber of Commerce, P.O. Box 1740, Atlanta, GA 30301
Bill Alberger, Bishop, Cook, Purcell & Reynolds, 1400 L Street NW., 8th floor, Washington, DC 20005-3502
Stephen L. Gelband, Hewes, Morella, Gelband & Lamberton, 1000 Potomac Street NW., Washington, DC 20007
David T. Beddow, Nancy E. McFadden, O'Melveny & Myers, 555 13th Street NW., Washington, DC 20004
Ronald D. Eastman, Esq., Cadwalader, Wickersham & Taft, Northwest Airlines, Inc., 1333 New Hampshire Avenue NW., suite 700, Washington, DC 20036
William L. Wagner, Office of Aviation Enforcement & Proceedings, room 4116, C-70, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590
Pittsburth Parties, B. Waring Partridge, III, Esq., The Partridge Group Chartered, 131 C Street SE., Washington, DC 20003
Robert E. Cohn, Counsel for Delta Air Lines, Inc., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037
Hugh H. Welsh, Assistant General Counsel, 67E One World Trade Center, New York, NY 10048
James P. Pitz, Director, Michigan Department of Transportation, Transportation Building, 425 W. Ottawa, Lansing, MI 46909
George N. Kenyon Jr., Trans World Airlines, Inc., 100 South Bedford Road, Mt. Kisco, NY 10549
Joel Stephen Burton, Esq., Ginsburg, Feldman & Bress, Chartered, United Air Lines, Inc., 1250 Connecticut Avenue NW., suite 800, Washington, DC 20036
Judith Richards Hope, Paul Hastings Janofsky & Walker, 1050 Connecticut Avenue NW., 12th floor, Washington, DC 20036
Ambassador, British Embassy, 3100 Massachusetts Avenue NW., Washington, DC 20008
Charles Angevine, Department of State, Office of Aviation, 2201 C Street NW., Washington, DC 20520
Robert S. Goldner, Esq., room 9216, P-7, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590
Dockets, Department of Transportation, room 4107, 400 Seventh Street SW., Washington, DC 20590
The Honorable Burton S. Kolko, Administrative Law Judge, Office of Hearings, room 9228, M-50, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

[FR Doc. 90-22992 Filed 9-27-90; 8:45 am]

BILLING CODE 4910-62-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Anthony Van Dyck: Paintings in the Grand Manner" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about November 11, 1990, to on or about February 24, 1991, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: September 24, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-22962 Filed 9-27-90; 8:45 am]

BILLING CODE 8230-01-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 350(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 addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: September 21, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration
2. Titles of the Information Collection
   a. Equal Opportunity Compliance Review Report
   b. Supplement to Equal Opportunity Compliance Review Report
3. Department Form Numbers
   a. VA Form 27-8734
   b. VA Form 27-8734a
4. VA Forms 27-8734 and 27-8734a are used to gather information from post-secondary proprietary schools below college level and their students and instructors to verify compliance by recipients of VA Federal financial assistance. The information is used to assure that

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619-5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

VA Federally-funded programs are operated and participants are assured equal access and equal treatment in compliance with equal opportunity laws.
5. On occasion
6. Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
7. Estimated Number of Responses
   a. 82–VA Form 27–8734
   b. 246 (164 students and 82 instructors)—VA Form 27–8734a
8. Hours Per Response
   a. 1 hour—VA Form 27–8734
   b. ½ hour—VA Form 27–8734a
9. Not applicable.

[FR Doc. 90–22944 Filed 9–27–90; 8:45 am]
BILLING CODE 8320–01–M

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 addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: September 21, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration
2. Application for Amounts on Deposit for Deceased Veterans
3. VA Form 21–6898
4. The form is used to gather the necessary information to determine who is the proper payee of gratuitous benefits deposited by VA in the Personal Funds of Patients for a veteran during hospitalization and due the veteran at the date of his or her death.
5. On occasion
6. Individuals or households
7. 700 responses
8. ¼ hour
9. Not applicable

[FR Doc. 90–22945 Filed 9–27–90; 8:45 am]
BILLING CODE 8320–01–M

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 addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: September 20, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration
2. Monthly Certification of Flight Training
3. VA Form 22–6553c
4. The form is used by students (veterans, service members and reservists) and flight schools to report the hours and cost of flight training received and the termination of training. The information is used to determine the amount of benefits payable to the student who is pursuing flight training.
5. On occasion; Monthly
6. Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
7. 19,200 responses
8. ½ hour
9. Not applicable

[FR Doc. 90–22946 Filed 9–27–90; 8:45 am]
BILLING CODE 8320–01–M

Advisory Committee on Cemeteries and Memorials; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Secretary's Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 1001, will be held at Arlington National Cemetery, Superintendent's Conference Room, Arlington, Virginia, on October 24–25, 1990.

Both sessions will begin at 9:00 a.m. to conduct routine business. The meeting will be open to the public up to the seating capacity which is about twenty persons. Those wishing to attend should contact Mr. Sydney Farrar, Staff Assistant, National Cemetery System, (phone 202–233–7980) no later than 12 noon, EST October 16, 1990.

Agenda items will include: (1) Discussion of the overall operation of the National Cemetery System; (2) Volunteer initiatives; (3) Educational

programs; (4) World War II 50th Anniversary celebrations.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC 20402. In any such letters, the writers must fully identify themselves and state the organization, association or person they represent. To the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver them to the Director, National Cemetery System. Letters and written statements as discussed must be mailed or delivered in time to reach the Director, National Cemetery System by 12 noon EST October 16, 1990. Oral statements will be heard only between 1:30 p.m. and 2 p.m.

DATED: September 21, 1990.

By direction of the Secretary:

Sylvia Chavez-Long,

Committee Management Officer.

[FR Doc. 90-22942 Filed 9-27-90; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee for Health Research Policy; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92-463 as amended by Pub. L. 94-409), VA (Department of Veterans Affairs) gives notice that a meeting of the Advisory Committee for Health Research Policy will be held at the Holiday Inn-University Center, 100 Lytton Avenue, Pittsburgh, Pennsylvania 15213 on November 16 and 17, 1990, beginning at 8 a.m. each day. The purpose of this meeting is to complete the set of recommendations to the Secretary of Veterans Affairs for strengthening the VA medical and prosthetic research program. The Committee's original charge was published in 55 FR 2478 (1/24/90).

The meeting will be open to the public and a brief period is set aside at the end of the meeting for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the VA official named below at least 3 days before the meeting.

Persons wishing additional information regarding the meeting or who wish to submit written statements may contact Dr. Prakash Grover, Chief, HSR&D Special Projects Office (641/152), VA Medical Center, Perry Point, MD; Telephone (301) 642-2411, ext. 5448.

Dated: September 21, 1990.

By direction of the Secretary:

Sylvia Chavez-Long,

Committee Management Officer.

[FR Doc. 90-22943-Filed 9-27-90; 8:45 a.m.]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 189
Friday, September 28, 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., Thursday, October 4, 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: September 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–23161 Filed 9–26–90; 1:40 pm]

BILLING CODE 6210-01-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 2:14 p.m. on Tuesday, September 25, 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; and (2) terminating assistance agreements between FDIC/FRF and thrifts placed into conservatorship and/or receivership.

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 Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its 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: September 26, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–23155 Filed 9–26–90; 12:54 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 55, No. 188
day, September 28, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-50574B; FRL 3743-6]

Certain Chemical Substances; Significant New Use Rule and Addition to Health and Safety Data Reporting Rule

Correction

In rule document 90-20602 beginning on page 35628 in the issue of Friday, August 31, 1990, make the following correction:

The table appearing in § 716.120 on pages 35631 and 35632 should have read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

CAS No.	Substance	Special Exemptions	Effective Date	Sunset Date
* * * * * * *				
75-88-7	Ethane, 2-chloro-1,1,1-trifluoro-		10/15/90	10/15/00
* * * * * * *				
306-83-2	Ethane, 2,2-dichloro-1,1,1-trifluoro-		10/15/90	10/15/00
* * * * * * *				
354-33-6	Ethane, pentafluoro-		10/15/90	10/15/00
* * * * * * *				
811-97-2	Ethane, 1,1,1,2-tetrafluoro-		10/15/90	10/15/00
* * * * * * *				
1649-08-7	Ethane, 1,2-dichloro-1,1-difluoro-		10/15/90	10/15/00
1717-00-6	Ethane, 1,1-dichloro-1-fluoro-		10/15/90	10/15/00
* * * * * * *				
2873-69-0	Ethane, 2-chloro-1,1,1,2-tetrafluoro-		10/15/90	10/15/00
* * * * * * *				

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3787-8]

Approval and Promulgation of Implementation Plans; Illinois

Correction

In the correction to rule document 90-13929 [55 FR 28814; June 29, 1990] beginning on page 31981 in the issue of Monday, August 6, 1990, items 5, 11, 18, 19, and 21 were incorrectly set forth and should be replaced by the following:

5. In § 52.741(a)(8)(ii), on page 26867, at the top of the second column the formula should have appeared as follows:

$$P_{vol} = \sum_{i=1}^{n} P_i X_i$$

11. On page 26874, in the second column, in § 52.741(h)(1)(ii)(A), the equation at the bottom of the page should have appeared as follows:

$$VOM_{(j)(A)} = \frac{\sum_{i=1}^{n} C_i L_i (V_{si} + V_{VOMi})}{\sum_{i=1}^{n} L_i (V_{si} + V_{VOMi})}$$

18. On page 26889, at the top of the third column, in appendix B, section 7.1, the equation should have appeared as follows:

$$G = \sum_{j=1}^{n} (C_{Gj} - C_B) Q_{Gj} T_C K_1 \qquad \text{Eq. 1}$$

19. On page 26889, in the third column, under section 7.4, the equation should appear as follows:

$$C_B = \frac{\sum_{i=1}^{n} C_{Bi} A_i}{n A_N} \quad \text{Eq. 4}$$

21. On page 26891, in the third column, the equation in section 7.2 should appear as follows:

$$C_{Gj} = DF(C_{j+} - C_{DO}) \frac{C_H}{C_{DH} - C_{DO}} \quad \text{Eq. 2}$$

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD-673-F]

RIN 0938-AE56

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1991 Rates

Correction

In rule document 90-20667 beginning on page 35990 in the issue of Tuesday, September 4, 1990, make the following corrections:

1. On page 36020, in the first column, in the first full paragraph, in the 13th line "years" should read "days".

2. On page 36022, in the third column, in the first full paragraph, in the 26th line "with" should read "will".

3. On page 36023, in the third column, in the second full paragraph, in the 11th line "imputed" was misspelled.

4. On page 36024, in the third column, under item 5, in the second paragraph, in the ninth line "of" should read "or".

PART 412—[AMENDED]

5. On page 36068, in the second column, in the authority citation for part 412, on the third line "1394hh, and 1394ww" should read "1395hh, and 1395ww".

§ 412.75 [Corrected]

6. On page 36069, in the third column, in § 412.75(h)(2)(iii), in the fourth line "§ 45.1875" should read "§ 405.1875".

7. On the same page, in the same column, in § 412.75(h)(3), in the second line "paragraph" should be made plural.

§ 412.118 [Corrected]

8. On page 36070, in the third column, in § 412.118(f)(3), in the third line "regardless" was misspelled.

PART 413—[AMENDED]

9. On page 36071, in the third column, in the first line of item B "(i)(3),(viii)" should read "(i)(3)(viii)".

10. On page 36135, in the third column, in Table 6g, in the description to procedure code 11.69 "corneal" was misspelled.

11. On page 36136, in the first column, in the same table , in the description to procedure code 12.92 "interior" should read "anterior".

12. On the same page, in the second column, in the same table, in the description to procedure code 15.29 "extraocular, muscle" should read "extraocular muscle".

13. On page 36139, in the third column, in Table 6k, in the descriptions to both diagnosis codes 202.81 and 202.91 delete the period and insert ", NOS." after "neck".

14. On page 36167, in the second column, in entry 2, in the seventh full paragraph in the seventh line "solely" should read "sole".

15. On page 36169, in Table III, in the first column, in the sixth entry, "Puerto Rico" was misspelled.

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-36175; FRL 3775-9]

Reevaluation and Update of Pesticide Assessment Guidelines, Subdivision F, Hazard Evaluation: Human and Domestic Animals

Correction

In notice document 90-21891 beginning on page 38578 in the issue of Wednesday, September 19, 1990, make the following correction:

On page 38579, after the table, in the second line of the third column, "January 17, 1990" should read "January 17, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[A583-808]

Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan

Correction

In notice document 90-22720 beginning on page 39033 in the issue of Monday, September 24, 1990, make the following correction:

In the third column, the second complete sentence (reading "This includes sweaters 23 percent or more by weight of wool.") should read "This excludes sweaters 23 percent or more by weight of wool."

BILLING CODE 1505-01-D

federal register

Friday,
September 28, 1990

Part II

Department of Education

Office of Postsecondary Education

Patricia Roberts Harris Fellowship Program—Graduate and Professional Study Fellowships; Notice of Proposed Priority

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships; Notice of Proposed Priority

AGENCY: Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Secretary of Education proposes to establish a competitive preference priority for the fiscal year 1991 grant competition under the Patricia Roberts Harris Fellowships Program for Graduate and Professional Study Fellowships authorized under Title IX, Part B of the Higher Education Act of 1965, as amended. Under this competitive priority, the Secretary would award five points, in addition to the points awarded under the program selection criteria, to those applications for the Patricia Roberts Harris Fellowships Program for Graduate and Professional Study Fellowships proposing to award fellowships only to students pursuing a program of studies leading to a Ph.D. degree. This priority would increase the number of fellowships to students pursuing a Ph.D. degree and respond to the need for faculty and researchers in postsecondary institutions over the next decade.

DATES: Comments must be received on or before October 29, 1990.

ADDRESSES: All comments concerning this proposed priority should be addressed to Dr. Charles H. Miller, Office of Postsecondary Education, Division of Higher Education Incentive Programs, U.S. Department of Education (Room 3022, ROB–3), 400 Maryland Avenue, SW., Washington, DC 20202–5251.

FOR FURTHER INFORMATION CONTACT: Dr. Charles H. Miller, (202) 708–8395.

SUPPLEMENTARY INFORMATION: Under the Patricia Roberts Harris Fellowship Program, the Secretary is authorized to provide grants to institutions of higher education to support fellowships for graduate and professional studies to students who demonstrate financial need and are from groups which are traditionally underrepresented in graduate and professional study areas of high national priority.

Over the past decade, the number of United States citizens and permanent residents pursuing a Ph.D. degree has declined. This decline has been particularly acute among members of groups traditionally underrepresented in postbaccalaureate programs—minorities and women. Additionally, those students earning this degree are selecting employment outside of the academic sector. These factors are contributing to a shrinking pool of United States citizens and permanent residents, particularly among minorities and women, qualified for faculty and research positions in postsecondary institutions.

Recent studies conducted by leading educators, national associations and a Congressional committee point out the need to address the Ph.D. shortage now. The 1990 Association of American Universities (AAU) policy statement, "The Ph.D. Shortage: The Federal Role," details the effects of the continued decline of Ph.D.s on America's major research universities and institutes and the need for federal assistance in expanding the pool of U.S. citizens eligible for the Ph.D. degree. AAU notes that the failure to begin increasing Ph.D.s today will contribute to the severity of the Ph.D. shortage projected over the next twenty-five years, resulting in a demand for Ph.D.s among universities that will far surpass the supply. To address this impending Ph.D. shortage and to blunt its impact on the nation, AAU urges the federal government to make doctoral studies a priority, particularly in those programs focused on minorities and women.

In 1987, a majority of American citizens who received a Ph.D. and who had an employment commitment at graduation accepted an appointment at a 2- or 4-year college, a university, or a medical school. The Secretary believes that this proposed priority will result in an increase of Ph.D.s holding faculty positions at postsecondary institutions across the country.

In consideration of the foregoing and under the procedures in the Education Department General Administrative Regulations at 34 CFR 75.105(c)(2)(i), the Secretary proposes to establish the following priority for the fiscal year 1991 Patricia Roberts Harris Fellowships Program grant competition for Graduate and Professional Study Fellowships.

Awards are contingent upon the availability of appropriations for FY 1991. No funds have been appropriated at this time.

Proposed priority: The Secretary proposes to give a five point competitive preference to applications that meet the following priority:

Applications under the Patricia Roberts Harris Fellowships Program for Graduate and Professional Study proposing to award fellowships only to students currently enrolled or about to enroll in a Ph.D. program.

These points are in addition to any points the application earns under the selection criteria for the program. The Secretary does not intend or anticipate that the application of this priority will result in the elimination of institutions of higher education not awarding Ph.D. degrees from receiving grants under this competition.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this priority will be available for public inspection, during and after the comment period, in Room 3022 Regional Office Building Number 3 (7th and D Street, SW), Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except on Federal Holidays.

Authority: 20 U.S.C. 1134d–1134f.

Dated: September 24, 1990.

Catalog of Federal Domestic Assistance Numbers 84.094B—Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90–22939 Filed 9–27–90; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
September 28, 1990

Part III

Environmental Protection Agency

40 CFR Parts 712 and 716

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals; Final Rule

40 CFR Parts 712 and 716

[OPTS-82035; FRL-3773-3]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Interagency Testing Committee (ITC) in its Twenty-sixth Report to EPA recommended that EPA give priority consideration to one chemical substance and three categories of chemical substances in proposing test rules to assist EPA in determining which, if any, tests are needed for the substance and categories. EPA is adding the substance and categories to two model information-gathering rules: The Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA section 8(d) Health and Safety Data Reporting Rule. These model rules will require manufacturers, importers, and processors of the specific substances and members of the categories to report production, use, exposure-related, and unpublished health and safety data to EPA.

This rule adds one substance and three categories of substances (with 76 individual substances identified) to the PAIR and the same substance and categories (with 64 individual substances identified) to the 8(d) Health and Safety Data Reporting Rule. Several of the substances in the categories recommended by the ITC are already listed on either the PAIR, the section 8(d) Health and Safety Data Reporting Rule, or the Comprehensive Assessment Information Rule (CAIR), and have not been included in this rule.

EFFECTIVE DATE: This rule will become effective on October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. E-543, Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This rule adds one substance and three categories of substances to the PAIR and the section 8(d) Health and Safety Data Reporting Rule and adds a new section § 716.120(d) for listing category members. Manufacturers, processors, and importers of these chemicals will be required to report unpublished health and safety data and/or end use, exposure, and production volume data to EPA.

I. Background

Section 4(e) of TSCA established the ITC and authorized it to recommend to EPA chemical substances and mixtures (chemicals) to be given priority consideration in proposing test rules under section 4. For some of these chemicals, the ITC may designate that EPA must respond to its recommendations within 12 months. In this time, EPA must either initiate a rulemaking to test the chemical or publish in the Federal Register its reasons for not doing so.

On May 8, 1990, EPA announced the receipt of the Twenty-sixth Report of the ITC (55 FR 23050). The Twenty-sixth Report revises and updates the Committee's priority list of chemicals and adds 1 chemical substance and 3 categories containing 79 substances to the section 4(e) priority list. This rule adds the chemical substance and the three categories of substances to the PAIR and to the section 8(d) Health and Safety Data Reporting Rule. These two rules are model information gathering rules which assist EPA in responding to the ITC recommendations.

EPA issued the PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR part 712. This model section 8(a) rule establishes standard reporting requirements for manufacturers and importers of the chemicals listed in the rule at 40 CFR 712.30. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure-related information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35). EPA uses this model section 8(a) rule to gather current information on chemicals of concern quickly.

EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR part 716. The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemicals to submit to EPA copies and lists of unpublished health and safety studies on the listed chemicals that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

These model rules provide for the automatic addition of ITC priority list chemicals. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time without further notice and comment, amend the two model information-gathering rules by adding the recommended chemicals. The amendment adding these chemicals to the PAIR and the Health and Safety Data Reporting Rule becomes effective 30 days after publication.

II. Chemicals To Be Added

In its Twenty-sixth Report to EPA, the ITC recommended for priority consideration one substance and three categories of substances with a total of 79 substances identified in the three categories.

The substances listed by the ITC designation follow in ascending Chemical Abstract Service (CAS) Registry Number order:

A. *Designated for response within 12 months*:

None.

B. Recommended With Intent-to-Designate

CAS No.	Chemical Substance
143-33-9	Sodium cyanide
Isocyanates:	
91-08-7	2,6-Toluene diisocyanate
91-97-4	4,4'-Diisocyanato-3,3'-dimethylbiphenyl
100-28-7	p-Nitrophenyl isocyanate
101-68-8	4,4'-Diphenylmethane diisocyanate
102-36-3	3,4-Dichlorophenyl isocyanate
103-71-9	Phenyl isocyanate
104-12-1	p-Chlorophenyl isocyanate
104-49-4	p-Phenylene diisocyanate
109-90-0	Ethyl isocyanate
110-78-1	n-Propyl isocyanate
111-36-4	n-Butyl isocyanate
112-96-9	Octadecyl isocyanate
123-61-5	1,3-Diisocyanatobenzene
329-01-1	(alpha,alpha,alpha-Trifluoro-m-tolyl)isocyanate
584-84-9	2,4-Toluene diisocyanate
614-68-6	1-Isocyanato-2-methylbenzene
622-58-2	1-Isocyanato-4-methylbenzene
624-83-9	Methyl isocyanate
1476-23-9	3-Isocyanato-1-propene
2422-91-5	1,1',1''-Methylidynetris(4-isocyanatobenzene)
2493-02-9	1-Bromo-4-isocyanatobenzene
2909-38-8	1-Chloro-3-isocyanatobenzene
2949-22-6	Ethyl isocyanatoacetate
3173-53-3	Cyclohexyl isocyanate
4035-89-6	Tris(isocyanatohexyl)biuret
4098-71-9	Isophorone diisocyanate
4151-51-3	Tris(4-isocyanatophenyl) thiophosphate
5124-30-1	1,1'-Methylenebis(4-isocyanatocyclohexane)
5873-54-1	1-Isocyanato-2-((4-isocyanatophenyl)methyl)benzene
10031-75-1	Diphenylmethylene diisocyanate
15646-96-5	1,6-Diisocyanato-2,4,4-trimethylhexaney
16938-22-0	1,6-Diisocyanato-2,2,4-trimethylhexane
25854-16-4	Bis(isocyanatomethyl)benzene
26447-40-5	1,1'-Methylenebis-(isocyanatobenzene)
26471-62-5	Toluene diisocyanate
26603-40-7	1,3,5-Tris(3-isocyanatomethylphenyl)1,3.5-triazine-2,4,6(1H,3H,5H)-trione

B. Recommended With Intent-to-Designate—Continued

CAS No.	Chemical Substance
26747-90-0	Toluene diisocyanate dimer
28178-42-9	2,6-Diisopropylphenyl isocyanate
28556-81-2	2-Isocyanato-1,3-dimethylbenzene
30674-80-7	2-Isocyanatoethyl methacrylate
34893-92-0	3,5-Dichlorophenyl isocyanate
68239-06-5	2-Heptyl-3,4-bis(9-isocyanatononyl)-1-pentylcyclohexane
73597-26-9	Isophorone diisocyanate, hydroxyethylmethacrylate adduct

C. Recommended Without Being Designated for Response Within 12 Months

CAS No.	Chemical Substance
Brominated flame retardants:.	
74-97-5	Bromochloromethane
87-10-5	3,4',5-Tribromosalicylanilide
87-83-2	2,3,4,5,6-Pentabromotoluene
87-84-3	1,2,3,4,5-Pentabromo-6-chlorocyclohexane
96-13-9	2,3-Dibromopropanol
593-60-2	Vinylbromide
615-58-7	2,4-Dibromophenol
4162-45-2	Ethoxylated tetrabromobisphenol A
25327-89-3	Tetrabromobisphenol A, bis(allyl ether)
30554-72-4	Tetrabromodichlorocyclohexane
30554-73-5	Tribromotrichlorocyclohexane
36483-57-5	Tribromoneopentyl alcohol
55205-38-7	Tetrabromobisphenol A diacrylate
68955-41-9	Alkanes, C10-18, bromo chloro
69882-11-7	2,4-(or 2,6)-Dibromophenol, homopolymer
88497-56-7	Benzene, ethenyl-, homopolymer, brominated
Alkyl phosphates: ..	
78-40-0	Triethyl phosphate
78-42-2	Tris(2-ethylhexyl)phosphate
78-51-3	Tris(2-butoxyethyl)phosphate
107-66-4	Dibutyl phosphate
126-71-6	Triisobutyl phosphate
126-73-8	Tributyl phosphate
298-07-7	Di(2-ethylhexyl)phosphate
812-00-0	Monomethyl phosphate
1070-03-7	Mono(2-ethylhexyl)phosphate 70
1498-51-7	Ethyl dichlorophosphate
1623-15-0	Monobutyl phosphate
1623-24-1	Mono(isopropyl) phosphate
2958-09-0	Monooctadecyl phosphate
3900-04-7	Monohexyl phosphate
3991-73-9	Monooctyl phosphate
7057-92-3	Didodecyl phosphate
7332-46-9	2-(2-Butoxyethoxy)ethanol phosphate (3:1)
12645-31-7	2-Ethylhexyl phosphate
12751-23-4	Dodecyl phosphate
27215-10-7	Diisooctyl phosphate

Several of the chemical substances in the categories recommended by the ITC are already listed in the PAIR, the section 8(d) Health and Safety Data Reporting Rule, or the CAIR. As discussed below, these substances are excluded from the amendments to the PAIR and section 8(d) rules being promulgated today. (Note that the chemical names on the ITC Priority List are the common names while the names used in this rule are from the TSCA Chemical Substance Inventory.)

Fifteen of the substances are already listed in the section 8(d) Health and Safety Data Reporting Rule: Phosphoric acid, tributyl ester (CAS No. 126–73–8) was added on May 19, 1986 (51 FR 18323), and the remaining 14 were added on May 1, 1987 (52 FR 16022). The Agency will not add these substances to the section 8(d) Health and Safety Data Rule at this time, because these substances are already listed and subject to a 10–year reporting period.

In addition, three chemical substances from the isocyanates group were added to CAIR on December 22, 1988 (53 FR 246): 2,6-toluene diisocyanate (CAS No. 91–08–7), 2,4-toluene diisocyanate (CAS No. 584–84–9) and toluene diisocyanate (CAS No. 26471–62–5). Since the CAIR asks questions which are similar to some of the PAIR questions, EPA has decided not to require PAIR reporting for these three substances. However, if the information received under the CAIR is not sufficient, the Agency reserves the right to require the PAIR reporting at a later time. (Note that these 3 substances are also 3 of the 15 substances not being added to the section 8(d) Health and Safety Data list as noted above.)

Phenyl isocyanate (CAS No. 103–71–9), ethene bromo- (CAS No. 593–60–2) and phosphoric acid, and tributyl ester (CAS No. 126–73–8) were each previously placed on the 8(a) PAIR list (Phenyl isocyanate and ethene bromo- in 1982 (47 FR 26992) and phosphoric acid in 1986 (51 FR 18323)). However, EPA needs updated information on these substances, and therefore has included these substances in today's rule.

III. Reporting Requirements

A. Preliminary Assessment Information Rule

All persons who manufactured or imported the chemical substances named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35) for each manufacturing or importing site at which they manufactured or imported a named chemical substance. A separate form must be completed for each chemical substance and submitted to the Agency no later than December 27, 1990. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA may be able to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. See § 712.30(a)(3).

Details of the reporting requirements, the basis for exemptions, and a facsimile of the reporting form, are provided in 40 CFR part 712. Copies of the form are available from the TSCA Environmental Assistance Division at the address listed under **FOR FURTHER INFORMATION CONTACT.**

B. Health and Safety Data Reporting Rule

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a substance is listed, either have proposed to manufacture, import, or process, or have manufactured, imported, or processed, the listed substance must submit to EPA: A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, propose to manufacture, import, or process; or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete--regardless of completion date

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and is being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete--regardless of the completion date.

The bulk of reporting is required at the time the substance is listed. Persons described in categories 1 and 2 do all or most of their health and safety data reporting at the start of the reporting period. The remaining reporting requirements, specifically categories 2(d), 2(e), and 3, continue prospectively.

Detailed guidance for reporting unpublished health and safety data is provided in the **Federal Register** of September 15, 1986 (51 FR 32720). Also found there are the reporting exemptions.

C. Submission of PAIR Reports and Section 8(d) Studies

PAIR reports and section 8(d) health and safety studies must be sent to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: (insert either PAIR or 8(d) Reporting).

D. Removal of Chemicals from the Rules

Any person who believes that section 8(a) or 8(d) reporting required by this rule is unwarranted, should promptly submit to EPA in detail the reasons for that belief. EPA, in its discretion, may remove the substance from this rule for good cause (40 CFR 712.30 and 716.105). When withdrawing a substance from the rule, EPA will issue a rule amendment for publication in the **Federal Register**.

IV. Release of Aggregate Data

EPA will follow procedures for the release of aggregate statistics as prescribed in the **Federal Register** notice of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than December 27, 1990.

V. Economic Analysis

A. Preliminary Assessment Information Rule

EPA estimates the PAIR reporting cost of this rule is $178,898. To calculate this figure, EPA used information from the 1986 TSCA Inventory Update and SRI Directory of Chemical Producers to generate a list of manufacturers and importers of this one substance and three categories listing 76 substances. None of the companies identified qualify as a small business as defined in 40 CFR 712.25(c), thus, EPA expects 83 firms to generate a total of 143 reports.

Reporting costs (dollars)	
(a) 143 reports estimated at $843 per report	$120,549
(b) 83 familiarization cases at $703 per case	58,349
Total Cost	$179,898
Average cost per site	$8,191
Average cost per firm	$9,081
Reporting burden (hours)	
(a) Rule familiarization: 18 hours/site × 83 sites	1,494
(b) Reporting: 16 hours/report × 143 reports	2,288
EPA costs (dollars)	
Processing cost = 143 reports × $95/report	$13,585

B. Health and Safety Data Reporting Rule

EPA estimates the total reporting costs for establishing section 8(d) reporting requirements for one substance and three categories listing 64 substances to be $210,922. This cost estimate is high because EPA is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, much of the information is based upon the 1986 TSCA Inventory Update and secondary information from industry sources. Therefore, EPA tends to overestimate rather than underestimate reporting burden.

Nevertheless, the cost of this final rule is low in comparison with the potential public health and environmental problems posed by these chemicals. Therefore, EPA is justified in obtaining data to determine better whether further regulatory action would be necessary.

The estimated reporting costs are broken down as follows:

Initial corporate review	$18,862
Site identification	30,389
File searches at site	62,483
Photocopying existing studies	10,259
Title listing	3,167
Managerial review for CBI	59,531
Reporting on newly-initiated studies	1,310
Submissions after initial reporting period	24,921
Total Cost	$210,922

Reporting Burden (Hours)

(a) Initial review: 2 hours/firm × 203 firms	406 hours
(b) Reporting: 25.4 hours/firm × 203 firms	5,156 hours
Total reporting burden hours	5,562
Total PAIR and section 8(d) reporting costs	$389,820
Total PAIR and section 8(d) burden hours	9,344 hours

VI. Rulemaking Record

The following documents constitute the record for this rule (docket control number OPTS-82035). All of these documents are available to the public in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.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.

1. This final rule.
2. The economic analysis for this rule.
3. The Twenty-sixth Report of the ITC.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of substances recommended by the ITC is provided for in 40 CFR 712.30(c) and 716.18(b).

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction

Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control numbers 2070–0054 for PAIR reporting and 2070–0004 for TSCA section 8(d) reporting.

Public reporting burden for this collection of information is estimated to average 27.4 hours for section 8(d) and 34 hours for PAIR 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 St., SW., Washington, DC, 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 712 and 716

Chemicals, Environmental protection, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: September 21, 1990.

James B. Willis,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

Therefore, 40 CFR chapter I is amended as follows:

PART 712—[AMENDED]

1. In part 712:

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.30 is amended by adding one substance to the list in paragraph (w) and adding a new paragraph (x) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(w) * * *

CAS No.	Substance	Effective Date	Reporting Date
* * * * * * *			
143–33–9	Sodium cyanide	10/29/90	12/27/90
* * * * * * *			

(x) Manufacturers and importers of the substances listed below by category must submit a Preliminary Assessment Information Manufacturers Report for each site at which they manufacture or import each substance by the reporting date shown in the table below. The categories are listed in alphabetic order with the chemical substances within each category listed by ascending numerical CAS number.

CAS No.	Substance	Effective date	Reporting date
Alkyl phosphates:			
78–40–0	Phosphoric acid, triethyl ester	10/29/90	12/27/90
78–42–2	Phosphoric acid, tris(2-ethylhexyl)ester	10/29/90	12/27/90
78–51–3	Ethanol, 2-butoxy-, phosphate (3:1)	10/29/90	12/27/90
107–66–4	Phosphoric acid, dibutyl ester	10/29/90	12/27/90
126–71–6	Phosphoric acid, tris(2-methylpropyl) ester	10/29/90	12/27/90
126–73–8	Phosphoric acid tributyl ester	10/29/90	12/27/90
298–07–7	Phosphoric acid, bis(2-ethylhexyl)ester	10/29/90	12/27/90
812–00–0	Phosphoric acid, monomethyl ester	10/29/90	12/27/90
1070–03–7	Phosphoric acid, mono(2-ethylhexyl)ester	10/29/90	12/27/90
1498–51–7	Phosphorodichloridic acid, ethylester	10/29/90	12/27/90
1623–15–0	Phosphoric acid, monobutyl ester	10/29/90	12/27/90
1623–24–1	Phosphoric acid, mono(1-methylethyl)ester	10/29/90	12/27/90
2958–09–0	Phosphoric acid, monooctadecyl ester	10/29/90	12/27/90
3900–04–7	Phosphoric acid, monohexyl ester	10/29/90	12/27/90
3991–73–9	Phosphoric acid, monooctyl ester	10/29/90	12/27/90
7057–92–3	Phosphoric acid, didodecyl ester	10/29/90	12/27/90
7332–46–9	Ethanol, 2-(2-butoxyethoxy)-, phosphate (3:1)	10/29/90	12/27/90
12645–31–7	Phosphoric acid, 2-ethylhexyl ester	10/29/90	12/27/90
12751–23–4	Phosphoric acid, dodecyl ester	10/29/90	12/27/90
27215–10–7	Phosphoric acid, diisooctyl ester	10/29/90	12/27/90
Brominated flame retardants:			
74–97–5	Methane, bromochloro-	10/29/90	12/27/90
87–10–5	Benzamide, 3,5-dibromo-N-(4-bromophenyl)-2-hydroxy-	10/29/90	12/27/90
87–83–2	Benzene, pentabromomethyl-	10/29/90	12/27/90
87–84–3	Cyclohexane,1,2,3,4,5-pentabromo-6-chloro-	10/29/90	12/27/90
96–13–9	1-Propanol, 2,3-dibromo-	10/29/90	12/27/90
593–60–2	Ethene, bromo-	10/29/90	12/27/90
615–58–7	Phenol, 2,4-dibromo-	10/29/90	12/27/90
4162–45–2	Ethanol,2,2'-((1-methylethylidene)bis((2,6-dibromo-4,1-phenylene)oxy))bis-	10/29/90	12/27/90

CAS No.	Substance	Effective date	Reporting date
25327-89-3	Benzene, 1,1'-(1-methylethylidene)bis(3,5-dibromo-4-(2-propenyloxy)-	10/29/90	12/27/90
30554-72-4	Cyclohexane, tetrabromodichloro-	10/29/90	12/27/90
30554-73-5	Cyclohexane, tribromotrichloro-	10/29/90	12/27/90
36483-57-5	1-Propanol, 2,2-dimethyl-, tribromo deriv.	10/29/90	12/27/90
55205-38-7	2-Propenoic acid, (1-methylethylidene)bis (2,6-dibromo-4,1-phenylene) ester.	10/29/90	12/27/90
68955-41-9	Alkanes, C10-18, bromochloro-	10/29/90	12/27/90
69882-11-7	Phenol, 2,4(or 2,6)-dibromo-, homopolymer	10/29/90	12/27/90
88497-56-7	Benzene, ethenyl-, homopolymer, brominated	10/29/90	12/27/90
Isocyanates:			
91-97-4	1,1'-Biphenyl, 4,4'-diisocyanato-3,3'-dimethyl-	10/29/90	12/27/90
100-28-7	Benzene, 1-isocyanato-4-nitro-	10/29/90	12/27/90
101-68-8	Benzene, 1,1'-methylenebis(4-isocyanato-	10/29/90	12/27/90
102-36-3	Benzene, 1,2-dichloro-4-isocyanato-	10/29/90	12/27/90
103-71-9	Benzene, isocyanato-	10/29/90	12/27/90
104-12-1	Benzene, 1-chloro-4-isocyanato-	10/29/90	12/27/90
104-49-4	Benzene, 1,4-diisocyanato-	10/29/90	12/27/90
109-90-0	Ethane, isocyanato-	10/29/90	12/27/90
110-78-1	Propane, 1-isocyanato-	10/29/90	12/27/90
111-36-4	Butane, 1-isocyanato-	10/29/90	12/27/90
112-96-9	Octadecane, 1-isocyanato-	10/29/90	12/27/90
123-61-5	Benzene, 1,3-diisocyanato-	10/29/90	12/27/90
329-01-1	Benzene, 1-isocyanato-3-(trifluoromethyl)-	10/29/90	12/27/90
614-68-6	Benzene, 1-isocyanato-2-methyl-	10/29/90	12/27/90
622-58-2	Benzene, 1-isocyanato-4-methyl-	10/29/90	12/27/90
624-83-9	Methane, isocyanato-	10/29/90	12/27/90
1476-23-9	1-Propene, 3-isocyanato-	10/29/90	12/27/90
2422-91-5	Benzene, 1,1',1''-methylidynetris(4-isocyanato-	10/29/90	12/27/90
2493-02-9	Benzene, 1-bromo-4-isocyanato-	10/29/90	12/27/90
2909-38-8	Benzene, 1-chloro-3-isocyanato-	10/29/90	12/27/90
2949-22-6	Acetic acid, isocyanato-, ethyl ester	10/29/90	12/27/90
3173-53-3	Cyclohexane, isocyanato-	10/29/90	12/27/90
4035-89-6	Imidodicarbonic diamide,N,N',2-tris(6-isocyanatohexyl)-	10/29/90	12/27/90
4098-71-9	Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-	10/29/90	12/27/90
4151-51-3	Phenol, 4-isocyanato-, phosphorothioate (3:1) (ester)	10/29/90	12/27/90
5124-30-1	Cyclohexane, 1,1'-methylenebis(4-isocyanato-	10/29/90	12/27/90
5873-54-1	Benzene, 1-isocyanato-2-((4-isocyanatophenyl)methyl)-	10/29/90	12/27/90
10031-75-1	Benzene, 1,1'-(diisocyanatomethylene)bis-	10/29/90	12/27/90
15646-96-5	Hexane, 1,6-diisocyanato-2,4,4-trimethyl-	10/29/90	12/27/90
16938-22-0	Hexane, 1,6-diisocyanato-2,2,4-trimethyl-	10/29/90	12/27/90
25854-16-4	Benzene, bis(isocyanatomethyl)-	10/29/90	12/27/90
26447-40-5	Benzene, 1,1'-methylenebis(isocyanato-	10/29/90	12/27/90
26603-40-7	1,3,5,-Triazine-2,4,6(1H.3H,5H-trione, 1,3,5-tris(3-isocyanatomethyl-phenyl)-.	10/29/90	12/27/90
26747-90-0	1,3-Diazetidine-2,4-dione, 1,3-bis(3-isocyanatomethylphenyl)-	10/29/90	12/27/90
28178-42-9	Benzene, 2-isocyanato-1,3-bis(1-methylethyl)-	10/29/90	12/27/90
28556-81-2	Benzene, 2-isocyanato-1,3-dimethyl-	10/29/90	12/27/90
30674-80-7	2-Propenoic acid, 2-methyl-,2-isocyanatoethyl ester	10/29/90	12/27/90
34893-92-0	Benzene, 1,3-dichloro-5-isocyanato-	10/29/90	12/27/90
68239-06-5	Cyclohexane, 2-heptyl-3,4-bis(9-isocyanatononyl)-1-pentyl-	10/29/90	12/27/90
73597-26-9	2-Propenoic acid, 2-methyl-, 2-(((((5-isocyanato-1,3,3-trimethylcyclo-hexyl) methyl)amino)carbonyl)oxy)ethyl ester.	10/29/90	12/27/90

PART 716—[AMENDED]

2. In part 716:

a. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

b. Section 716.120 is amended by adding one substance to the list in paragraph (a) and adding a new paragraph (d) to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

CAS Number	Substance	Special Exemptions	Effective Date	Sunset Date
* * * * * * *				
143-33-9	Sodium Cyanide		10/29/90	10/29/00
* * * * * * *				

* * * * *

(d) *Listed members of categories.* The following categories are listed in alphabetical order with the chemical substances identified in each category

also listed alphabetically. Only those chemical substances specifically listed within a category are subject to all provisions of part 716 for the time period from the effective date of the rule until the sunset date.

Category	CAS No. (exemptions for category)	Special Exemptions	Effective Date	Sunset Date
Alkyl Phosphates:				
Ethanol, 2-butoxy-, phosphate (3:1)	78-51-3		10/29/90	10/29/00
Ethanol, 2-(2-butoxyethoxy)-, phosphate (3:1)	7332-46-9		10/29/90	10/29/00
Phosphoric acid, bis(2-ethylhexyl) ester	298-07-7		10/29/90	10/29/00
Phosphoric acid, dibutyl ester	07-66-4		10/29/90	10/29/00
Phosphoric acid, didodecyl ester	7057-92-3		10/29/90	10/29/00
Phosphoric acid, diisooctyl ester	27215-10-7		10/29/90	10/29/00
Phosphoric acid, dodecyl ester	12751-23-4		10/29/90	10/29/00
Phosphoric acid, 2-ethylhexyl ester	12645-31-7		10/29/90	10/29/00
Phosphoric acid, monobutyl ester	1623-15-0		10/29/90	10/29/00
Phosphoric acid, mono(2-ethylhexyl)ester	1070-03-7		10/29/90	10/29/00
Phosphoric acid, monohexyl ester	3900-04-7		10/29/90	10/29/00
Phosphoric acid, monomethyl ester	812-00-0		10/29/90	10/29/00
Phosphoric acid, mono(1-methylethyl)ester	1623-24-1		10/29/90	10/29/00
Phosphoric acid, monooctyl ester	3991-73-9		10/29/90	10/29/00
Phosphoric acid, monooctadecyl ester	2958-09-0		10/29/90	10/29/00
Phosphoric acid, triethyl ester	78-40-0		10/29/90	10/29/00
Phosphoric acid, tris(2-ethylhexyl) ester	78-42-2		10/29/90	10/29/00
Phosphoric acid, tris(2-methylpropyl) ester	126-71-6		10/29/90	10/29/00
Phosphorodichloridic acid, ethyl ester	1498-51-7		10/29/90	10/29/00
Brominated flame retardants:				
Alkanes, C10-18, bromochloro-	68955-41-9		10/29/90	10/29/00
Benzamide, 3,5-dibromo-N-(4-bromophenyl)-2-hydroxy-	87-10-5		10/29/90	10/29/00
Benzene, ethenyl-, homopolymer, brominated	88497-56-7		10/29/90	10/29/00
Benzene, 1,1'-(1-methylethylidene)bis (3,5-dibromo-4-(2-propenyloxy)-.	25327-89-3		10/29/90	10/29/00
Benzene, pentabromomethyl-	87-83-2		10/29/90	10/29/00
Cyclohexane, 1,2,3,4,5-pentabromo-6-chloro-	87-84-3		10/29/90	10/29/00
Cyclohexane, tetrabromodichloro-	30554-72-4		10/29/90	10/29/00
Cyclohexane, tribromotrichloro-	30554-73-5		10/29/90	10/29/00
Ethanol, 2,2'-((1-methylethylidene)bis ((2,6-dibromo-4,1-phenylene)oxy)) bis-.	4162-45-2		10/29/90	10/29/00
Ethene, bromo-	593-60-2		10/29/90	10/29/00
Phenol, 2,4-dibromo-	615-58-7		10/29/90	10/29/00
Phenol, 2,4(or 2,6)-dibromo-, homopolymer	69882-11-7		10/29/90	10/29/00
1-Propanol, 2,3-dibromo-	96-13-9		10/29/90	10/29/00
1-Propanol, 2,2-dimethyl-, tribromo deriv.	36483-57-5		10/29/90	10/29/00
2-Propenoic acid,(1-methylethylidene)bis (2,6-dibromo-4,1-phenylene) ester.	55205-38-7		10/29/90	10/29/00
Isocyanates:				
Acetic acid, isocyanato-, ethyl ester	2949-22-6		10/29/90	10/29/00
Benzene, bis(isocyanatomethyl)-	25854-16-4		10/29/90	10/29/00
Benzene, 1-bromo-4-isocyanato-	2493-02-9		10/29/90	10/29/00
Benzene, 1-chloro-3-isocyanato-	2909-38-8		10/29/90	10/29/00
Benzene, 1-chloro-4-isocyanato-	104-12-1		10/29/90	10/29/00
Benzene, 1,2-dichloro-4-isocyanato-	102-36-3		10/29/90	10/29/00
Benzene, 1,3-dichloro-5-isocyanato-	34893-92-0		10/29/90	10/29/00
Benzene, 1,1'-(diisocyanatomethylene)bis-	10031-75-1		10/29/90	10/29/00
Benzene, isocyanato-	103-71-9		10/29/90	10/29/00
Benzene, 2-isocyanato-1,3-bis(1-methylethyl)-	28178-42-9		10/29/90	10/29/00
Benzene, 2-isocyanato-1,3-dimethyl-, ester	28556-81-2		10/29/90	10/29/00
Benzene, 1-isocyanato-2-methyl-	614-68-6		10/29/90	10/29/00
Benzene, 1-isocyanato-4-methyl-	622-58-2		10/29/90	10/29/00
Benzene, 1-isocyanato-4-nitro-	100-28-7		10/29/90	10/29/00
Benzene, 1-isocyanato-3-(trifluoromethyl)-	329-01-1		10/29/90	10/29/00
Benzene, 1,1',1''-methylidynetris(4-isocyanato-	2422-91-5		10/29/90	10/29/00
Butane, 1-isocyanato-	111-36-4		10/29/90	10/29/00
Cyclohexane, 2-heptyl-3,4-bis (9-isocyanatononyl)-1-pentyl-	68239-06-5		10/29/90	10/29/00
Cyclohexane, isocyanato-	3173-53-3		10/29/90	10/29/00
1,3-Diazetidine-2,4-dione, 1,3-bis(3-isocyanato methylphenyl)-	26747-90-0		10/29/90	10/29/00
Ethane, isocyanato-	109-90-0		10/29/90	10/29/00
Imidodicarbonic diamide, N,N'-2-tris(6-isocyanatohexyl)-	4035-89-6		10/29/90	10/29/00
Methane, isocyanato-	624-83-9		10/29/90	10/29/00
Octadecane, 1-isocyanato-	112-96-9		10/29/90	10/29/00
Phenol, 4-isocyanato-, phosphorothioate (3:1) (ester)	4151-51-3		10/29/90	10/29/00
Propane, 1-isocyanato-	110-78-1		10/29/90	10/29/00
1-Propene, 3-isocyanato-	1476-23-9		10/29/90	10/29/00
2-Propenoic acid, 2-methyl-, 2-isocyanatoethyl ester	30674-80-7		10/29/90	10/29/00
2-Propenoic acid, 2-methyl-,2-(((((5-isocyanato-1,3,3-trimethylcyclohexyl)methyl)amino) carbonyl)oxy)ethyl ester.	73597-26-9		10/29/90	10/29/00
1,3,5,-Triazine-2,4,6(1H.3H.5H-trione, 1,3,5-tris(3-isocyanatomethylphenyl)-.	26603-40-7		10/29/90	10/29/00

federal register

Friday
September 28, 1990

Part IV

Department of Defense

48 CFR Part 201 et al.

Department of Defense Acquisition Regulations; Miscellaneous Amendments; Proposed Rule

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 205, 206, 209, 210, 212, 213, 214, 228, 230, 234, 246, 252, 253, and Appendix I

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Defense Federal Acquisition Regulation Supplement (DFARS) is being rewritten in its entirety as a result of a Defense Management Review initiative. The rewrite is designed to eliminate text and clauses that are unnecessary (e.g., duplicate FAR or other directives, add no value, etc.); eliminate or modify, where possible, thresholds, certifications, approval levels, and other regulatory burdens on contracting officers and contractors; and rephrase remaining text and clauses in plain English. The rewrite is being published for public comment in four increments. This is the second increment. The first increment was published on August 14, 1990 (55 FR 33218).

DATES: Comments must be submitted on or before November 27, 1990.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Ms. Lucile Hughes, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)(M&RS), Room 3D139, Pentagon, Washington, DC 20301-3062. Please cite DAR Case 90-743 in all correspondence concerning this proposed rule.

FOR FURTHER INFORMATION CONTACT: 202-697-7266, Barbara Young, for parts 205, 206, 209, 210, 212, 214, 234; Valorie Lee, for parts 201, 213 and 246; Alyce Sullivan, for parts 228 and 230; and Charles Lloyd, for Appendix I.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Defense's July 1989 Defense Management Report to the President concluded that much of the stifling burden of DoD regulatory guidance, including the Defense Federal Acquisition Regulation Supplement (DFARS), is self-imposed. To correct this situation, the DoD formed a Regulatory Relief Task Force to review DFARS and lower level supplements and to recommend revisions. As a result, the Defense Acquisition Regulatory System, under the direction of the Deputy Assistant Secretary of Defense for Procurement, has undertaken the complete rewrite of DFARS. The rewrite is designed to: Eliminate text and clauses that are unnecessary (e.g., duplicate FAR or other directives, add no value, etc.); eliminate or modify, where possible, thresholds, certifications, approval levels, and other regulatory burdens on contracting officers and contractors; and rephrase remaining text and clauses in plain English.

The rewritten DFARS is being published for public comment in four monthly increments. This publication of DFARS parts 205, 206, 209, 210, 212, 213, 214, 228, 230, 234, 246, their attendant clauses in 252, and their attendant forms instructions in 253 is the second increment. This increment also includes that section of part 201 which explains DFARS numbering. Part 201 is scheduled for publication in a subsequent increment. All public comments received in response to this notice will be considered in developing the final rule, which is planned for publication in February 1991. Parties responding to this notice are requested to separate their comments by DFARS part.

The rewritten DFARS is addressed to the contracting officer. Every attempt has been made to remove extraneous material which, though informative, was guidance addressed to others in the acquisition process, e.g., program managers, requirements personnel, small business specialists, etc. Text which was unnecessary or redundant has been removed. Some text has been moved to the FAR and some additional text in this proposed rule may be moved to the FAR before the rule is finalized. Text has been rearranged, and in some instances, moved to other parts, to more closely align the DFARS text with the FAR text it implements or supplements. The rewritten DFARS includes some policy and procedural changes. These are identified in the following discussion of revisions by part. Unless specifically identified as a change, the rewritten version of the part is not intended as a change in current policy or procedure.

Part 205, Publicizing Contract Actions. The level of approval in 205.502 for placing newspaper advertisements has been lowered. The requirement in 205.302 for inclusion of the size status of the contractor in the synopsis of contract award has been deleted. The requirement in 205.404-2 to announce the availability of long-range acquisition estimates in the Commerce Business Daily has been deleted, thus leaving this to the discretion of the contracting officer.

Part 206, Competition Requirements. The prescription for use of the provision entitled "Domestic Source Restriction" has been moved from part 214 to part 206. The provision has been moved from 252.214-7001 to 252.206-7000.

Part 209, Contractor Qualifications. The coverage in 209.473 on debarment in overseas areas has been substantially revised to adopt use of FAR Subpart 9.4 procedures. The requirement in 209.473 for overseas commanders to maintain a consolidated list of debarred and suspended offshore contractors has been replaced by a requirement to list such contractors on the GSA maintained list. The certification requirement in the provision at 252.209-7000, Certification or Disclosure of Ownership or Control by a Foreign Government That Supports Terrorism, has been eliminated, but the disclosure requirement remains. Guidance on use of the SF 1403, Preaward Survey of Prospective Contractor, has been moved to part 253.

Part 210, Specifications, Standards, and Other Purchase Descriptions. A new provision has been added as 252.210-7004 to provide for consideration of alternate offers based on use of commercial preservation, packaging, and packing.

Part 212, Contract Delivery or Performance. The clause at 252.212-7000, Exclusion of Periods in Computing Completion Schedules, has been deleted as unnecessary.

Part 213, Small Purchase and Other Simplified Purchase Procedures. Instructions for completion of forms prescribed by part 213 have been moved to part 253.

Part 214, Sealed Bidding. The clause at 252.214-7001, Domestic Source Restriction, has been moved to 252.206-7000.

Part 228, Bonds and Insurance. The clause at 252.228-7007, Bid Bond, has been deleted. The requirement in 228.102-1(a) for approval of the chief of the contracting office before requiring performance and payment bonds in cost-reimbursement construction contracts has been deleted. The requirement in 228.103-2 for sending copies of class determinations on use of performance bonds to the Office of the Assistant Secretary of Defense (Production and Logistics) has been deleted.

Part 230, Cost Accounting Standards. No changes in policy or procedure.

Part 234, Major System Acquisition. The provision at 252.234-7000, Notice of Cost/Schedule Control Systems, has been combined with the clause at

252.234–7001, Cost/Schedule Control Systems.

Part 246, Quality Assurance. The definition in section 246.770 of "essential performance requirements" has been revised to lower the level for determining such characteristics for weapon systems from the Secretary of Defense to the agency head. A new clause has been added at 252.246–7001, Manufacturing Process Controls and In-Process Inspections, to supplement the inspection system requirements of MIL–I–45208 when controls and inspections need to be strengthened to ensure the integrity of the product.

Part 252, Solicitation Provisions and Contract Clauses. Revisions in provisions/clauses are identified in the discussion of the part which prescribes use of the provision or clause.

Part 253, Forms. Revisions in this part are identified in the discussion of the part which prescribes use of the form.

Appendix I, Material Inspection and Receiving Report. No changes in policy or procedure.

B. Regulatory Flexibility Act

Parts 201, 205, 206, 209, 212, 213, 214, 228, 230, 234, 246, the provisions/clauses in part 252 prescribed by these parts, the instructions in part 253 on forms prescribed by these parts, and Appendix I. These proposed rules do not constitute significant revisions within the meaning of Public Law 98–577; therefore, the Regulatory Flexibility Act does not apply.

Part 210 and the provisions/clauses in part 252 prescribed by this part. This proposed rule is not expected to have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged and with few exceptions, the procedural changes are internal agency operating procedures. An Initial Regulatory Flexibility Analysis has not been performed. Comments are solicited from small business and other interested parties and will be considered in development of the final rule.

C. Paperwork Reduction Act

Parts 201, 205, 206, 209, 210, 212, 213, 214, 228, 230, 234, 246, the provisions/clauses in part 252 prescribed by these parts, the instructions in part 253 on forms prescribed by these parts, and Appendix I. These proposed rules do not change or impose any record keeping or information collection requirements beyond that for which OMB approval has previously been obtained.

List of Subjects in 48 CFR Parts 201, 205, 206, 209, 210, 212, 213, 214, 228, 230, 234, 246, 252, and 253

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulatory System.

Adoption of Amendments

Therefore, it is proposed that 48 CFR parts 201, 205, 206, 209, 210, 212, 213, 214, 228, 230, 234, 246, 252, 253, and Appendix I be amended as follows:

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.–2. Section 201.303 is added to read as follows:

201.303 Publication and codification.

(a)(i) The DFARS is codified under chapter 2 in Title 48, Code of Federal Regulations. DFARS text is numbered to parallel and correspond with its FAR part, subpart, section, subsection, paragraph, and lower division counterpart, except—

(A) The FAR counterpart in DFARS is preceded by a 2, e.g., FAR part 19 is DFARS part 219.

(B) Implemental text is numbered exactly the same as its FAR counterpart, preceded by a 2, except when the implemental text exceeds one paragraph, the subdivisions are numbered by skipping a unit in the FAR 1.104–2(b)(2) prescribed numbering sequence. For example, three paragraphs implementing FAR 19.501 would be numbered 219.501(1), (2), and (3) rather than (a), (b), and (c). Further subdivision of these implemental paragraphs would follow the prescribed numbering sequence, e.g., 219.501(1)(i)(A).

(C) Supplemental text is numbered the same as its FAR counterpart, preceded by a 2, with the addition of a number of 70 and up or (S–70) and up. Parts, subparts, sections, or subsections are supplemented by the addition of a number of 70 and up. Lower divisions are supplemented by the addition of a number of (S–70) and up. When supplemental text exceeds one paragraph, the subdivisions are numbered using the FAR 1.104–2(b)(2) prescribed sequence, without skipping a unit. For example, DFARS text supplementing FAR 19.501 would be numbered 219.501–70.

Its subdivisions would be numbered 219.501–70(a), (b), and (c).

As an example of DFARS numbering—

FAR	Is Implemented As	Is Supplemented As
19	219	219.70.
19.5	219.5	219.570.
19.501	219.501	219.501–70.
19.501–1	219.501–1	219.501–1–70.
19.501–1(a)	219.501–1(a)	219.501–1(a)(S–70).
19.501–1(a)(1)	219.501–1(a)(1)	219.501–1(a)(1)(S–70).

(ii) Department/agency and component supplements must parallel the FAR and DFARS numbering for implemental text. Department/agency supplemental text will use subsection numbering of 90 and up.

3. Part 205 is revised to read as follows:

PART 205—PUBLICIZING CONTRACT ACTIONS

Subpart 205.2—Synopses of Proposed Contract Actions

Subpart 205.3—Synopses of Contract Awards

Subpart 205.4—Release of Information

Subpart 205.5—Paid Advertisements

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 205.2—Synopses of Proposed Contract Actions

205.203 Publicizing and response time.

(b) Allow at least 45 days response time—

(i) When requested by a qualifying or designated country source (as these terms are used in part 225); and

(ii) When consistent with the Government's requirement.

205.207 Preparation and transmittal of synopses.

(d)(i) For small disadvantaged business set-asides under 219.502–270, use CBD Numbered Note 4.

(ii) For acquisitions being considered for small disadvantaged business set-aside, use CBD Numbered Note 6.

(iii) For historically black college and university and minority institution set-asides under 226.7003, use CBD Numbered Note 5.

(iv) For acquisitions being considered for historically black college and university and minority institution set-aside, state:

This proposed contract is being considered as a 100 percent set-aside for historically black colleges and universities (HBCUs) and minority institutions (MIs), as defined by the clause at 252.226-7000 of the Defense Federal Acquisition Regulation Supplement. Interested HBCUs and MIs should provide the contracting office as early as possible, but not later than 15 days after this notice, evidence of their capability to perform the contract, and a positive statement of their eligibility as an HBCU or MI. If adequate response is not received from HBCUs and MIs, the solicitation will instead be issued, without further notice, as: _____(indicate if unrestricted, or restricted for small business or small disadvantaged business, etc.). Therefore, replies to this notice are also requested from _____(enter the types of firms to be solicited in the event an HBCU or MI set-aside is not made).

(v) For Broad Agency Announcement (BAA) (see 235.016) notices, indicate which, if any, portion of the BAA will be set-aside for historically black colleges and universities and minority institutions.

(e) For acquisitions restricted to domestic sources under the authority of FAR 6.302-3, use CBD Numbered Note 13.

Subpart 205.3—Synopses of Contract Awards

205.303 Announcement of contract awards.

(a) *Public Announcement.* (i) The threshold for DoD awards is $5 million and generally is based on the obligated amount of the action. For example—

(A) Announce delivery orders or modifications which individually obligate $5 million.

(B) Do not announce requirements contracts, regardless of their estimated value, since the contract does not obligate funds.

(C) Announce indefinite quantity contracts estimated to exceed $5 million, even though less than $5 million may be obligated at time of award.

(ii) Departments and agencies submit the information—

(A) To the Office of the Assistant Secretary of Defense (Public Affairs);

(B) By the close of business the day before the date of the proposed award;

(C) Using report control symbol DD-LA-(AR) 1279;

(D) Including, as a minimum, the following—

(1) Contract data. Contract number, modification number, or delivery order number, amount to be obligated, total cumulative amount of the contract, item description, contract type, whether any of the buy was for foreign military sales (FMS) and identification of the FMS customer;

(2) Competition information. Number of solicitations mailed and number of offers received;

(3) Contractor data. Name, address, place of performance (if different), and socioeconomic status (e.g., small business, small disadvantaged business, labor surplus area);

(4) Funding data. Type of appropriation and fiscal year of the funds, and whether the contract is multiyear (see FAR subpart 17.1); and

(5) Miscellaneous data. Identification of the contracting office, the contracting office point of contact, known congressional interest, and the information release date.

(iii) Departments and agencies, in accordance with department/agency procedures and concurrent with the public announcement, provide information similar to that required by paragraph (a)(ii) of this section to members of Congress in whose state or district the contractor is located and the work is to be performed.

Subpart 205.4—Release of Information

205.470 Contractor information to be provided Cooperative Agreement Holders.

205.470-1 Statutory requirement.

(a) As required by 10 U.S.C. 2413, the Defense Logistics Agency enters into Cooperative Agreements—

(1) With—

(i) State and local governments;

(ii) Non-profit organizations;

(iii) Indian tribal organizations; and

(iv) Indian-owned economic enterprises

(2) For the provision of technical assistance to business entities. (b) Contractors receiving Defense contracts valued at more than $500,000 must provide Cooperative Agreement Holders, at their request, the information specified in the clause at 252.205-7000, Provision of Information to Cooperative Agreement Holders.

205.470-2 Contract clause.

Use the clause at 252.205-7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts expected to exceed $500,000.

Subpart 205.5—Paid Advertisements

205.502 Authority.

For paid advertisements to recruit civilian personnel, see section 332-1-9 of the Federal Personnel Manual.

(a) *Newspapers.* (i) Heads of contracting activities are delegated authority to approve the publication of paid advertisements in newspapers. They may redelegate this authority in accordance with agency procedures.

(ii) Submit DD Form 1535, Request/Approval for Authority to Advertise, to the approval authority to obtain special or general authority.

(A) Special authority permits the publication of a given advertisement for a specified number of times in designated newspapers.

(B) General authority permits the publication of such advertisements as may be required during a designated fiscal year.

4. Part 206 is revised to read as follows:

PART 206—COMPETITION REQUIREMENTS

Sec.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

(a) Agencies may use this authority to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) and the documentation supporting the D&F must identify the source to be excluded from the contract action.

(i) Include the following information, as applicable, and any other information that may be pertinent, in the supporting documentation:

(A) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award;

(B) The circumstances which make it necessary to exclude the particular source from the contract action, including—

(*1*) The reasons for the lack of or potential loss of alternative sources; e.g., the technical complexity and criticality of the items or services; and

(*2*) The current annual requirement and projected needs for the supplies or services;

(C) Whether the source must be totally excluded from the contract action or whether a partial exclusion is sufficient;

(D) The potential effect of exclusion on the excluded source in terms of loss of capability to furnish the supplies or services in the future;

(E) When FAR 6.202(a)(1) is the authority, the basis for—

(*1*) The determination of future competition; and

(*2*) The determination of reduced overall costs. Include, as a minimum, a discussion of start-up costs, facility costs, duplicative administration costs, economic order quantities, and life cycle cost considerations; and

(F) When FAR 6.202(a)(2) is the authority—

(*1*) The current annual and mobilization requirements for the items or services, citing the source of, or the basis for, the data;

(*2*) A comparison of current production capacity with that necessary to meet mobilization requirements;

(*3*) An analysis of the risks of relying on the present source; and

(*4*) A projection of the time required for a new source to acquire the necessary facilities and achieve the production capacity necessary to meet mobilization requirements.

(ii) A sample format for Determination and Findings citing the authority of FAR 6.202(a) follows—

Determination and Findings

Authority to Exclude a Source

In accordance with 10 U.S.C. 2304(b)(1), it is my determination that the following contract action may be awarded using full and open competition after exclusion of _____*:

(Describe requirement.)

Findings

The exclusion of _____*

Alternate 1: will increase or maintain competition for this requirement and is expected to result in a reduction of $_____ in overall costs for the acquisition of these supplies or services. (Describe how estimate was derived.)

Alternate 2: is in the interest of national defense because it will result in having a supplier available for furnishing these supplies or services in case of a national emergency or industrial mobilization. Explain circumstances requiring exclusion of source.)

Alternate 3: is in the interest of national defense because it will result in establishment or maintenance of an essential engineering, research or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center. (Explain circumstances requiring exclusion of source.)

*Identify source being excluded.

206.203 Set-asides for small business and labor surplus area concerns.

(b) Also no separate justification or determination and findings is required for contract actions processed as small disadvantaged business set-asides (219.502270) or as historically black college and university and minority institution set-asides (226.7003).

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.* (2)(i) Departments and agencies shall not enter into a contract for studies, analyses, or consulting services (see FAR subpart 37.2) on the basis of an unsolicited proposal without providing for full and open competition, unless—

(*1*) The head of the contracting activity, or a designee no lower than chief of the contracting office, determines that—

(*i*) Following thorough technical evaluation, only one source is fully qualified to perform the proposed work;

(*ii*) The unsolicited proposal offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence; or

(*iii*) The contract benefits the national defense by taking advantage of a unique and significant industrial accomplishment or by ensuring financial support to a new product or idea;

(*2*) A civilian official of the DoD, whose appointment has been confirmed by the Senate, determines the award to be in the interest of national defense; or

(*3*) The contract is related to improvement of equipment that is in development or production.

(b) *Application.* This authority may be used for acquisitions of test articles and associated support services from a designated foreign source under the DoD Foreign Comparative Testing Program.

(4) Do not use this authority unless the equipment or parts have been adopted as standard items of supply in accordance with DoDD 4120.3, Defense Standardization and Specification Program.

206.302-2 Unusual and compelling urgency.

(b) *Application.* The circumstances under which use of this authority may be appropriate include, but are not limited to, the following:

(i) Supplies, services, or construction needed at once because of fire, flood, explosion, or other disaster;

(ii) Essential equipment or repair needed at once to—

(A) Comply with orders for a ship;

(B) Perform the operational mission of an aircraft; or

(C) Preclude impairment of launch capabilities or mission performance of missiles or missile support equipment.

(iii) Construction needed at once to preserve a structure or its contents from damage;

(iv) Purchase requests citing an issue priority designator under DoDD 4410.6, Uniform Material Movement and Issue Priority System, of 4 or higher, or citing "Electronic Warfare QRC Priority."

206.302-3 Industrial mobilization; or engineering, development, or research capability.

206.302-3-70 Solicitation provision.

Use the provision at 252.206-7000, Domestic Source Restriction, in all solicitations that are restricted to domestic sources under the authority of FAR 6.302-3.

206.302-5 Authorized or required by statute.

(c) *Limitations.* (i) 10 U.S.C. 2361 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(A) The statute authorizing or requiring award specifically—

(*1*) States that the statute modifies or supersedes the provisions of 10 U.S.C. 2361,

(*2*) Identifies the particular college or university involved, and

(*3*) States that award is being made in contravention of 10 U.S.C. 2361(a); and

(B) The Secretary of Defense provides Congress written notice of intent to award. The contract cannot be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Deputy Assistant Secretary of Defense (Procurement).

(ii) The limitation in paragraph (c)(i) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

206.303 Justifications.

206.303-1 Requirements.

(b) Technical and requirements personnel must obtain any review and approval required by department or agency procedures before submission of a recommendation for other than full and open competition to the contracting officer.

206.303-2 Content.

(a) Include sufficient information in the justification to permit its approval as a stand-alone document, even though agency procedures may require supplementary documentation.

5. Part 209 is revised to read as follows:

PART 209—CONTRACTOR QUALIFICATIONS

Subpart 209.1—Responsible Prospective Contractors

Subpart 209.2—Qualifications Requirements

Subpart 209.3—First Article Testing and Approval

Subpart 209.4—Debarment, Suspension, and Ineligibility

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 209.1—Responsible Prospective Contractors

209.103 Policy.

(a)(i) Do not deny award to contractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty due to the actual or potential presence of Soviet inspectors at the contractor's facility unless—

(A) Necessary for reasons of national security;

(B) The decision is based on full information, including comment from the potential contractor or subcontractor on the security issues involved; and

(C) The department or agency acquisition executive reviews the decision and the Under Secretary of Defense (Acquisition) approves the decision.

(ii) Make any decision to deny consideration for award under paragraph (a)(i) of this section as early as possible in the acquisition process. Notify the firm in writing of any decision not to consider the firm for award of a contract or subcontract.

209.103-70 Contract clause.

Use the clause at 252.209-7000, Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty, in all solicitations and contracts in excess of the small purchase limitation in FAR 13.000, except solicitations and contracts for commercial or commercial-type products (see FAR 11.001).

209.104 Standards.

209.104-1 General standards.

(e) Also, have the necessary safety programs on contractor or subcontractor materials or services.

(g)(i) A contracting officer shall not award a contract to a firm or to a subsidiary of a firm when a foreign government—

(A) Either directly or indirectly—

(*1*) Has a significant interest in the firm; or

(*2*) Has a significant interest in the subsidiary, and

(B) Has been determined by the Secretary of State under 50 U.S.C. App. 2405(j)(1)(A) to be a government of a country that has repeatedly provided support for acts of international terrorism.

(ii) The Secretary of Defense may waive the prohibition in paragraph (g)(i) of this subsection in accordance with 10 U.S.C. 2327(e). This waiver authority may not be delegated.

209.104-3 Application of standards.

(c) *Satisfactory Performance Record.* Quality is a significant consideration in determining satisfactory performance. Quality defects of a critical or repetitive nature without adequate and timely corrective action, including repair or replacement of items, creates a presumption of an unsatisfactory performance record.

209.104-4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting officer, the contracting officer shall request from CCC and any other sources whatever additional information is necessary to make the responsibility determination.

209.104-70 Solicitation provision.

Use the provision at 252.209-7000, Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism, in solicitations expected to result in contracts of $100,000 or more.

209.106 Preaward surveys.

209.106-1 Conditions for preaward surveys.

(a) If the contracting officer is unable to make a determination of responsibility for an acquisition of $25,000 or less because of inconclusive information, contact the surveying activity for additional information. If a preaward survey is indicated, include the rationale in Block 23 of the SF 1403, Preaward Survey of Prospective Contractor (General).

209.106-2 Requests for preaward surveys.

(1) The surveying activity is the cognizant contract administration office as listed in DoD 4105.59-H, DoD Directory of Contract Administration Services Components. When information is required as part of the survey on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, the surveying activity will obtain the information from the auditor.

(2) Limited information may be requested by telephone. For a formal survey, send an original and three copies of SF 1403. The contracting officer may request the survey by telephone but must confirm immediately with the SF 1403.

(a) List additional factors in item H, Section III of the SF 1403 and explain them in Block 23. For example—

(i) Information needed to determine a prospective contractor's eligibility under the Walsh-Healey Public Contracts Act. (Note that the Walsh-Healey Public Contracts Act block of Section I is for information purposes only).

(ii) Evaluation of a contractor as a planned producer when the offered item is or may appear on the Industrial Preparedness Planning List (IPPL). When

the preaward survey results in a recommendation for award, ask the office responsible for industrial preparedness planning to consider designating the prospective contractor as a planned producer. If the item is already on the IPPL or the prospective contractor is already a planned producer, note the information in Block 23.

(b) Include necessary drawings and specifications.

(c) On base level preaward surveys, technical personnel from the requiring installation should participate when there is concern about the ability of a prospective contractor to perform a base level service or construction contract.

(d) Allow more time for—

(i) Complex items;

(ii) New or inexperienced DoD contractors; and

(iii) Surveys with time-consuming requirements, e.g., secondary survey, accounting system review, financial capability analysis, or purchasing office participation.

(e) Only request those factors essential to the determination of responsibility. See 253.209–1(a) for an explanation of the factors in Section III, Blocks 19 and 20 of the SF 1403.

Subpart 209.2—Qualifications Requirements

209.202 Policy.

(a)(1) The inclusion of qualification requirements in specifications for products which are to be included on a Qualified Products List requires approval of the following—

Army—Headquarters, U.S. Army Materiel Command, AMCPD–SE
Navy—Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition) (Acquisition Policy, Integrity, and Accountability)
Air Force—Departmental Standardization Office, SAF/AQXL
Defense Logistics Agency—Executive Director, Technical and Logistics Services
National Security Agency—Director of Procurement
Defense Communications Agency—The Director
Defense Nuclear Agency—Director, Acquisition Management
Defense Mapping Agency—The Director of Acquisition

Subpart 209.3—First Article Testing and Approval

209.305 Risk.

The contracting officer may give this authorization to a contractor only after approval by a level higher than the contracting officer.

209.306 Solicitation requirements.

(a)(1) To be sure that the contractor and the Government clearly understand and interpret contract terms and conditions in the same manner, avoid describing first article requirements exclusively in general terms such as "visual," "dimensional," "workmanship," or "specification compliance."

209.308 Contract clauses.

Alternate I of the clauses at FAR 52.209–3, First Article Approval—Contractor Testing, or 52.209–4, First Article Approval—Government Testing, as appropriate, may be used when—

(1) The form, fit, or function of the product would be adversely affected by contractor changes in the production facilities, processes, methods, or materials subsequent to first article approval; and

(2) The Government has relied upon first article testing in the absence of complete design specifications to supplement a performance specification; or

(3) It is essential to have an approved first article to serve as a manufacturing standard.

Subpart 209.4—Debarment, Suspension, and Ineligibility

209.403 Definitions.

Debarring official.

(1) For DoD, the designees are—

Army—Commander, U.S. Army Legal Services Agency
Navy—Assistant Secretary of the Navy (Research, Development, and Acquisition)
Air Force—The Deputy Assistant Secretary (Contracting)
Defense Logistics Agency—The Special Assistant for Contracting Integrity
National Security Agency—The Director
Defense Communications Agency—The General Counsel
Defense Nuclear Agency—The Director
Defense Mapping Agency—The General Counsel
Overseas installations—as designated by the agency head

(2) Overseas debarring officials—

(i) Are authorized to debar or suspend contractors located within the official's geographic area of responsibility under any delegation of authority they receive from their agency head.

(ii) Debar or suspend in accordance with the procedures in FAR subpart 9.4 or under modified procedures approved by the agency head based on consideration of the laws or customs of the foreign countries concerned.

(iii) In addition to the bases for debarment in FAR 9.406–2, may consider the following additional bases—

(A) The foreign country concerned determines that a contractor has engaged in bid-rigging, price-fixing, or other anti-competitive behavior; or

(B) The foreign country concerned declares the contractor to be formally debarred, suspended, or otherwise ineligible to contract with that foreign government or its instrumentalities.

209.405 Effect of listing.

(1) After the opening of bids or receipt of proposals, the contracting officer shall review the list of Parties Excluded from Procurement Programs. Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the acquiring agency head determines in writing that there is a compelling reason to consider the bid. Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, and discussions shall not be conducted with such offeror, unless the acquiring agency head determines, in writing, that there is a compelling reason to do so.

(2) When a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is on the list of parties excluded from procurement programs, it shall provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling reasons are—

(i) Only a listed contractor can provide the supplies or services;

(ii) Urgency requires contracting with a listed contractor;

(iii) The contractor and a department or agency have an agreement covering the same events which resulted in the listing and the agreement includes the department/agency decision not to debar or suspend the contractor; or

(iv) The national defense requires continued business dealings with the listed contractor.

209.406 Debarment.

209.406–1 General.

(a)(i) If a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary. Before arriving at any debarment decision, the debarring official should consider the following mitigating factors, as applicable—

(A) Whether the contractor had standards of conduct and internal control systems in place at the time of the activity which constitutes cause for

debarment or had adopted such procedures prior to any Government investigation of alleged wrongdoing;

(B) Whether the contractor brought the wrongdoing to the attention of the appropriate Government agency;

(C) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and if so, made the result of the investigation available to the debarring official;

(D) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action;

(E) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution;

(F) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment;

(G) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government;

(H) Whether the contractor has agreed to institute new or revised review and control procedures and ethics training programs;

(I) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment; and

(J) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

(ii) When debarment consideration involves a felony conviction and the debarring official decides that debarment is not necessary, the official shall require the contractor to enter into a written agreement which includes—

(A) A requirement for the contractor to establish, if not already established, and to maintain the standards of conduct and internal control systems prescribed by subpart 203.70; and

(B) Other requirements the debarring official considers appropriate.

209.406–3 Procedures.

(a) *Investigation and Referral.* (i) The contracting officer shall prepare a report containing the information required by paragraph (a)(ii) of this subsection when—

(A) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 and 9.407–2;

(B) FAR 49.106 requires a report;

(C) Part 203 requires a report;

(D) The Government suspects a contractor of violating the Buy American Act (see FAR 25.204);

(E) The Government suspects a contractor of attempting to evade the prohibitions of debarment or suspension by changes of address, multiple addresses, formation of new companies, or by other devices.

(ii) Include the following information, when available, in the report required by paragraph (a)(i) of this subsection)—

(A) Name, address, and telephone number of the point of contact for the activity making the report;

(B) Name and address of the contractor;

(C) Name and addresses of the members of the board, principal officers, partners, owners, and managers;

(D) Name and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship;

(E) For each contract affected by the conduct being reported—

(*1*) The contract number;

(*2*) All office identifying numbers or symbols;

(*3*) Description of supplies or services;

(*4*) The amount;

(*5*) The percentage of completion;

(*6*) The amount paid the contractor;

(*7*) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(*8*) The amount due the contractor;

(F) For any other contracts outstanding with the contractor or any of its affiliates—

(*1*) The contract number;

(*2*) The amount;

(*3*) The amounts paid the contractor; and

(*4*) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom;

(*5*) The amount due the contractor;

(G) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor;

(H) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated);

(I) The comments and recommendations of the contracting officer and of each higher level contracting review authority regarding;

(*1*) Whether to suspend or debar the contractor;

(*2*) Whether to apply limitations to the suspension or debarment; and

(*3*) The period of any recommended debarment;

(*4*) Whether to continue any current contracts with the contractor (explain why a recommendation regarding current contracts is not included);

(J) When appropriate, as an enclosure to the report—

(*1*) A copy or extracts of each pertinent contract;

(*2*) Witness statements or affidavits;

(*3*) Copies of investigative reports;

(*4*) Certified copies of indictments, judgments, and sentencing actions; and

(*5*) D Any other appropriate exhibits or documentation.

(iii) Send three copies of each report, including enclosures, to the debarring official in 209.403.

209.406–4 Period of debarment.

(a) If a decision is based on a felony conviction, the period generally should be for more than one year. When the debarring official decides not to debar or to debar for one year or less, both that decision and the agreement required by 209.406–1(a)(ii) require the written approval of the Secretary concerned or, in the case of the defense agencies, the Assistant Secretary of Defense (Production and Logistics), unless the debarring official determines that all of the mitigating factors in 209.406–1(a)(i) (A) through (J) are applicable and affirmative.

6. Part 210 is revised to read as follows:

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

Authority: 5 U.S.C. 301,10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

210.001 Definitions.

Bill of materials means a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind.

Nondevelopmental item means—

(1) Any item of supply that is available in the commercial marketplace;

(2) Any previously-developed item of supply that is in use by a department or agency of the U.S., a state or local Government, or a foreign Government with which the U.S. has a mutual Defense cooperation agreement;

(3) Any item of supply described in paragraphs (1) or (2) of this definition that requires only minor modification in order to meet the requirements of the contracting agency; or

(4) Any item of supply that is currently being produced that does not meet the requirements of paragraphs (1), (2), or (3) of this definition solely because the item is not yet in use or is not yet available in the commercial marketplace.

Systems means a combination of elements that will function together to produce the capabilities required to fulfill a mission need.

Systems acquisition means the design, development, and production of new systems.

It also includes modifications to existing systems that involve redesign of the system or subsystems.

210.002 Policy.

(c) All systems acquisition programs in the DoD are subject to the acquisition streamlining policies and procedures in DoDD 5000.43, Acquisition Streamlining, and MIL–HDBK–248. Statements of work for acquisition streamlining programs, in citing specifications, standards, and related documents, shall—

(i) Specify results desired, rather than how-to design or how-to manage;

(ii) Be tailored to the unique circumstances of the acquisition; and

(iii) State for each specification, standard, and related document whether it is included for guidance or mandatory compliance.

(A) Include specifications, standards, and related documents for guidance for acquisition programs prior to entering full-scale development, except as provided in paragraph (c)(iii)(B)*(2)* of this section. Require in the statement of work that the contractor evaluate the specifications, standards, and related documents and recommend a tailored application for any subsequent phase of the acquisition.

(B) Include specifications, standards, and related documents for mandatory compliance—

(1) At the first tier document level, for acquisition programs in fullscale development. Include documents below first tier for guidance.

(2) At all document tiers, if they—

(i) Define the product baseline for acquisition programs in the production phase;

(ii) Call for nondevelopmental items, such as standard parts or off-the-shelf items; or

(iii) Cover design constraints which have been directed and have been tailored to the maximum extent practical.

210.002-70 Preference for nondevelopmental items.

DoD policy is to fulfill requirements for supplies through acquisition of nondevelopmental items to the maximum extent practical (10 U.S.C. 2325).

210.004 Selecting specifications or descriptions for use.

(b)(3) When a "brand name or equal" purchase description is used—

(i) The purchase description—

(A) Should include a complete common generic identification of the item.

(B) Should reference all known acceptable brand name products, to include—

(1) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known); and

(2) Model, make, or catalog number for each, and identity of the commercial catalog in which it appears.

(C) May, if necessary to adequately describe an item, use a commercial catalog description or an extract from the catalog. Ensure that a copy of each catalog referenced (except parts catalogs) is available at the contracting office for review by offerors.

(D) Should give prospective offerors the opportunity to offer products other than those specifically referenced by brand name, as long as they meet the needs of the Government in essentially the same manner as the brand name product.

(E) Must identify those salient physical, functional, or other characteristics which are essential to the needs of the Government.

(ii) The solicitation—

(A) May require bid samples for "or equal" offers, but not for "brand name" offers.

(B) Must provide for full consideration and evaluation of "or equal" offers against the salient characteristic specified in the purchase description. Do not reject offers for minor differences in design, construction, or features which do not affect the suitability of the product for its intended use.

(iii) The contract shall identify, or incorporate by reference an identification of the specific products the contractor is to furnish. Include any brand name, make or model number, descriptive material, and any modifications of brand name products specified in the offer.

210.008 Identification and availability of specifications.

(a) The DoD index of data item descriptions is DoD 5010.12–L, Acquisition Management Systems and Data Requirements Control List.

(d) Also, furnish data item descriptions which are not listed in the Acquisition Management Systems and Data Requirements Control List (AMSDL), except when it is not feasible, e.g., documents are bulky or only a limited number of copies are available at the contracting activity.

(g) Contracting activities can obtain copies of the DODISS, the AMSDL, all unclassified specifications and standards listed in the DODISS, and data item descriptions listed in the AMSDL by sending a DD Form 1425, Specifications and Standards Requisition, to the DoD single stock point: Standardization Document Order Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111–5094. Include with the DD Form 1425—

(i) The requestor's customer number; and

(ii) Complete return mailing address, including any "mark for" instructions.

210.011 Solicitation provisions and contract clauses.

(b) When contract performance requires use of specifications and standards which are not listed in the DODISS and data item descriptions which are not listed in the AMSDL, use provisions, as appropriate, substantially the same as those at 252.210–7001, Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD 5010.12–L, and Plans, Drawings, and Other Pertinent Documents, and 252.210–7002, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

210.011-70 Solicitation provisions and contract clauses.

(a)(i) When a brand name or equal purchase description is to be included in a solicitation, use the provision at 252.210–7000, Brand Name or Equal. Also, immediately following each item covered by a brand name or equal purchase description, insert the following:

Offering:
Manufacturer's Name———————
Brand ———————
No. ———————

(ii) When component parts of an end item are described by brand name or equal purchase descriptions and application of the provision at 252.210–7000 to some or all of the components would be impracticable, either do not use the provision or limit its application to specific components.

(b) Use the clause at 252.210–7003, Acquisition Streamlining, in all solicitations and contracts for systems acquisition programs.

(c) Use the provision at 252.210–7004, Alternate Preservation, Packaging, and Packing, in solicitations which include military preservation, packaging, or packing specifications; and it is both desirable and feasible to evaluate and award using commercial or industrial preservation, packaging, or packing.

(d) Use the clause at 252.210–7005, Bill of Materials, in solicitations and contracts which require delivery of bill(s) of materials.

210.070 Acquiring bills of materials.

(a) DoDI 4210.8, Department of Defense Bills of Materials, requires acquisition of bills of materials for certain items, when necessary—

(1) To develop materials or components requirements for production and maintenance programs;

(2) For industrial mobilization purposes; or

(3) For other specified purposes.

(b) When a bill of materials is required, include the following in the contract—

(1) An identification of the supplies or parts to be covered by the bill of materials;

(2) The type of bill or bills of materials (detailed, modified, expanded summary, or abbreviated summary) to be furnished, with instructions, including a requirement for submission, on DD Form 346, Raw (Basic Processed) and Semi-Fabricated Stock Form, and DD Form 347, Bill of Materials for Subcontracted Parts, Purchased Parts, Government Furnished Property;

(3) The price to be paid the contractor for the bill of materials and any revisions, or a statement that the bill of materials is not separately priced;

(4) The number of copies of each bill of materials to be furnished; and

(5) The delivery dates.

7. Part 212 is revised to read as follows:

PART 212—CONTRACT DELIVERY OR PERFORMANCE

Subpart 212.1—Delivery or Performance Schedules

Sec.
212.104 Contract clauses.

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

Subpart 212.3—Priorities and Allocations

212.302 General.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 212.1—Delivery or Performance Schedules

212.104 Contract clauses.

(a) The clauses at FAR 52.212–1, Time of Delivery, and 52.212–2, Desired and Required Time of Delivery, may also be used in contracts for research, development, or facilities, or in time and material and labor hours contracts.

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

(b) Use the clause at FAR 52.212–5, Liquidated Damages—Construction, in all construction contracts exceeding $500,000, except cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. Use of the clause in contracts of less than $500,000 is optional.

Subpart 212.3—Priorities and Allocations

212.302 General.

DoD implementation of the Defense Priorities and Allocations System is in DoDI 4400.1, Priorities and Allocations—Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuance of Related Manuals.

8. Part 213 is revised to read as follows:

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 213.1—General

Sec.
213.106 Competition and price reasonableness.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of Blanket Purchase Agreements.
213.203–1 General.
213.204 Purchase under Blanket Purchase Agreements.

Subpart 213.3—Fast Payment Procedure

213.302 Conditions for use.

Subpart 213.4—Imprest Fund

213.403 Agency responsibilities.
213.404 Conditions for use.

Subpart 213.5—Purchase Orders

213.503 Obtaining contractor acceptance and modifying purchase orders.
213.504 Termination or cancellation of purchase orders.
213.505 Purchase order and related forms.
213.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
215.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.
213.507 Clauses.

Authority: 5 U.S.C. 301,10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 213.1—General

213.106 Competition and price reasonableness.

The contracting officer need not solicit foreign firms located in qualifying countries (as defined in 225.001), unless it is in the best interest of the Government to do so.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of Blanket Purchase Agreements.

213.203–1 General.

(i) Prepare and issue blanket purchase agreements (BPAs) on DD Form 1155, Order for Supplies or Services.

213.204 Purchase under Blanket Purchase Agreements.

(b) Individual purchases for subsistence may be made at any dollar value; however, the contracting officer shall satisfy the competition requirements of FAR part 6 for any action above the dollar threshold at FAR 13.000.

Subpart 213.3—Fast Payment Procedure

213.302 Conditions for use.

(a) Individual orders may exceed $25,000 for—

(i) Brand name commissary resale subsistence; and

(ii) Medical supplies for direct shipment overseas.

Subpart 213.4—Imprest Fund

213.403 Agency responsibilities.

(c) Installation commanders and commanders of other activities with contracting authority are authorized to approve the establishment of imprest funds. See Chapter 32 of the DoD Accounting Manual, DoD 7220.9–M, and DoDD 7360.10, Disbursing Policies.

213.404 Conditions for use.

(a) Overseas transactions in support of contingencies declared by the Secretary of Defense may use imprest funds up to $2,500.

(c)(i) Additional conditions for use include—

(A) Availability for delivery within 60 days; and

(B) No requirement for detailed technical specifications or technical inspections

(ii) When imprest funds are used for small purchases, the funds may also be used to pay—

(A) Charges for local delivery, parcel post (including c.o.d. postal charges), and line haul or inter-city transportation charges when the supplier is to arrange for delivery, provided—

(*1*) The charges are reasonable; and

(*2*) Acceptance is in the best interest of the Government.

(B) C.o.d. charges.

Subpart 213.5—Purchase Orders

213.503 Obtaining contractor acceptance and modifying purchase orders.

(a) Require written acceptance of purchase orders for classified acquisitions.

(b) Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to modify purchase orders.

(d)(i) Unilateral modifications may be used for—

(A) Administrative changes such as correction of typographical errors, changes in paying office, changes in accounting and appropriation data, etc.

(B) No cost amended shipping instructions (ASI) ii—

(*1*) The ASI modifies a unilateral purchase order, and

(*2*) The contractor agrees verbally or in writing.

(C) Any change made before work begins if—

(*1*) The change is within the scope of the original order;

(*2*) The contractor agrees;

(*3*) The modification references the contractor's verbal or written agreement; and

(*4*) Block 13D of the Standard Form 30 is annotated to reflect issuance of the modification.

213.504 Termination or cancellation of purchase orders.

(a) Use Standard Form 30 to cancel a unilateral purchase order.

213.505 Purchase order and related forms.

213.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Departments and agencies shall not use Optional Forms 347, Order for Supplies or Services, and 348, Order for Supplies or Services-Schedule Continuation.

(b)(i) Use DD Form 1155, Orders for Supplies or Services, (see 253.213(e)), for purchases made using the small purchase procedures of FAR part 13. The DD Form 1155 serves as—

(A) A purchase order, when used with the clauses prescribed at 213.507(a);

(B) A blanket purchase agreement, when used with the clauses prescribed at 213.507 for purchase orders;

(C) A delivery order under a Government contract or from Government agencies outside the DoD;

(D) A receiving and inspection report;

(E) A property voucher,

(F) A public voucher—

(*1*) For not more than $25,000, when the form is used as a purchase order;

(*2*) Without monetary limitation, when the form is used—

(*i*) As a delivery order; or

(*ii*) As the basis for payment of an invoice against blanket purchase agreements or basic ordering agreements when a firm price has been established;

(G) A document for acceptance by the supplier.

(ii) The DD Form 1155 is also authorized for use for—

(A) Classified acquisitions when the purchase is made within the United States, its possessions, and Puerto Rico. (Ensure incorporation in the purchase order of DD Form 254, Contract Security Classification Specification.)

(B) Orders under departmental contracts or from Government agencies outside the DoD (see FAR subparts 8.4, 8.6, 8.7, and 16.5).

213.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

(b)(1) The $2,500 limitation applies to all purchases except—

(A) Aviation fuel and oil purchases up to the small purchase threshold at FAR 13.000;

(B) Overseas transactions by contracting officers up to the small purchase threshold at FAR 13.000 in support of contingencies declared by the Secretary of Defense.

213.507 Clauses.

(a) Use the clauses in paragraph (a)(i) through (iii) of this section, as applicable, in all purchase orders. Incorporate the clauses either by reference, if permitted by FAR 52.102-1, or in full text, if required by FAR 52.102-2.

(i) Unilateral purchase orders—

(A) 52.252-2, Clauses Incorporated by Reference (required only if other clauses are incorporated by reference);

(B) 52.203-1, Officials Not to Benefit;

(C) 52.203-3, Gratuities;

(D) 52.203-5, Covenant Against Contingent Fees;

(E) 52.203-7, Anti-Kickback Procedures;

(F) 52.212-9, Variation in Quantity;

(G) 52.222-3, Convict Labor (unless the order will be subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6));

(H) 52.222-26, Equal Opportunity (unless exempt under FAR 22.007);

(I) 52.225-3, Buy American Act-Supplies;

(J) 52.232-1, Payments;

(K) 52.232-25, Prompt Payment;

(L) 52.232-28, Electronic Funds Transfer Payment Methods;

(M) 52.233-1, Disputes;

(N) 52.246-1, Contractor Inspection Requirements (except when an alternate level of inspection of quality assurance is necessary (see FAR 46.203 and 204)); and

(O) 52.246-16, Responsibility for Supplies.

(ii) Bilateral purchase orders—

(A) The clauses in paragraph (a)(i) of this section;

(B) 52.204-2, Security Requirements (if the acquisition is classified);

(C) 52.243-1, Changes—Fixed Price (with appropriate alternate as necessary);

(D) 252.243-7001, Pricing of Contract Modifications;

(E) 52.249-1,52.249-4, or 52.249-5, Termination for Convenience of the Government; and

(F) 52.249-8, 52.249-9, or 52.249-10, Default.

(iii) Any other clauses required by the prescription for their use.

9. Part 214 is revised to read as follows:

PART 214—SEALED BIDDING

Subpart 214.2—Solicitation of Bids

Sec.

Subpart 214.4—Opening of Bids and Award of Contract

Subpart 214.5—Two-Step Sealed Bidding

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 214.2—Solicitation of Bids

214.202 General rules for solicitation of bids.

214.202-5 Descriptive literature.

(d) *Requirements of invitation for bids.* When brand name or equal purchase descriptions are used, use of the provision at 252.210-7000, Brand Name or Equal, satisfies this requirement.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.

214.404-1 Cancellation of invitations after opening.

The contracting officer shall make the written determinations required by FAR 14.404-1 (c) and (e).

214.406 Mistakes in bids.

214.406-3 Other mistakes disclosed before award.

(c) Process cases involving evidence that is less than clear and convincing under paragraph (e) of this subsection.

(e) Departments and agencies may delegate authority for making a determination under FAR 14.406-3 (a), (b), and (d), without power of redelegation, as follows:

(i) Department of the Army:

(A) Deputy Assistant Secretary (Procurement), Office of the Assistant Secretary of the Army (Research, Development, and Acquisition);

(B) General Counsel, U.S. Army Materiel Command;

(C) General Counsel, Office of the Chief of Engineers; and

(D) Chief, Contract Law Division, Office of The Judge Advocate General, Headquarters, Department of the Army.

(ii) Department of the Navy:

(A) Assistant Commander for Contracts, Naval Facilities Engineering Command Headquarters; and

(B) Deputy Commander for Purchasing, Naval Supply Systems Command Headquarters.

(iii) Department of the Air Force:

The Staff Judge Advocate, Headquarters, Air Force Logistics Command.

(iv) Defense Logistics Agency:

(A) General Counsel, DLA; and

(B) Associate General Counsel, DLA.

(v) National Security Agency:

Director of Procurement, NSA.

(vi) Defense Communications Agency:

General Counsel, DCA.

(vii) Defense Nuclear Agency:

General Counsel, DNA.

(viii) Defense Mapping Agency:

General Counsel, DMA.

(h) Send a signed copy of the document authorizing correction of the bid to the appropriate finance center with its copy of the contract.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.

214.503-1 Step One.

(a) Requests for technical proposals may be in the form of a letter.

10. Part 228 is revised to read as follows:

PART 228—BONDS AND INSURANCE

Sec.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

228.001 Definitions.

Self-insurance as defined at FAR 31.001, applies to contracts—

(1) Subject to Cost Accounting Standard (CAS) 416; or

(2) If not subject to CAS 416, when the contractor elects to establish a program of self-insurance.

Subpart 228.1—Bonds

228.101 Bid guarantees.

228.101-1 Policy on use.

(b) For construction contracts, only separate bid bonds, U.S. bonds, Treasury notes, or other public debt obligations of the U.S. are acceptable.

228.102 Performance and payment bonds for construction contracts.

228.102-1 General.

(a) The requirement for performance and payment bonds is waived for cost reimbursement contracts. However, for cost type contracts with fixed-price construction subcontracts over $25,000, require the prime contractor to obtain from each of its construction subcontractors—

(i) A payment bond in favor of the prime contractor sufficient to pay labor and material costs; and

(ii) A performance bond in an equal amount if available at no additional cost.

228.105 Other types of bonds.

Fidelity and forgery bonds may be used when—

(1) Necessary for the protection of the Government or the contractor; or

(2) The investigative and claims services of a surety company are desired.

228.170 Solicitation provision.

When a requirement for a performance bond or other security is included in a solicitation for dismantling, demolition, or removal of improvements (see FAR 37.300), use the provision at 252.228-7004, Bonds or Other Security.

Subpart 228.3—Insurance

228.304 Risk-pooling arrangements.

The DoD has established the National Defense Projects Rating Plan, also known as the Special Casualty Insurance Rating Plan, as a risk-pooling arrangement to minimize the cost to the Government of purchasing the liability insurance listed in FAR 28.307-2. Use the plan in accordance with the following guidelines when it provides the necessary coverage more advantageously than commercially available coverage.

(1) The plan—

(i) Is implemented by attaching an endorsement to standard insurance policy forms for worker's compensation, employer's liability, comprehensive general, and automobile liability. The endorsement states that the instant policy is subject to the National Defense Projects Rating Plan.

(ii) Applies to eligible Defense projects of one or more departments/agencies. For purposes of this section, a Defense project is any eligible contract or group of contracts with the same contractor.

(A) A Defense project is eligible when—

(*1*) Eligible contracts represent, at the inception of the plan, at least 90 percent of the payroll for the total operations at project locations, and

(*2*) The annual insurance premium is estimated to be at least $10,000.

(B) A contract is eligible when it is—

(*1*) Either domestic or foreign;

(*2*) Cost-reimbursement type; or

(*3*) Fixed price with redetermination provisions.

(2) Under construction contracts, include construction subcontractors in the prime contractor's plan when—

(i) Subcontractor operations are at the project site, and the subcontract provides that the prime contractor will furnish insurance; or

(ii) Subcontractor operations are away from the project site.

(3) Use the following agreement when the Government assumes contractor premium payments upon contract termination or completion.

Special Casualty Insurance Rating Plan

Assignment-Assumption of Premium Obligations

It is agreed that 100 percent* of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy _____ applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the office designated for contract administration acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100 percent* of the premiums under said policies.

This agreement, upon acceptance by the prime contractor, the United States of America, and the Company shall be effective from _____

Accepted _____

(Date) _____

(Name of Insurance Company)

By _____

(Title of Official Signing)

Accepted _____

(Date) _____

United States of America

By _____

Authorized Representative)

Accepted _____

(Date) _____

(Prime Contractor)

By _____

(Authorized Representative)

*In the event the Government has less than a 100 percent interest in premium funds or dividends, modify the assignment to reflect the percentage of interest and extent of the Governments assumption of additional premium obligation.

(4) The Federal Tort Claims Act provides protection for Government employees while driving Government-owned vehicles in the performance of their assigned duties. Include the following endorsement in automobile liability insurance policies provided under the National Defense Projects Rating Plan:

It is agreed that insurance provided by the policy with respect to the ownership, maintenance, or use of automobiles, including loading and unloading thereof, does not apply to the following as insureds: The United States of America, any of its agencies, or any of its officers or employees.

228.305 Overseas workers' compensation and war-hazard insurance.

(d) Submit requests for waiver through department/agency channels. Include the following—

(i) Name and address of contractor:

(ii) Contract number;

(iii) Date of award;

(iv) Place of performance;

(v) Name of insurance company providing Defense Base Act coverage;

(vi) Nationality of employees to whom waiver is to apply; and

(vii) Reason for waiver.

228.307 Insurance under cost-reimbursement contracts.

228.307-1 Group insurance plans.

The Defense Department Group Term Insurance Plan is available for contractor use under cost-reimbursement type contracts when approved as provided in department or agency regulations. A contractor is eligible if—

(a) The number of covered employees is 500 or more; and

(b) The contractor has all cost-reimbursement contracts; or

(c) At least 90 percent of the payroll for contractor operations to be covered by the Plan is under cost-reimbursement contracts.

228.370 Contract clauses.

(a) Use the clause at 252.228-7000, Reimbursement for War-Hazard Losses, when—

(1) The clause at FAR 52.228-4, Worker's Compensation and War-Hazard Insurance Overseas, is used; and

(2) The head of the contracting activity decides not to allow the contractor to buy insurance for war-hazard losses.

(b)(1) Use the clause at 252.228-7001, Ground and Flight Risk, in negotiated fixed-price contracts for aircraft production, modification, maintenance, repair, or overhaul, unless—

(i) The aircraft is being acquired for a foreign military sale and the foreign government has not agreed to assume the risk; or

(ii) The cost of insurance for damage, loss, or destruction of aircraft does not exceed $500, and the contracting officer agrees to recognize the insurance costs.

(2) If appropriate, revise the clause at 252.228-7001, Ground and Flight Risk, as follows—

(i) Include a modified definition of "aircraft" if the contract covers other than conventional types of winged aircraft, i.e., helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.

(ii) Modify "in the open" to include "hush houses," test hangars and comparable structures, and other designated areas.

(iii) Expressly define the "contractor's premises" where the aircraft will be located during and for contract performance. These locations may include contract premises which are owned, leased, or premises where the contractor is a permittee or licensee or has a right to use, including Government airfields.

(iv) Revise paragraph (d)(iii) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—

(A) Limited to the vicinity of contractor premises; and

(B) Incidental to work performed under the contract.

(c)(1) Use the clause at 252.228-7002, Aircraft Flight Risk, in cost reimbursement contracts—

(i) For the development, production, modification, maintenance, repair, or overhaul of aircraft; or

(ii) Otherwise involving the furnishing of aircraft to the contractor by the Government.

(iii) With the definition of "aircraft" modified, if appropriate, to include helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft.

(2) Use the clause at 252.228-7002, Aircraft Flight Risks, appropriately modified, in fixed price contracts when—

(i) The clause at 252.228-7001, Ground and Flight Risk, is not used; and

(ii) Contract performance involves the flight of Government furnished aircraft.

(d) The clause at 252.228-7003, Capture and Detention, may be used when contractor employees are subject to capture and detention and may not be covered by the War-Hazard Compensation Act (42 U.S.C. 1701 et seq.).

(e) The clause at 252.228-7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, may be used in solicitations and contracts which involve the manufacture, modification, overhaul, or repair of these items.

11. Part 230 is revised to read as follows:

PART 230—COST ACCOUNTING STANDARDS

Subpart 230.70—Facilities Capital Employed for Facilities in Use

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 230.70—Facilities Capital Employed for Facilities In Use

230.7000 Contract facilities capital estimates.

(a) The contracting officer will estimate the facilities capital cost of money and capital employed using—

(1) An analysis of the appropriate Forms CASB-CMF and cost of money factors; and

(2) DD Form 1861, Contract Facilities Capital Cost of Money.

230.7001 Use of DD Form 1861.

230.7001-1 Purpose.

The DD Form 1861 provides a means of linking the Form CASB-CMF and DD Form 1547, Record of Weighted Guidelines Application. It—

(a) Enables the contracting officer to differentiate profit objectives for various types of assets (land, buildings, equipment). The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) Is designed to record and compute the contract facilities capital cost of money and capital employed which is carried forward to DD Form 1547.

230.7001-2 Completion instructions.

Complete a DD Form 1861 only after evaluating the contractor's cost proposal establishing cost of money factors, and establishing a prenegotiation objective on cost. Complete the form as follows:

(a) List overhead pools and direct-charging service centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective and list against each overhead pool and direct-charging service center.

(c) Multiply each allocation base by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort.

(d) Total contract facilities cost of money is the sum of the yearly amounts.

(e) Since the facilities capital cost of money factors reflect the applicable cost of money rate in Column 1 of Form CASB-CMF, divide the contract cost of money by that same rate to determine the contract facilities capital employed.

230.7002 Preaward facilities capital applications.

To establish cost and price objectives, apply the facilities capital cost of money and capital employed, as determined under 230.7000, as follows:

(a) *Cost of Money*—(1) *Cost Objective.* Use the imputed facilities capital cost of money, with normal, booked costs, to establish a cost objective or the target cost when structuring an incentive type contract. Do not adjust target costs established at the outset even though actual cost of money rates become available during the period of contract performance.

(2) *Profit Objective.* When measuring the contractor's effort for the purpose of establishing a prenegotiation profit objective, restrict the cost base to normal, booked costs. Do not include cost of money as part of the cost base.

(b) *Facilities Capital Employed.* Assess and weight the profit objective for risk associated with facilities capital employed in accordance with the profit guidelines at 215.970-1(c).

230.7003 Postaward facilities capital applications.

230.7003-1 Interim billings based on costs incurred.

(a) The contractor may include contract facilities capital cost of money in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. These cost of money calculations are interim estimates subject to adjustment

(b) As actual cost of money factors under CAS 414 and FAR 31.205-10 are finalized, use the new factors to calculate contract facilities cost of money for the next accounting period.

230.7003-2 Final settlement.

(a) Contract facilities capital cost of money for final cost determination or repricing is based on each year's final cost of money factors determined under CAS 414 and supported by separate Forms CASB-CMF.

(b) Separately compute contract facilities cost of money in a manner similar to yearly final overhead rates. Also like overhead costs, include in the final settlement an adjustment from interim to final contract cost of money. Do not, however, adjust estimated or target cost.

230.7004 Administrative procedures.

230.7004-1 Forms CASB-CMF.

(a) Forms CASB-CMF are normally initiated by the contractor under the same circumstances as Forward Pricing Rate Agreements (see FAR 15.809) and evaluated as complementary documents and procedures.

(b) Separate forms are required for each prospective cost accounting period of contract performance.

(c) The contractor may submit annually or with individual contract price proposals, as agreed with the administrative contracting officer (ACO).

(d) The contractor must submit a final form under CAS 414 as soon as possible after the end of each accounting period, together with a proposal for actual overhead costs and rates.

230.7004-2 DD Form 1861.

(a) The contracting officer may ask the ACO to complete the forms as part of field pricing support.

(b) When the Weighted Guidelines Method is used, completion of the DD Form 1861 requires information not included on the Form CASB-GMF, i.e., distribution percentages of land, building, and equipment for the business unit performing the contract. Choose the most practical method for obtaining this information, for example—

(1) Contract administration offices could obtain the information through the process used to establish factors for

facilities capital cost of money or could establish advance agreements on distribution percentages for inclusion in field pricing reports;

(2) The corporate ACO could obtain distribution percentages; or

(3) The contracting officer could request the information through a solicitation provision.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7100 Definitions.

(a) *Intangible capital asset* is an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset* is an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate* is either—

(1) The interest rate determined by the Secretary of the Treasury under Public Law 92–41 (85 Stat. 97); or

(2) The time-weighted average of the interest rate for each cost accounting period during which the asset is being constructed, fabricated, or developed.

(d) *Representative investment* is the calculated amount considered invested by the contractor during the cost accounting period to construct, fabricate, or develop the asset.

230.7101 Calculations.

230.7101–1 Cost of money.

(a) The interest rate in 230.7100(c)(1) is established semi-annually and is published in the **Federal Register** during the fourth week of December and June.

(b) To calculate the time-weighted average interest rate—

(1) Multiply the various rates in effect during the months of construction by the number of months each rate was in effect; and

(2) Divide the sum of the products by the total number of months in which the rates were experienced.

230.7101–2 Representative investment.

(a) The calculation of the representative investment requires consideration of the rate or expenditure pattern of the costs to construct, fabricate, or develop a capital asset.

(b) If a majority of the costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor shall either—

(1) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(2) Treat month-end balances as individual representative investment amounts.

(c) If the costs were incurred in a fairly uniform expenditure pattern throughout the construction, fabrication, or development period, the contractor may—

(1) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(2) Treat month-end balances as individual representative investment amounts.

230.7102 Determining imputed cost of money.

(a) Determine the imputed cost of money for an asset under construction, fabrication, or development by applying a cost of money rate (see 230.7101–1) to the representative investment amount (see 230.7101–2).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 230.7101–2(b)(1) or 230.7101–2(c)(1), the cost of money will be the time-weighted average rate.

(2) When a monthly representative investment amount is used in accordance with 230.7101–2(b)(2) or 230.7101–2(c) (2), the cost of money will be the interest rate in effect each month. (Under this method, the cost of money is determined monthly and the total for the cost accounting period is the sum of the monthly amounts.)

(b) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of the period or at the end of the construction, fabrication, or development period, whichever comes first.

(c) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

230.7103 Preaward capital employed application.

An offset to the profit objectives as set forth in FAR subpart 15.9 is not required for CAS 417 cost of money.

12. Part 234 is revised to read as follows:

PART 234—MAJOR SYSTEM ACQUISITION

Sec.

Authority: 5 U.S.C. 301,10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

234.003 Responsibilities.

DoDD 5000.1, Major and Non-Major Defense Acquisition Programs, and DoDI 5000.2, Defense Acquisition Program Procedures, contain the DoD implementation of OMB Circular A–109.

234.005 General requirements.

234.005–70 Contract clause.

Use the clause at 252.234–7000, Cost/Schedule Control Systems, in solicitations and contracts when contractor compliance with the cost/schedule control system criteria of DoDI 7000.2, Performance Measurement for Selected Acquisitions, is required.

13. Part 246 is revised to read as follows:

PART 246—QUALITY ASSURANCE

Subpart 246.1—General

Sec.

Subpart 246.2—Contract Quality Requirements

Subpart 246.4—Government Contract Quality Assurance

Subpart 246.6—Material Inspection and Receiving Reports

Subpart 246.7—Warranties

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 246.1—General

246.102 Policy.

Departments and agencies shall also—

(1) Develop and manage a cost effective quality program to ensure that contract performance conforms to specified requirements. Apply the quality program to all contracts for services and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of by contractors.

(2) Conduct quality audits to ensure the quality of products and services.

(3) Base the type and extent of Government contract quality assurance actions on the particular acquisition.

(4) Provide contractors the maximum flexibility in establishing efficient and effective quality programs to meet contractual requirements.

246.103 Contracting office responsibilities.

The contracting office may conduct product-oriented surveys and evaluations to determine the adequacy of the technical requirements relating to quality, and product conformance to design intent. Consider conducting the surveys and evaluations in conjunction with the activity responsible for technical requirements.

(a) Contracting offices are also responsible for—

(i) Assisting the technical activity in improving the quality requirements for contracts when first identified for competitive acquisition; and

(ii) Assisting in determining the cause of problems noted in user experience reports.

(b) The contracting office must coordinate with the quality assurance activity before changing any quality requirement.

(c) If defective material—

(i) Is discovered after acceptance;

(ii) The defect appears to be the fault of the contractor;

(iii) Any warranty has expired; and

(iv) There are no other available contractual remedies,

The contracting officer shall—

(A) Notify the contractor in writing of the defective material;

(B) Request that the contractor repair or replace the material at no cost to the Government; and

(C) Not request a voluntary refund. However, if consideration is offered, it may be accepted.

(d) The activity responsible for technical requirements may prepare instructions covering the type and extent of Government inspections for acquisitions that are complex, have critical applications, or have unusual requirements.

(i) In preparing the instructions, the technical activity shall consider, as applicable—

(A) The past quality history of the contractor;

(B) The criticality of the material procured in relation to its intended use, considering such factors as—

(*1*) Reliability;

(*2*) Safety; and

(*3*) Interchangeability;

(C) Problems encountered in the development of the material;

(D) Problems encountered in other procurements of the same or similar material;

(E) Available feed-back data from receiving, testing, or using activities; and

(F) The experience of other contractors in overcoming manufacturing problems.

(ii) The instructions shall—

(A) Be kept to a minimum;

(B) Comply with 246.470–2; and

(C) Be prepared on a contract-by-contract basis.

(iii) The instructions shall not—

(A) Serve as a substitute for incomplete contract quality requirements;

(B) Impose greater inspection requirements than are in the contract;

(C) Use broad or general designations such as—

(*1*) All requirements;

(*2*) All characteristics; or

(*3*) All characteristics in the classification of defects;

(D) Be used for routine administrative procedures; or

(E) Specify continued inspection requirements when statistically sound sampling will provide an adequate degree of protection.

(iv) After issuing the instructions, the technical activity—

(A) Must periodically analyze the need to continue, change, or discontinue the instructions;

(B) Must provide the contract administration office available information regarding those factors which resulted in the requirement for Government inspection; and

(C) Should advise the contract administration office of the results of the periodic analyses.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.

246.202–3 Higher-level contract quality requirements.

(b)(i) *Inspection System Requirements.* MIL–I–45208 requires that the contractor establish and maintain an inspection system. MIL–I–45208 is used in contracts—

(A) In addition to a standard inspection requirement; and

(B) When technical requirements require control of quality by both in-process and final end-item inspection, including such elements of the manufacturing process as—

(*1*) Measuring and testing equipment;

(*2*) Drawings and changes;

(*3*) Inspection; and

(*4*) Documentation and records.

(ii) *Quality Program Requirements.* MIL–Q–9858 requires that the contractor establish and maintain a quality program in accordance with a Government specification. MIL–Q–9858 is used in contracts—

(A) In addition to a standard inspection requirement; and

(B) When the technical requirements of the contract require—

(*1*) Control of work operations;

(*2*) In-process controls and inspection; and

(*3*) Attention to other factors such as—

(*i*) Organizations;

(*ii*) Planning;

(*iii*) Work instructions;

(*iv*) Documentation control; and

(*v*) Advanced metrology.

246.203 Criteria for use of contract quality requirements.

(c) *Criticality.* Acquisitions of critical items, whether peculiar or common, shall have contract quality requirements.

246.204 Application of criteria.

(1) Use the following table for the higher-level quality requirements of the table in FAR 46.204:

CONTRACT QUALITY REQUIREMENTS GUIDE

Item		Type of contract	
Technical description	Complexity	Application	Quality requirement
Commercial	Complex	Critical	MIL-I-45208
Military-Federal	noncomplex	Critical	MIL-I-45208
Military-Federal	Complex	noncritical	MIL-I-45208
		Peculiar	
Military-Federal	Complex	Critical	MIL-Q-9858

(2) When purchasing a commercial item, the technical, quality assurance, and contracting activities must work together to tailor contract quality requirements to—

(i) Eliminate or minimize special Government testing, quality control, and inspection requirements. Consider—

(A) The item's application;

(B) The cost objectives of the acquisition; and

(C) The item's reliability as established in the commercial market.

(ii) Maximize use of the certificate of conformance;

(iii) Provide for examination and acceptance at the most economical point (source or destination); and

(iv) Facilitate the exercise of any warranty rights.

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

(a) Use the clause at 252.246-7000, Material Inspection and Receiving Report, in solicitations and contracts when there will be separate and distinct deliverables.

(b) Use the clause even if the deliverables are not separately priced.

(c) When contract administration is retained by the contracting office, the clause is not required for—

(1) Contracts awarded using small and other simplified purchase procedures (FAR part 13);

(2) Negotiated subsistence contracts;

(3) Contracts for fresh milk and related fresh dairy products;

(4) Contracts for which the deliverable is a scientific or technical report;

(5) Research and development contracts not requiring the delivery of separately priced end items;

(6) Base, post, camp, or station contracts;

(7) Contracts in overseas areas when the preparation and distribution of the DD Form 250, Material Inspection and Receiving Report, by the contractor would not be practicable. In these cases, arrange for the contractor to provide the information necessary for the contracting office to prepare the DD Form 250;

(8) Contracts for services when hardware is not acquired as an item in the contract; and

(9) Indefinite delivery type contracts placed by central contracting offices which authorize only base, post, camp, or station activities to issue orders.

Subpart 246.4—Government Contract Quality Assurance

246.406 Foreign governments.

(1) *Quality assurance among North Atlantic Treaty Organization (NATO) countries*—(i) *NATO Standardization Agreement (STANAG) 410, Mutual Acceptance of Government Quality Assurance.* (A) STANAG 4107—

(*1*) Contains procedures, terms, and conditions under which one NATO country will perform quality assurance for another NATO country, or for a NATO organization.

(*2*) With certain reservations, has been ratified by the U.S. and other nations in NATO.

(B) Departments and agencies—

(*1*) May ask NATO countries to perform quality assurance;

(*2*) Shall perform quality assurance when requested by a NATO country.

(C) The U.S. Government reserves the right to require reimbursement for work it performs for other NATO countries and organizations.

(ii) *NATO Standardization Agreement (STANAG) 4108, Allied Quality Assurance Publications*—(A) STANAG 4108 provides for the application of Allied Quality Assurance Publications (AQAPs).

(B) Its annexes list AQAPs and the criteria for applying those AQAPs which are required in contracts between NATO countries.

(2) *International military sales (non-NATO).* Departments and agencies shall—

(i) Perform quality assurance services on international military sales contracts or in accordance with existing agreements;

(ii) Ensure conformance to the technical and quality requirements of international military sales contracts;

(iii) Inform host or U.S. Government personnel and contractors on the use of quality assurance publications;

(iv) Specify appropriate quality requirements in contracts awarded to other countries; and

(v) Delegate quality assurance to the host government when satisfactory services are available.

(3) *Reciprocal quality assurance agreements.* A Memorandum of Understanding (MOU) with a foreign country may contain an annex that provides for the reciprocal performance of quality assurance services. MOUs should be checked to determine whether such an annex exists for the country where a defense contract will be performed. (See subpart 225.74 for more information about MOUs.)

246.407 Nonconforming supplies or services.

Contracting officers shall ensure that—

(1) Nonconformances are identified; and

(2) The significance of a nonconformance is established when considering the acceptability of supplies or services which do not meet contract requirements.

(3) Definitions.

Critical nonconformance is a nonconformance that judgment and experience indicate—

(i) Would result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; and

(ii) Is likely to prevent performance of the tactical function of a major end item such as a ship, aircraft, tank, missile, or space vehicle.

Major nonconformance is a nonconformance, other than critical, that is likely to result in failure, or to materially reduce the useability of the supplies or services for their intended purpose.

Minor nonconformance is a nonconformance that is not likely to materially reduce the useability of the supplies or services for their intended purpose, or is a departure from established standards having little

bearing on the effective use or operation.

(c)(1) The nonconformances described in FAR 46.407(c)(1) are either critical or major. The risk associated with accepting supplies or services with critical nonconformances is greater than the risk associated with major nonconformances. The contracting officer—

(A) Shall consider this additional risk in determining acceptability and contract adjustment incident to acceptance of nonconforming supplies and services; and

(B) Shall not accept items having critical nonconformances without determining the impact on the tactical function of the major end item or the consequences of hazardous or unsafe conditions for use.

(f) Contracting officers should consider it in the best interests of the Government to request an equitable price reduction or other consideration for accepting minor nonconformances.

246.408 Single-agency assignments of Government contract quality assurance.

246.408-70 Subsistence.

(a) The Surgeons General of the military departments are responsible for—

(1) Acceptance criteria;

(2) Technical requirements; and

(3) Inspection procedures needed to assure wholesomeness of foods.

(b) The contracting office may designate any Federal activity, capable of assuring wholesomeness and quality in food, to perform quality assurance for subsistence contract items. The designation may—

(1) Include medical service personnel of the military departments; and

(2) Be on a reimbursable basis.

246.408-71 Aircraft.

(a) The Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with some commercial aircraft and of aircraft equipment and accessories (Public Law 85-726 [72 Stat 776, 49 U.S.C. 1423]). This includes the issuance of various certificates applicable to design, manufacture, and airworthiness.

(b) FAA evaluations are not a substitute for normal DoD evaluations of the contractor's quality assurance measures. Actual records of FAA evaluations may be of use to the contract administration office (CAO) and should be used to their maximum advantage.

(c) The CAO shall ensure that—

(1) The supplies and services conform to the terms of the contract; and

(2) The contractor possesses any required FAA certificates and approvals prior to acceptance.

246.408-72 Construction projects.

(a) The department or agency responsible for the construction of a building or other structure is normally responsible for on-site inspection.

(b) The contract administration office performs quality assurance for construction materials and supplies acquired for military and civil works projects.

(c) The offices responsible for on-site inspection and for quality assurance of materials and supplies must coordinate their efforts to ensure the compatibility of buildings and structures and installed equipment.

246.470 Government contract quality assurance actions.

246.470-1 Planning.

In systematically planning Government contract quality assurance actions used to determine a contractor's compliance with contract quality requirements, consider—

(a) The relative importance of the product; and

(b) The variety of tasks required of the available resources.

246.470-2 Evidence of conformance.

Use objective evidence of quality to determine conformance to contract quality requirements.

246.470-3 Assessment of additional costs.

(a) Under the clause at FAR 52.246-2, Inspection of Supplies—Fixed-Price, the Government may charge the contractor for additional costs incurred by the Government due to delays in tests or inspections caused by the contractor, or due to the necessity for reinspection or retest. This action may be necessary when—

(1) Supplies are not ready at the time such inspection and test are requested by the contractor; or

(2) Reinspection or retest is necessitated by prior rejection.

(b) After considering the factors in paragraph (d) of this subsection, the quality assurance representative (QAR) may believe that the assessment of additional costs is warranted. If so, the representative shall recommend that the contracting officer take the necessary action and provide a recommendation as to the amount of additional costs. Costs are based on the standard DoD reimbursable rate in effect at the time of the delay, reinspection, or retest.

(c) If the contracting officer agrees with the QAR, the contracting officer shall—

(1) Notify the contractor, in writing, of the determination to exercise the Government's right under the clause at FAR 52.246-2, Inspection of Supplies—Fixed Price; and

(2) Demand payment of the costs in accordance with the collection procedures contained in FAR subpart 32.6.

(d) In making a determination to assess additional costs, the contracting officer shall consider—

(1) The frequency of delays, reinspection, or retest under both current and prior contracts;

(2) The cause of such delay, reinspection, or retest; and

(3) The expense of recovering the additional costs.

246.470-4 Maintenance of Government records.

The contract administration office shall maintain suitable records of the quality assurance performance of contractors.

246.470-5 Quality evaluation data.

The contract administration office shall establish a system that provides, as a minimum, for the collection, evaluation, and use of—

(a) Quality data developed by the contractor during performance;

(b) Data developed by the Government through contract quality assurance actions; and

(c) Reports by users and customers.

246.471 Authorizing shipment of supplies.

(a) *General.* (1) Ordinarily, a representative of the contract administration office signs or stamps the shipping papers that accompany Government source-inspected supplies to release them for shipment. This is done for both prime and subcontracts.

(2) An alternative procedure [see paragraph (b) of this section) permits the contractor to assume the responsibility for releasing the supplies for shipment.

(3) The alternative procedure may include prime contractor release of supplies inspected at a subcontractor's facility.

(4) The use of the alternative procedure releases DoD manpower to perform technical functions by eliminating routine signing or stamping of the papers accompanying each shipment.

(b) *Alternative Procedures—Contract Release for Shipment.* (1) The contract administration office may authorize, in

writing, the contractor to release supplies for shipment when—

(i) The stamping or signing of the shipping papers by a representative of the contract administration office interferes with the operation of the Government contract quality assurance program or takes too much of the Government representative's time;

(ii) There is sufficient continuity of production to permit the Government to establish a systematic and continuing evaluation of the contractor's control of quality; and

(iii) The contractor has a record of satisfactory quality, including that pertaining to preparation for shipment.

(2) The contract administration office shall withdraw, in writing, the authorization when there is an indication that the conditions in paragraph (b)(1) of this subsection no longer exist.

(3) When the alternative procedure is used, require the contractor to—

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s), or on an attachment—

The supplies in this shipment—

1. Have been subjected to and have passed all examinations and tests required by the contract;

2. Were shipped in accordance with authorized shipping instructions;

3. Conform to the quality, identity, and condition called for by the contract; and

4. Are of the quantity shown on this document.

This shipment was—

1. Released in accordance with section 246.471 of the Defense FAR Supplement; and

2. Authorized by (name and title of the authorized representative of the contract administration office) in a letter dated (date of authorizing letter). (Signature and title of contractor's designated official.)

(ii) Release and process, in accordance with established instructions, the DD Form 250, Material Inspection and Receiving Report, or other authorized receiving report.

246.472 Inspection stamping.

(a) There are two DoD quality inspection approval marking designs (stamps). Both stamps are used—

(1) Only by, or under the direct supervision of, the Government representative; and

(2) For both prime and subcontracts.

(b) The designs of the two stamps and the differences in their uses are—

(1) *Partial (Circle) Inspection Approval Stamp.* (i) This circular stamp is used to identify material inspected for conformance to only a portion of the contract quality requirements.

(ii) Further inspection is to be performed at another time and/or place.

(iii) Material not inspected is so listed on the associated DD Form 250 (Material Inspection and Receiving Report), packing list, or comparable document.

(2) *Complete (Square) Inspection Approval Stamp.* (i) This square stamp is used to identify material completely inspected for all contract quality requirements at source.

(ii) The material satisfies all contract quality requirements and is in complete conformance with all contract quality requirements applicable at the time and place of inspection.

(iii) Complete inspection approval establishes that material which once was partially approved has subsequently been completely approved.

(iv) One imprint of the square stamp voids multiple imprints of the circle stamp.

(c) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or routing tickets serves to adequately indicate the status of the material and to control or facilitate its movement.

(d) Stamping material does not mean that it has been accepted by the Government. Evidence of acceptance is ordinarily a signed acceptance certificate on the DD Form 250, Material Inspection and Receiving Report.

(e) Policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) quality status stamps are contained in NASA publications. When requested by NASA centers, the DoD inspector shall use NASA quality status stamps in accordance with current NASA requirements.

Subpart 246.6—Material Inspection and Receiving Reports

246.670 General.

(a) Material Inspection and Receiving Reports (MIRRs) are used to document—

(1) Contract quality assurance;

(2) Acceptance of supplies and services; and

(3) Shipments.

(b) MIRRs are used by activities responsible for—

(1) Receiving;

(2) Status control;

(3) Technical requirements;

(4) Contracting;

(5) Inventory control;

(6) Requisitioning; and

(7) Payment.

246.671 Procedures.

See Appendix I, Material Inspection and Receiving Report, for procedures and instructions for the use, preparation, and distribution of—

(a) The Material Inspection and Receiving Report (DD Form 250 series) and;

(b) Supplier's commercial shipping/packing lists used to evidence Government contract quality assurance.

Subpart 246.7—Warranties

246.701 Definitions.

Acceptance, as defined in FAR 46.701 and as used in this subpart and in the warranty clauses at FAR 52.246–17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246–18, Warranty of Supplies of a Complex Nature; FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR 52.246–20, Warranty of Services, includes the execution of an official document (e.g., DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

Defect, as used in this subpart, means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Weapon system, as used in this subpart, means a system or major subsystem used directly by the Armed Forces to carry out combat missions.

(1) The term includes, but is not limited to, the following (if intended for use in carrying out combat missions)—

(i) Tracked and wheeled combat vehicles;

(ii) Self-propelled, towed and fixed guns, howitzers and mortars;

(iii) Helicopters;

(iv) Naval vessels;

(v) Bomber, fighter, reconnaissance and electronic warfare aircraft;

(vi) Strategic and tactical missiles including launching systems;

(vii) Guided munitions;

(viii) Military surveillance, command, control, and communication systems;

(ix) Military cargo vehicles and aircraft;

(x) Mines;

(xi) Torpedoes;

(xii) Fire control systems;

(xiii) Propulsion systems;

(xiv) Electronic warfare systems; and

(xv) Safety and survival systems.

(2) The term does not include—

(i) Related support equipment, such as—

(A) Ground-handling equipment;

(B) Training devices and accessories; or

(C) Ammunition, unless an effective warranty for the weapon system would require inclusion of such items, or

(ii) Commercial items sold in substantial quantities to the general public (see FAR 15.804–3(c)).

246.703 Criteria for use of warranties.

The use of warranties in the acquisition of weapon systems is mandatory (10 U.S.C. 2403) unless a waiver is authorized (see 246.770–8).

(b) *Cost.* Agencies shall establish procedures to track and accumulate data on warranty costs.

246.704 Authority for use of warranties.

The chief of the contracting office must approve use of a warranty, except in acquisitions for—

(1) Weapon systems (see 246.770);

(2) Commercial supplies or services (see FAR 46.709);

(3) Technical data, unless the warranty provides for extended liability (see 246.708);

(4) Supplies and services in fixed price type contracts containing quality assurance provisions that reference MIL–I–45208 or MIL–Q–9858; or

(5) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

246.705 Limitations.

(a) Warranties in the clause at 252.246–7003, Warranty of Data, are also an exception to the prohibition on use of warranties in cost-reimbursement contracts.

246.706 Warranty terms and conditions.

(b)(5) *Markings.* Use MIL Standard 129, Marking for Shipments and Storage, and MIL Standard 130, Identification Marking of U.S. Military Property, when marking warranty items.

(6) *Consistency.* Contracting officers may include the cost of a warranty as part of an item's price or as a separate contract line item.

246.708 Warranties of data.

Obtain warranties on technical data when practicable and cost effective. Consider the factors in FAR 46.703 in deciding whether to obtain warranties of technical data. Consider the following in deciding whether to use extended liability provisions—

(1) The likelihood that correction or replacement of the nonconforming data, or a price adjustment, will not give adequate protection to the Government; and

(2) The effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract clauses.

Use a clause substantially the same as the clause at 252.246–7001, Warranty of Data, in solicitations and contracts that include data requirements, and there is a need for greater protection or period of liability than provided by other contract clauses, such as the clauses at FAR 52.246–3, Inspection of Supplies—Cost-Reimbursement; FAR 52.246–6, Inspection—Time-and-Material and Labor-Hour; FAR 52.246–8, Inspection of Research and Development—Cost-Reimbursement; and FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(1) Use the clause at 252.246–7003 with its Alternate I when extended liability is desired and a fixed price incentive contract is contemplated.

(2) Use the clause at 252.246–7003 with its Alternate II when extended liability is desired and a firm fixed price contract is contemplated.

246.770 Warranties in weapon system acquisitions.

This section sets forth policies and procedures for use of warranties in contracts for weapon system production.

246.770–1 Definitions.

As used in this section—

At no additional cost to the Government means—

(1) At no increase in price for firm fixed price contracts;

(2) At no increase in target or ceiling price for fixed price incentive contracts (see also FAR 46.707); or

(3) At no increase in estimated cost or fee for cost-reimbursement contracts.

Design and manufacturing requirements means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the weapon system being produced.

Essential performance requirements means the operating capabilities and maintenance and reliability characteristics of a weapon system that the agency head determines to be necessary to fulfill the military requirement.

Initial production quantity means the number of units of a weapon system contracted for in the first program year of full-scale production.

Mature full-scale production means follow-on production of a weapon system after manufacture of the lesser of the initial production quantity or one-tenth of the eventual total production quantity.

246.770–2 Policy.

(a) Under 10 U.S.C. 2403, departments and agencies may not contract for the production of a weapon system with a unit weapon system cost of more than $100,000 or an estimated total procurement cost in excess of $10,000,000, unless—

(1) Each contractor for the weapon system provides the Government written warranties that—

(i) The weapon system conforms to the design and manufacturing requirements in the contract (or any modifications to that contract),

(ii) The weapon system is free from all defects in materials and workmanship at the time of acceptance or delivery as specified in the contract; and

(iii) The weapon system, if manufactured in mature full-scale production, conforms to the essential performance requirements of the contract (or any modification to that contract); and

(2) The contract terms provide that, in the event the weapon system fails to meet the terms of the above warranties, the contracting officer may—

(i) Require the contractor to promptly take necessary corrective action (e.g., repair, replace, and/or redesign) at no additional cost to the Government;

(ii) Require the contractor to pay costs reasonably incurred by the Government in taking necessary corrective action, or

(iii) Equitably reduce the contract price; or

(3) A waiver is granted under 246.770–8.

(b) Contracting officers may require warranties that provide greater coverage and remedies than specified in paragraph (a) of this subsection, such as including an essential performance requirement warranty in other than a mature full-scale production contract.

(c) When the contract includes an essential performance requirement warranty, the warranty must identify redesign as a remedy available to the Government.

(1) The period during which redesign must be available as a remedy shall not end before operational use, operational testing, or a combination of operational use and operational testing has demonstrated that the warranted item's design has satisfied the essential performance requirements.

(2) When essential performance requirements are warranted in contracts with alternate source contractors, do not include redesign as a remedy available to the Government under those contracts until the alternate source has manufactured the first ten percent of the eventual total production quantity

anticipated to be acquired from that contractor (see 246.770–5).

246.770–3 Tailoring warranty terms and conditions.

(a) Since the objectives and circumstances vary considerably among weapon system acquisition programs, contracting officers must tailor the required warranties on a case-by-case basis. The purpose of tailoring is to get a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(1) Include, at a minimum, remedies, exclusions, limitations, and duration consistent with the requirements of this section (see also FAR 46.706).

(2) Clearly relate the duration of any warranty to the contract requirements and allow sufficient time to demonstrate achievement of the requirements after acceptance.

(3) Tailor the terms of the warranty, if appropriate, to exclude certain defects for specified supplies (exclusions) or to limit the contractor's liability under the terms of the warranty (limitations).

(4) Structure broader and more comprehensive warranties when advantageous or narrow the scope when appropriate. For example, it may be inappropriate to require warranty of all essential performance requirements for a contractor that did not design the system.

(b) DoD policy is to exclude any terms that cover contractor liability for loss, damage, or injury to third parties from warranty clauses.

(c) Ensure acquisition of subsystems and components in a manner which does not affect the validity of the weapon system warranty.

246.770–4 Warranties on Government-furnished property.

Contracting officers shall not require contractors to provide the warranties specified in 246.770–2 on any property furnished the contractor by the Government, except for—

(a) Defects in installation;

(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property; or

(c) Modifications made to the property by the contractor.

246.770–5 Exemption for alternate source contractor(s).

Agency heads may exempt alternate source contractor(s) from the essential performance warranty requirements of 246.770–2(a)(1)(iii) until that contractor manufactures the first ten percent of its anticipated total production quantity.

246.770–6 Applicability to foreign military sales (FMS).

(a) The warranty requirements of 246.770–2 are not mandatory for FMS production contracts. DoD policy is to obtain the same warranties on conformance to design and manufacturing requirements and against defects in material and workmanship as it gets for U.S. supplies.

(b) DoD normally will not obtain essential performance warranties for FMS purchasers. However, where contracting officer cannot separately identify the cost for the warranty of essential performance requirements, the foreign purchaser shall be given the same warranty that the United States gets.

(c) If an FMS purchaser expressly requests a performance warranty in the letter of acceptance, the Government will exert its best efforts to obtain the same warranty obtained for U.S. equipment. Or, if specifically requested by the FMS purchaser, obtain a unique warranty.

(d) The costs for warranties for FMS purchasers may be different from the costs for such warranties for the Government due to factors such as overseas transportation and any tailoring to reflect the unique aspects of the FMS purchaser.

(e) Ensure that FMS purchasers bear all of the acquisition and administrative costs of any warranties.

246.770–7 Cost-benefit analysis.

(a) In assessing the cost effectiveness of a proposed warranty, perform an analysis which considers both the quantitative and qualitative costs and benefits of the warranty. Consider—

(1) Costs of warranty acquisition, administration, enforcement, and user costs, and any costs resulting from limitations imposed by the warranty provisions;

(2) Costs incurred during development specifically for the purpose of reducing production warranty risks;

(3) Logistical and operational benefits as a result of the warranty as well as the impact of the additional contractor motivation provided by the warranty.

(b) Where possible, make a comparison with the costs of obtaining and enforcing similar warranties on similar systems.

(c) Document the analysis in the contract file. If the contracting officer considers that a specific warranty is not cost effective, initiate a waiver request under 246.770–8.

246.770–8 Waiver and notification procedures.

(a) The Secretary of Defense, with authority to delegate (10 U.S.C. 2403), no lower than an Assistant Secretary of Defense or Assistant Secretary of a military department, may waive one or more of the weapon system warranties required by 246.770–2 if—

(1) The waiver is in the interests of national defense; or

(2) The warranty would not be cost effective.

(b) Waiving authorities must make the following notifications or reports to the Senate and House Committees on Armed Services and Appropriations for all waivers—

(1) *Major Weapon Systems.* For a weapon system that is a major Defense acquisition program for the purpose of 10 U.S.C. 2432, the waiving official must notify the Committees in writing of an intention to waive one or more of the required warranties. Include an explanation of the reasons for the waiver in the notice. Ordinarily provide the notice 30 days before granting a waiver.

(2) *Other Weapon Systems.* For weapon systems that are not major Defense acquisition programs for the purpose of 10 U.S.C. 2432, waiving officials must submit an annual report not later than February 1 of each year. List the waivers granted in the preceding calendar year in the report and include an explanation of the reasons for granting each waiver.

(3) *Weapon Systems Not in Mature Full-Scale Production.* Although a waiver is not required, if a production contract for a major weapon system not yet in mature full-scale production will not include a warranty on essential performance requirements, the waiving officials must comply with the notice requirements for major weapon systems.

(c) Departments and agencies shall issue procedures for processing waivers, notifications, and reports to Congress.

(1) Requests for waiver shall include—

(i) A brief description of the weapon system and its stage of production, e.g., the number of units delivered and anticipated to be delivered during the life of the program;

(ii) Identification of the specific warranty or warranties required by 246.770–2(a)(1) for which the waiver is requested;

(iii) The duration of the waiver if it is to go beyond the contract;

(iv) The rationale for the waiver;

(v) A description of the warranties or other techniques used to ensure acceptable field performance of the

weapon system, e.g., warranties, commercial or other guarantees obtained on individual components;

(vi) Action taken to preclude waivers on future contracts; and

(vii) Exercise date of the warranty option, if applicable.

(2) Notifications and reports shall include—

(i) A brief description of the weapon system and its stage of production; and

(ii) Rationale for not obtaining a warranty.

(3) Keep a written record of each waiver granted and notification and report made, together with supporting documentation such as a cost-benefit analysis, for use in answering inquiries.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. The authority for 48 CFR part 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

15. Section 252.205–7000 is revised to read as follows:

252.205–7000 Provision of Information to Cooperative Agreement Holders.

As prescribed in 205.470–2, use the following clause:

Provision of Information to Cooperative Agreement Holders (FEB 1991)

(a) Definition.

"Cooperative Agreement Holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–268; 25 U.S.C. 450(c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93–362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide Cooperative Agreement Holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under Defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular Cooperative Agreement Holder more frequently than once a year.

(End of clause)

252.214–700 [Redesignated as 25.206–7000]

16. Section 252.214–7001 is redesignated as section 252.206–7000 and revised to read as follows:

252.206–7000 Domestic Source Restriction.

As prescribed at 206.302–3–70, use the following provision:

Domestic Source Restriction (FEB 1991)

This solicitation is restricted to domestic sources under the authority of 10 U.S.C. 2304(c)(3). Foreign sources, except Canadian sources, are not eligible for award.

(End of provision)

17. Sections 252.209–7000 and 252.209–7001 are revised to read as follows:

252.209–7000 Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty.

As prescribed in 209.103–70, use the following clause:

Acquisition From Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (FEB 1991)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts over the dollar limitation in section 13.000 of the Federal Acquisition Regulation, except those for commercial or commercial-type products.

(End of clause)

252.209–7001 Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism.

As prescribed in 209.104–70, use the following provision:

Disclosure of Ownership or Control by a Foreign Government That Supports Terrorism (FEB 1991)

(a) *Definitions.* (1) "Significant interest" as used in this provision means—

(i) Ownership of or beneficial interest in five percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding five percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 50 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(2) "Foreign government" as used in this provision includes any agent or instrumentality of that foreign government.

(b) *Disclosure.* The Offeror shall disclose any significant interest the government of each of the following countries has in the Offeror or a subsidiary of the Offeror. If the Offeror is a subsidiary, it shall also disclose any significant interest each government has in any firm that owns or controls the subsidiary. If none, insert "none" after each country.

Country and Significant Interest

(1) Cuba _____

(2) Iran _____

(3) Libya _____

(4) Syria _____

(5) South Yemen _____

(End of provision)

18. Section 252.210–7000 is revised to read as follows:

252.210–7000 Brand Name or Equal.

As prescribed in 210.011–70(a), use the following provision:

Brand Name or Equal (FEB 1991)

(a) If items in this solicitation are identified as "brand name or equal," the term is intended to be descriptive not restrictive. The "brand name or equal" description is used to portray the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, and other characteristics which "equal" products must meet are specified in the solicitation.

(b) To be considered for award, offers of "equal" products, including products (other than the "brand name" item) of the brand name manufacturer, must—

(1) Meet the salient physical, functional, and other characteristics specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as cuts, illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the contracting activity; and

(4) Clearly describe any modifications the Offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate "equal" products on the basis of information furnished with the offer or reasonably available at the contracting activity. The contracting activity is not responsible for locating or securing information not identified in the offer or not reasonably available.

(d) The Contracting Officer will not consider modifications, submitted after the date set for receipt of offers, of an "equal" product to make it conform to the requirements of the solicitation.

(End of provision)

252.210–7002 [Redesignated as 252.210–7001]

19. Section 252.210–7002 is redesignated as section 252.210–7001 and revised to read as follows:

252.210–7001 Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD 5010.12–L, and Plans, Drawings, and Other Pertinent Documents.

As prescribed in 210–011(b), use the following provision:

Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DOD 5010.12–L, and Plans, Drawings, and Other Pertinent Documents (FEB 1991)

Offerors may obtain the specifications, standards, plans, drawings, descriptions, and other pertinent documents cited in this solicitation by submitting a request to:

(Activity) _____

(Complete Address) _____

Include the number of the solicitation and the title and number of the specification, standard, plan, drawing, or other pertinent document.

(End of provision)

252.210–7003 [Redesignated as 252.210–7002]

20. Section 252.210–7003 is redesignated as section 252.210–7002 and revised to read as follows:

252.210–7002 Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

As prescribed in 210.011(b), use the following provision:

Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and other Pertinent Documents (FEB 1991)

The specifications, standards, plans, drawings, descriptions, and other pertinent documents cited in this solicitation are not available for distribution but may be examined at the following location:

_____

(Insert complete address)

(End of provision)

252.210–7005 [Redesignated as 252.210–7003]

21. Section 252.210–7005 is redesignated as section 252.210–7003 and revised to read as follows:

252.210–7003 Acquisition Streamlining.

As prescribed in 210.011–70(b), use the following clause.

Acquisition Streamlining (FEB 1991)

(a) The Government's objectives under acquisition streamlining are to—

(1) Acquire systems that meet stated performance requirements;

(2) Avoid over-specification; and

(3) Ensure that cost effective requirements are included in future acquisitions.

(b) The Contractor shall—

(1) Prepare and submit acquisition streamlining recommendations in accordance with the statement of work of this contract; and

(2) Format and submit the recommendations as prescribed by data requirements on the contract data requirements list of this contract.

(c) The Government has the right to accept, modify, or reject the Contractor's recommendations.

(d) The Contractor shall insert this clause, including this paragraph (d), in all subcontracts over $1 million, awarded in the performance of this contract.

(End of clause)

252.210–7004 [Redesignated as 252.210–7005]

22. Section 252.210–7004 is redesignated as section 252.210–7005 and revised and a new section 252.210–7004 is added to read as follows:

252.210.7004 Alternate Preservation, Packaging, and Packing.

As prescribed in 210.011–70(c), use the following provision:

Alternate Preservation, Packaging, and Packing (FEB 1991)

(a) The Offeror may submit two unit prices for each item—one based on use of the military preservation, packaging, or packing requirements of the solicitation; and an alternate based on use of commercial or industrial preservation, packaging, or packing of equal or better protection than the military.

(b) If the Offeror submits two unit prices, the following information, as a minimum, shall be submitted with the offer to allow evaluation of the alternate—

(1) The per unit/item cost of commercial or industrial preservation, packaging, and packing;

(2) The per unit/item cost of military preservation, packaging, and packing;

(3) The description of commercial or industrial preservation, packaging, and packing procedures, including material specifications, when applicable, to include—

(i) Method of preservation;

(ii) Quantity per unit package;

(iii) Cleaning/drying treatment;

(iv) Preservation treatment;

(v) Wrapping materials;

(vi) Cushioning/dunnage material;

(vii) Thickness of cushioning;

(viii) Unit container;

(ix) Unit package gross weight and dimensions.

(4) Item characteristics, to include—

(i) Material and finish;

(ii) Net weight;

(iii) Net dimensions;

(iv) Fragility.

(c) If the Contracting Officer does not evaluate or accept the Offeror's proposed alternate commercial or industrial preservation, packaging, or packing, the Offeror agrees to preserve, package, or pack in accordance with the specified military requirements.

(End of provision)

252.210–7005 Bill of Materials.

As prescribed in 210.011–70(d), use the following clause:

Bill of Materials (FEB 1991)

(a) The Contractor shall furnish a Bill of Materials for the supplies designated in the schedule of this contract—

(1) In the required number of copies;

(2) On DD Forms 346, Raw (Basic Processed) and Semi-Fabricated Stock Form, and 347, Bill of Materials for Subcontracted Parts, Purchased Parts, Government Furnished Property, if applicable; and

(3) In accordance with the instructions in the schedule.

(b) The Contractor shall furnish revised pages of the Bill of Materials—

(1) At intervals designated in the schedule; and

(2) Incorporating the effect of any changes under the "Changes" clause.

(c) The Contractor shall furnish a final revision of the Bill of Materials, or statement that no revision is necessary, at contract completion.

(d) The Bill of Materials and all revisions or statements are subject to inspection and acceptance by the Government.

(End of clause)

252.212–7000 [Removed]

23. Section 252.212–7000 is removed.

252.214–7000 [Removed]

24. Section 252.214–7000 is removed.

25. Section 252.228–7000 is revised to read as follows:

252.228–7000 Reimbursement for War-Hazard Losses.

As prescribed in 228.370(a), use the following clause:

Reimbursement for War-Hazard Losses (FEB 1991)

(a) Costs for providing employee war-hazard benefits in accordance with paragraph (b) of the Workers' Compensation and War-Hazard Insurance clause of this contract are allowable if the Contractor—

(1) Submits proof of loss files to support payment or denial of each claim;

(2) Subject to Contracting Officer approval, makes lump sum final settlement of any open claims and obtains necessary release documents within 1 year of the expiration or termination of this contract, unless otherwise extended by the Contracting Officer; and

(3) Provides the Contracting Officer at the time of final settlement of this contract—

(i) An investigation report and evaluation of any potential claim; and

(ii) An estimate of the dollar amount involved should the potential claim mature.

(b) The cost of insurance for liabilities reimbursable under this is not allowable.

(c) The Contracting Officer may require the Contractor to assign to the Government all right, title, and interest to any refund, rebate, or recapture arising out of any claim settlements.

(d) The Contractor agrees to—

(1) Investigate and promptly notify the Contracting Officer in writing of any occurrence which may give rise to a claim or potential claim, including the estimated amount of the claim;

(2) Give the Contracting Officer immediate written notice of any suit or action filed which may result in a payment under this clause; and

(3) Provide assistance to the Government in connection with any third party suit or claim relating to this clause which the Government elects to prosecute or defend in its own behalf.

(End of clause)

26. Section 252.208–7001 is revised to read as follows:

252.228–7001 Ground and Flight Risk.

As prescribed in 228.370(b), use the following clause:

Ground and Flight Risk (FEB 1991)

(a) Definitions.

As used in this clause—

(1) "Aircraft," unless otherwise provided in the Schedule, means—

(i) Aircraft to be delivered to the Government under this contract (either before or after Government acceptance), including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing or a wing is attached to a fuselage of the aircraft; and

(ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Contractor under this contract, including all property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by a separate bailment agreement.

(2) "Contractor's premises" means those premises designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.

(3) "Flight" means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land based aircraft, "flight" begins with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises;

(ii) For seaplanes, "flight" begins with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Contractor's premises;

(iii) For helicopters, "flight" begins upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and

(iv) For vertical take-off aircraft, "flight" begins upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been engaged to any launching platform or device on the Contractor's premises;

(v) All aircraft off the Contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of this contract, or landings approved in writing by the Contracting Officer.

(4) "Flight crew member" means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, navigator, and bombardier-navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Contractor. If required, a defense systems operator may also be assigned as a flight crew member.

(5) "In the open" means located wholly outside of buildings on the Contractor's premises or other places described in the Schedule as being "in the open." Government furnished aircraft shall be considered to be located "in the open" at all times while in the Contractor's possession, care, custody, or control.

(6) "Operation" means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.

(b) Except as may be specifically provided in the Schedule as an exception to this clause, the Government assumes the risk of damage to, or loss or destruction of aircraft "in the open," during "operation," and in "flight." The Contractor shall not be liable to the Government for such damage, loss, or destruction.

(c) The Government's assumption of risk for aircraft in the open shall continue unless the Contracting Officer finds that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action.

(1) The Contracting Officer, when finding aircraft in the open under unreasonable conditions, shall notify the Contractor in writing of the unreasonable conditions and require the Contractor to make corrections within a reasonable time.

(2) Upon receipt of the notice, the Contractor shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable. If the Contracting Officer later determines that the cited conditions were not reasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions. Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(3) If the Contracting Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 am on the fifteenth day following the day the written notice is received by the Contractor. If the Contracting Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred as a result of termination of the Government's assumption of risk. Any dispute as to the timeliness of the Contractor's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(4) If the Government terminates its assumption of risk, the risk of loss for Government-furnished property shall be determined in accordance with the Government Property clause of this contract.

(5) The Contractor shall promptly notify the Contracting Officer when unreasonable conditions have been corrected. If the Government elects to again assume the risk of loss and relieve the Contractor of liabilities, the Contracting Officer will notify the Contractor. The Contractor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after the Contractor notice of correction until the Contractor is notified that the Government will assume the risk of loss. If the Government does not again assume the risk of loss and conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day.

(d) The Government's assumption of risk shall not extend to damage, loss, or destruction of aircraft which—

(1) Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice. The term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or other equivalent representatives who supervise or direct all or substantially all of the Contractor's business; or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed; or a separate and complete major industrial operation in connection with the performance of this contract;

(2) Is sustained during flight if the flight crew members have not been approved in writing by the Contracting Officer;

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) Is covered by insurance;

(5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and

tear or deterioration, or results from inherent vice in the property.); or

(6) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor, but for the Government's assumption of risk.

(e) With the exception of damage, loss, or destruction in flight, the Contractor assumes the risk and shall be responsible for the first $1,000 of loss or damage to aircraft in the open or during operation resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss, if less) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage, loss, or destruction of aircraft while in its possession or control, except to the extent that the subcontract, with the written approval of the Contracting Officer, provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability, and damage, loss, or destruction occurs, the Contractor shall enforce liability against the subcontractor for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government, even if the assumption may be terminated for aircraft in the open.

(h) In the event the damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, to put all aircraft in the best possible order and further, except in cases covered by paragraph (e) of this clause, the Contractor shall furnish to the Contracting Officer a statement of—

(1) The damaged, lost, or destroyed aircraft;

(2) The time and origin of the damage, loss, or destruction;

(3) All known interests in commingled property of which aircraft are a part; and

(4) The insurance, if any, covering the interest in commingled property. Except in cases covered by paragraph (e) of this clause, the Contracting Officer will make an equitable adjustment in the contract price for expenditures made by the Contractor in performing the obligations under this paragraph.

(i) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(1) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage; or

(2) Terminate this contract with respect to the aircraft. In the event the Government requires that the aircraft be replaced or restored, the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance. If this contract is terminated with respect to the aircraft and the Government has assumed the risk of damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

(i) It would have cost the Contractor to complete the aircraft (or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and

(ii) Would be the value of the damaged aircraft or any salvage retained by the Contractor.

The Contracting Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due the Contractor. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause.

(j) In the event the Contractor is reimbursed or compensated by a third person for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment of subrogation) in obtaining recovery.

(k) The Contractor agrees to be bound by the operating procedures contained in the combined regulation: "Contractor Flight Operation" in effect on the date of contract award (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1; and Defense Logistics Agency Regulation 8210.1).

(End of clause)

27. Section 252.228–7002 is revised to read as follows:

252.228–7002 Aircraft Flight Risks.

As prescribed in 228.370(c), use the following clause:

Aircraft Flight Risk (FEB 1991)

(a) Definitions.

As used in this clause—

(1) "Aircraft," unless otherwise provided in the Schedule, means—

(i) Aircraft furnished by the Contractor under this contract (either before or after Government acceptance); or

(ii) Aircraft furnished by the Government to the Contractor, including all Government property placed on, installed or attached to the aircraft; provided that the aircraft and property are not covered by a separate bailment agreement.

(2) "Flight" means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land-based aircraft, "flight" begins with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) For seaplanes, "flight" begins with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) For helicopters, "flight" begins upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) For vertical take-off aircraft, "flight" begins upon disengagement from any launching platform or device and continues until the aircraft has been reengaged to any launching platform or device.

(3) "Flight crew members" means the pilot, co-pilot, and unless otherwise provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator as required, when assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(b) This clause takes precedence over any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause).

(c) Unless the flight crew members previously have been approved in writing by the Contracting Officer, the Contractor shall not be—

(1) Relieved of liability for damage, loss, or destruction of aircraft sustained during flight; or

(2) Reimbursed for liabilities to third persons for loss or damage to property or for death or bodily injury caused by aircraft during flight.

(d)(1) The loss, damage, or destruction of aircraft during flight in an amount exceeding $100,000 or 20 percent of the estimated cost of this contract, whichever is less, is subject to an equitable adjustment when the Contractor is not liable under—

(i) The Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause, and

(ii) Paragraph (c) of this clause.

(2) The equitable adjustment under this contract for the repair, restoration, or replacement of aircraft shall be made—

(i) In the estimated cost, the delivery schedule, or both; and

(ii) In the amount of any fee to be paid to the Contractor.

(3) In determining the amount of equitable adjustment in the fee, the Contracting Officer will consider any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction.

(e) The Contractor agrees to be bound by the operating procedures contained in the combined regulation: "Contractor Flight Operations" in effect on the date of contract award (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1; and Defense Logistics Agency Regulation 8210.1).

(End of clause)

28. Section 252.228–7003 is revised to read as follows:

252.228–7003 Capture and Detention.

As prescribed in 228.370(d), use the following clause:

Capture and Detention (Feb 1991)

(a) As used in this clause—

(1) "Captured person" means any employee of the Contractor who is—

(i) Assigned to duty outside the United States for the performance of this contract; and

(ii) Found to be missing from his or her place of employment under circumstances that make it appear probable that the absence is due to the action of the force of any power not allied with the United States in a common military effort; or

(iii) Known to have been taken prisoner, hostage, or otherwise detained by the force of such power, whether or not actually engaged in employment at the time of capture; provided, that at the time of capture or detention, the person was either—

(A) Engaged in activity directly arising out of and in the course of employment under this contract; or

(B) Captured in an area where required to be only in order to perform this contract.

(2) A "period of detention" begins with the day of capture and continues until the captured person is returned to the place of employment, the United States, or is able to be returned to the jurisdiction of the United States, or until the person's death is established or legally presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever occurs first.

(3) "United States" comprises geographically the 50 states and the District of Columbia.

(4) "War Risk Hazards Compensation Act" refers to the statute compiled in Chapter 12 of Title 42, U.S. Code (sections 1701–1717), as amended.

(b) If pursuant to an agreement entered into prior to capture, the Contractor is obligated to pay and has paid detention benefits to a captured person, or the person's dependents, the Government will reimburse the Contractor up to an amount equal to the lesser of—

(1) Total wage or salary being paid at the time of capture due from the Contractor to the captured person for the period of detention; or

(2) That amount which would have been payable if the detention had occurred under circumstances covered by the War Risk Hazards Compensation Act.

(c) The period of detention shall not be considered as time spent in contract performance, and the Government shall not be obligated to make payment for that time except as provided in this clause.

(d) The obligation of the Government shall apply to the entire period of detention, except that it is subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive prior expiration, completion, or termination of this contract.

(e) The Contractor shall not be reimbursed under this clause for payments made if the employees were entitled to compensation for capture and detention under the War Risk Hazards Compensation Act, as amended.

(End of clause)

29. Section 252.228–7004 is revised to read as follows:

252.228–7004 Bonds or Other Security.

As prescribed in 228.170, use the following provision:

Bonds or Other Security (FEB 1991)

(a) Offerors shall furnish a bid guarantee in the amount of $_____ with their bids. The offeror to whom award is made shall furnish—

(1) A performance bond in the penal amount of $_____; and

(2) Payment in full of any sum due the Government.

(b) Bonds supported by sureties whose names appear on the list contained in Treasury Department Circular 570 are acceptable. Performance bonds from individual sureties are acceptable if each person acting as a surety provides a SF 28, Affidavit of Individual Surety, and a pledge of assets acceptable to the Contracting Officer.

(c) The contract and notice to proceed will not be issued until the Contracting Officer receives an acceptable performance bond and payment of any sum due the Government.

(End of provision)

252.228–7006 [Redesignated as 252.228–7005]

30. Section 252.228–7006 is redesignated as 252.228–7005 and revised to read as follows:

252.228–7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.

As prescribed in 228.370(e), use the following clause:

Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (FEB 1991)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with this contract.

(b) If the Government conducts an investigation of the accident, the Contractor will cooperate and assist the Government's personnel until the investigation is complete.

(c) The Contractor will include a clause in subcontracts under this contract to require subcontractor cooperation and assistance in accident investigations.

(End of clause)

252.228–7007 [Removed]

31. Section 252.228–7007 is removed.

252.234–7000 [Removed]

32. Section 252.234–7000 is removed.

252.234.7001 [Redesignated as 252.234–7000]

33. Section 252.234–7001 is redesignated as 252.234–7000 and revised to read as follows:

252.234–7000 Cost/Schedule Control Systems.

As prescribed by 234.005–70, use the following clause:

Cost/Schedule Control Systems (FEB 1991)

(a) The Offeror, as part of its offer, shall submit a comprehensive plan for compliance with the cost/schedule control systems criteria of DoDI 7000.2, Performance Measurement for Selected Acquisitions. The plan shall—

(1) Describe the cost/schedule control systems (C/SCS) the Offeror intends to use in performance of the contract.

(2) Distinguish between the Offeror's existing management systems and modifications proposed to meet the criteria of DoDI 7000.2.

(3) Describe the management systems and their application in all major functional cost areas in terms of:

(i) The work breakdown structure,

(ii) Planning,

(iii) Budgeting,

(iv) Scheduling,

(v) Work authorization,

(vi) Cost accumulation,

(vii) Measurement and reporting of cost and schedule performance,

(viii) Variance analysis, and

(ix) Baseline control.

(4) Describe compliance with each of the DoDI 7000.2 criteria. (Preferably, cross-reference appropriate elements in the description of systems with the items in the checklist for the C/SCS criteria in AFCCP 173–5, AMC–P 715–5, NAVSO P3627, DLAH 8400.2, DCAA P7641.47, Cost/Schedule Control Systems Criteria Joint Implementation Guide.)

(5) Identify the major subcontractors to which the criteria will be applied. (If major subcontractors have not been selected, identify the major subcontracted effort.)

(6) Describe the proposed procedure for administration of the criteria at the subcontract level.

(b) If the Offeror is using C/SCS which previously have been accepted by the Government, or is operating C/SCS under a current Memorandum of Understanding (as described in DoDI 7000.2), the Offeror may submit evidence of either instead of the comprehensive plan.

(c) The Government will evaluate the Offeror's plan for C/SCS as an integral part of the source selection evaluation. When systems existing at time of award do not comply with the C/SCS criteria of DoDI 7000.2, the Contractor will make adjustments as necessary to ensure compliance at no change in contract price or fee.

(d) Within 90 calendar days after contract award, or a longer period if the Contracting Officer agrees, the Contractor shall—

(1) Provide a description of the C/SCS to be used in the performance of the contract. The description shall—

(i) Be in the form and detail prescribed by the Cost/Schedule Control Systems Criteria Joint Implementation Guide; or

(ii) Be in the form and detail required by the Contracting Officer; and

(iii) Upon approval by the Contracting Officer, be incorporated by reference in the contract.

(2) Demonstrate the operation of its C/SCS to the Government for compliance with the C/SCS criteria of DoDI 7000.2.

(e) The Offeror/Contractor agrees to provide access to all records and data requested by the Contracting Officer for purposes of—

(1) Evaluating the Offeror's plan for C/SCS;

(2) Assessing the Contractor's description and demonstration of the C/SCS to be used in performance of the contract; and

(3) Conducting Government surveillance during contract performance to ensure continuing application of approved C/SCS.

(f) The Contractor shall require each subcontractor selected for application of C/SCS criteria to adopt C/SCS that meet the criteria of DoDI 7000.2. The Government, if requested by the Contractor, will perform the evaluation, assessment, and surveillance of subcontractor C/SCS.

(End of clause)

34. Section 252.246–7000 is revised to read as follows:

252.246–7000 Material Inspection and Receiving Report.

As prescribed in 246.370, use the following clause:

Material Inspection and Receiving Report (FEB 1991)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix I, Material Inspection and Receiving Report, of the Defense Federal Acquisition Regulation Supplement.

(End of clause)

35. Section 252.246–7001 is revised to read as follows:

§ 252.246–7001 Warranty of Data.

As prescribed in 246.710, use the following clause:

Warranty of Data (FEB 1991)

(a) *Definition.* "Technical data" has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for 3 years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after the Contracting Officer notifies the Contractor of a breach of warranty, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(f) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

Alternate I (FEB 1991)

As prescribed in 246.710, substitute the following for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d) (1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 75 percent of the target profit.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) Damages due the Government under the provisions of this warranty are not an allowable cost.

(iv) The additional liability in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirement under Category E or I of MIL–D–1000, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

Alternate II (FEB 1991)

As prescribed at 246.710, substitute the following paragraph for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d) (1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 10 percent of the total contract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirement under Category E or I of MIL–D–1000, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

PART 253—FORMS

36. The authority for 48 CFR part 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 253.2—Prescription of Forms

37. Sections 253.209 and 253.209–1 are added to read as follows:

§ 253.209 Contractor qualifications.

§ 253.209–1 Responsible prospective contractors.

(a) *SF 1403(10/83), Preaward Survey of Prospective Contractor (General).* (i) The factors in Section III, Block 19, generally mean— .

(A) *Technical Capability.* An assessment of the prospective contractor's key management personnel to determine if they have the basic technical knowledge, experience, and understanding of the requirements necessary to produce the required product or provide the required service.

(B) *Production Capability.* An evaluation of the prospective contractor's ability to plan, control, and integrate manpower, facilities, and other resources necessary for successful contract completion. This includes—

(*1*) An assessment of the prospective contractor's possession of, or the ability to acquire, the necessary facilities, material, equipment, and labor; and

(*2*) A determination that the prospective contractor's system provides for timely placement of orders and for vendor follow-up and control.

(C) *Quality Assurance Capability.* An assessment of the prospective contractor's capability to meet the quality assurance requirements of the proposed contract. It may involve an evaluation of the prospective contractor's quality assurance system, personnel, facilities, and equipment.

(D) *Financial Capability.* A determination that the prospective contractor has or can get adequate financial resources to obtain needed facilities, equipment, materials, etc.

(E) *Accounting System.* An assessment by the Defense Contract Audit Agency (DCAA) of the adequacy of the prospective contractor's accounting system. Normally, a contracting officer will request an accounting system review when soliciting contracts with progress payments or cost or incentive type contracts.

(ii) The factors in Section III, Block 20, generally mean—

(A) *Government Property Control.* An assessment of the prospective contractor's capability to manage and control Government property.

(B) *Transportation.* An assessment of the prospective contractor's capability to follow the laws and regulations applicable to the movement of Government material, or overweight, oversized, hazardous cargo, etc.

(C) *Packaging.* An assessment of the prospective contractor's ability to meet all contractual packaging requirements including preservation, unit pack, packing, marking, and unitizing for shipment.

(D) *Security Clearance.* A determination that the prospective contractor's facility security clearance is adequate and current. (When checked, the surveying activity will refer this factor to the Defense Investigative Service (DIS)).

(E) *Plant Safety.* An assessment of the prospective contractor's ability to meet the safety requirements in the solicitation.

(F) *Environmental/Energy Consideration.* An evaluation of the prospective contractor's ability to meet specific environmental and energy requirements in the solicitation.

(G) *Flight Operations and Flight Safety.* An evaluation of the prospective contractor's ability to meet flight operation and flight safety requirements on solicitations involving the overhaul and repair of aircraft.

(H) *Other.* If the contracting officer wants an assessment of other than major factors A–E and other factors A–G, check this factor. Explain the desired information in the Remarks sections.

38. Section 253.213 is added to read as follows:

253.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

(e) *OF 347 (10/83), Order for Supplies or Services, and OF 348 (10/83), Order for Supplies or Services-Schedule Continuation.* DoD uses the DD Form 1155, Order for Supplies or Services, instead of OF 347. DoD uses Optional Form 336, Continuation Sheet, instead of OF 348.

(i) Use the DD Form 1155 as prescribed in 213.505–2(b) and in accordance with the instructions at 253.213–70.

(ii) Use the OF 336, or a sheet of paper, as a continuation sheet for the DD Form 1155. Continuation sheets may be printed on the reverse of the DD Form 1155.

(iii) DD Form 1155c–1, Order for Supplies or Services (Commissary Continuation Sheet) may be used for commissary acquisitions.

253.213–70 Instructions for Completion of DD Form 1155.

(a) These instructions are mandatory if—

(1) Contract administration has been assigned to—

(i) The Defense Contract Management Command (DCMC); or

(ii) A non-DCMC office listed in DoD 4105.59–H, DoD Directory of Contract Administration Services Components; and

(2) The contractor is located in the continental United States or Canada.

(b) The organizational entity codes (address codes) referenced in this subsection are codes published in—

(1) *DoD Activity Address Directory (DoDAAD), DoD 4000.25–6–M.* Use the DoDAAD codes for—

(i) Government entities in Blocks 6, 7, 9, 14, 15, and 19.

(ii) Non-Government entities in Blocks 14 and 19 (elements (8) and (10)). Shipments to non-Government entities to satisfy MILSTRIP requisitions, use a DoDAAD code for non-Government entities in Block 14 ("Ship To") and Blocks 19 (8) and (10) ("Ship To"/"Mark For").

(2) *Military Assistance Program Address Directory System (MAPAD), DoD 4000.25–8–M.* Use a MAPAD code in Block 14 for foreign military sales.

(3) *Commercial and Government Entity (CAGE) Handbook H4/H8.* Except as provided in paragraphs (b) (1) and (2) of this subsection, use the CAGE codes for non-Government entities in Blocks 9, 14, and 19.

(c) For orders requiring payment in Canadian currency—

(1) State the contract price in terms of Canadian dollars, followed by the initials CN; e.g., $1,647.23CN.

(2) Indicate on the face of the order—

(i) The U.S./Canadian conversion rate in effect at the time of the award; and

(ii) The U.S. dollar equivalent of the Canadian dollar amount.

(d) Instructions for DD Form 1155 entries. (Instructions apply to both purchase orders and delivery orders, except Block 2, which applies only to delivery orders, and Block 12, which applies only to purchase orders.

Block

1 *CONTRACT/PURCH ORDER NO.*—Enter the Procurement Instrument Identification (PII) number and, when applicable, the supplementary identification number for contracts and purchase orders as prescribed in subpart 204.70.

2 *DELIVERY ORDER NO.*—Enter PII number for delivery orders as prescribed in subpart 204.70.

3 *DATE OF ORDER*—

Enter the two position numeric year, three position alpha month, and two position numeric day.

4 *REQUISITION/PURCH REQUEST NO.—*

Enter the number authorizing the purchase. When the number differs by line item, list it in the schedule and annotate this block, "see schedule."

5 *CERTIFIED FOR NATIONAL DEFENSE UNDER DMS REG 1—*

Enter the claimant program number from Volume I, Section III of DoD 4105.61–M, Procurement Coding Manual.

6 *ISSUED BY—*

Enter the name and address of the issuing office. In the code block, enter the DoDAAD code for the issuing office. Directly below the address, enter: Buyer/Symbol: followed by the buyer's name and routing symbol. Directly below the buyer/symbol, enter: Phone: followed by the buyer's phone number and extension.

7 *ADMINISTERED BY—*

Enter the name and address of the DCMC or military activity responsible for contract administration. On purchase orders retained by purchasing offices for administration, mark this block, "see Block 6." Enter in the code block the organizational entity code of the contract administration activity. In the lower right or left-hand corner, enter the criticality designator code from FAR 42.1105.

8 *DELIVERY FOB—*

Check the applicable box.

9 *CONTRACTOR—*

(i) Enter the full business name and address of the contractor. Enter in the first code block, the organizational entity code of the contractor.

(ii) If it is known that all the work covered by the order is to be performed at an address different from the address represented by the contractor's code, and any contract administration function will be required at that facility, enter in the facility code block the organizational entity code for that facility, i.e., H8–1/H8–2 code for a non-Government entity or DoDAAD code for a Government entity. (Use DoDAAD codes only to indicate "performed at" locations for orders specifying services at a Government location.) If it is known that multiple facilities are involved, enter the codes for all facilities at which work is to be performed, including the contractor's code if work is performed at that address, in the Optional Form 336 Continuation Sheet and mark the facility code block with "see schedule."

10 *DELIVER TO FOB POINT BY (Date)—*

If a single date of delivery applies to the entire order, enter date in this block. List multiple delivery dates in the schedule and mark this block "see schedule."

11 *MARK IF BUSINESS—*

Check all applicable blocks.

12 *DISCOUNT TERMS—*

Enter the discount for prompt payment in terms of percentages and corresponding days. Express the percentages in whole numbers and decimals, e.g., 3.25%—10 days; 0.50%—20 days.

13 *MAIL INVOICES TO—*

Enter a reference to the block number containing the address to which invoices are to be mailed. When not in Blocks 6, 7, 14, or 15, insert in Block 13, "see schedule."

14 *SHIP TO—*

If a single ship-to point applies to the entire order, enter the name and address of that point in this block. Enter multiple ship-to points in the schedule and annotate this block, "see schedule."

15 *PAYMENT WILL BE MADE BY—*

Enter the name and address of the activity making payment. Enter in the code block, the organizational entity code of the paying activity.

16 *TYPE OF ORDER—*

Check the appropriate box. If a purchase order:

(i) Identify the type of quotation, i.e., oral, letter or TWX, on which the order is based.

(ii) Check the box when acceptance of the purchase order is required and enter the number of copies of the order to be returned to the issuing office.

17 *ACCOUNTING AND APPROPRIATION DATA/LOCAL USE—*

Enter the accounting classification and the accounting classification reference number(s) in accordance with 204.7108.

18 *ITEM NO.—*

Enter an item number for each item of supply or service in accordance with subpart 204.71.

19 *SCHEDULE OF SUPPLIES/SERVICES—*

The schedule contains several elements of data. The order and arrangement of data in the schedule is mandatory for purchase and delivery orders assigned to DCMC or the military departments for administration and is encouraged for all orders.

(1) *National Stock Number (NSN)—*

Total item quantity for the line or subline item number followed by the appropriate national stock number or the word "none" if an NSN has not be assigned. On the same line and adjacent to NSN, enter the words "Total Item Quantity." This phrase is used in conjunction with the total quantity, unit of issue, unit price, and dollar amount of the stock number or item cited (see entries for Blocks 20, 21, 22, and 23).

(2) *Item Identification—*

Enter first the most descriptive noun or verb of the supplies or services to be furnished, supplemented by additional description as prescribed in FAR part 10. If multiple accounting classifications apply to the contract, enter the accounting classification reference number.

(3) *Quantity Variance—*

Enter the quantity variance permitted for the line item in terms of percentages, indicating whether the percentage is plus or minus and if applicable to each destination.

(4) *Inspection/Acceptance—*

Enter the point at which inspection/acceptance will take place.

(5) *Preservation and Packaging—*

Enter the preservation and packaging requirements for the item described. These requirements may be expressed in terms of MIL–STD–726 codes or reference to applicable specifications. 1st Example: MIL–STD–726 PRES/PACK:B/10/1/00/2/10/c/00/21/3/22/4/3/2/00. 2nd Example: Preservation and packaging shall be in accordance with instructions below. DGSP P–54 in lieu of level "c" requirement.

(6) *Packing—*

When required, enter the packing level designator and specification, standard, or document in which the requirements are stated or state the specific requirements. 1st Example: Packing. Preserved and packaged items shall be packed Level (A, B, or C depending on destination) in accordance with MIL–STD–794. 2nd Example: Packing. Preserved and packaged items shall be packed Level (A, B, or C) in accordance with DESC Manual 4100.1.

(7) *Unitization—*

When desired by the requiring activity, a requirement for cargo unitization for a particular destination should be specified for shipments involving two or more shipping containers having an aggregate total of not less than 20 cubic feet or 200 pounds. 1st Example: Items packed for shipment shall be unitized in accordance with MIL–STD–147. 2nd Example: Nonperishable subsistence, packed as specified shall be unitized in accordance with MIL–L–35078C Type (I or II) Class (A through F for Type I, A through D for Type II). Supplemental waterproofing requirements of Appendix II (are/are not) applicable.

(8) *Ship To—*

Enter the organizational entity code of the ship-to point on the first line and the corresponding name and address on succeeding lines. If multiple accounting classifications apply to the same line or subline item, enter the accounting classification reference number. When several items are to be shipped to the same point, the code will be listed; but it will not be necessary to repeat the address.

(9) *Delivery Date—*

When multiple delivery dates apply, enter the required date of delivery on the same line with ship-to code.

(10) *Mark For—*

Enter the organizational entity code on the first line and name and address of the ultimate recipient of the supplies and services on succeeding lines.

20 *QUANTITY ORDERED/ACCEPTED—*

Enter the total quantity ordered for the line item. If applicable, enter the breakdown on quantities for each ship-to point within the line item.

21 *UNIT—*

Enter the unit of measure applicable to the line item.

22 *UNIT PRICE—*

Enter the unit price applicable to the line item.

23 *AMOUNT—*

Enter the extended dollar amount (quantity × unit price) for each line item.

24 *CONTRACTING/ORDERING OFFICER—*

Enter the contracting/ordering officer's signature.

25 *TOTAL AMOUNT—*

Enter the total dollar amount for all line items on the order.

26 thru 42 These blocks are used in the receiving and payment functions. Procedures for making entries are prescribed by the respective departments.

39. Appendix I to Chapter 2 is revised to read as follows.

APPENDIX I TO CHAPTER 2—MATERIAL INSPECTION AND RECEIVING REPORT

Part 1—Introduction

Sec.

Part 2—Contract Quality Assurance (CQA) on Shipments Between Contractors

Part 3—Preparation of the DD Form 250 and DD Form 250c

Part 4—Distribution of DD Form 250 and DD Form 250c

Part 5—Preparation of the DD Form 250–1 (Loading Report)

Part 6—Preparation of the DD Form 250–1 (Discharge Report)

Part 7—Distribution of the DD Form 250–1

Part 1—Introduction

I–101 General.

This appendix contains procedures and instructions for the use, preparation, and distribution of the material inspection and receiving report (MIRR) (DD Form 250 series) and commercial shipping/packing lists used to document Government contract quality assurance.

I–102 Applicability.

(a) The provisions of this appendix apply to supplies or services acquired by DoD when the clause at 252.246–7000, Material Inspection and Receiving Report, is included in the contract. If the contract contains the clause at FAR 52.213–1, Fast Payment Procedure, the contractor may elect not to prepare a DD Form 250.

(b) When DoD provides quality assurance or acceptance services for non-DoD activities, prepare a MIRR using the instructions in this appendix, unless otherwise specified in the contract.

I–103 Use.

(a) The DD Form 250 is a multipurpose report used—

(1) To provide evidence of Government contract quality assurance at origin or destination;

(2) To provide evidence of acceptance at origin or destination;

(3) For packing lists;

(4) For receiving;

(5) For shipping;

(6) As a contractor invoice; and

(7) As commercial invoice support.

(b) Do not use the DD Form 250 for shipments—

(1) By subcontractors, unless the subcontractor is shipping directly to the Government; or

(2) Of contract inventory.

(c) The contractor prepares the MIRR, except for entries that an authorized Government representative is required to complete.

(d) Use the DD Form 250–1—

(1) For bulk movements of petroleum products by tanker or barge to cover—

(i) Origin or destination acceptance of cargo; or

(ii) Shipment or receipt of Government owned products.

(2) To send quality data to the point of acceptance in the case of origin inspection on FOB destination deliveries or preinspection at product source. Annotate the forms with the words "INSPECTED FOR QUALITY ONLY."

I–104 Application.

(a) DD Form 250.

(1) Use the DD Form 250 for delivery of contract line, subline, exhibit line, or exhibit subline items. Do not use the DD Form 250 for those exhibit line or exhibit subline items on a DD Form 1423, Contract Data Requirements List, that indicate no DD Form 250 is required.

(2) If the shipped to, marked for, shipped from, mode of shipment, contract quality assurance and acceptance data are the same for more than one shipment made on the same day under the same contract, contractors may prepare one MIRR to cover all such shipments.

(3) If the volume of the shipment precludes the use of a single car, truck, or other vehicle, prepare a separate MIRR for the contents of each vehicle.

(4) When a shipment is consigned to an Air Force activity and the shipment includes items of more than one federal supply class (FSC) or material management code (MMC), prepare a separate DD Form 250 for items of each of the FSCs or MMCs in the shipment. However, the cognizant Government representative may authorize a single DD Form 250, listing each of the FSCs or MMCs included in the shipment on a separate continuation sheet. The MMC appears as a suffix to the national stock number applicable to the item.

(5) Consolidation of Petroleum Shipments on a Single MIRR.

(i) *Continental United States.*

Contractors may consolidate multiple car or truck load shipments of petroleum made on the same day, to the same destination, against the same contract line item, on one MIRR. To permit verification of motor deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250. Include a shipping document (commercial or government) with each individual load showing as a minimum—

(A) The shipper;

(B) Shipping point;

(C) Consignee;

(D) Contract and line item number;

(E) Product identification;

(F) Gross gallons (bulk only);

(G) Loading temperature (bulk only);

(H) American Petroleum Institute gravity (bulk only);

(I) Identification of carrier's equipment;

(J) Serial number of all seals applied; and

(K) Signature of supplier's representative.

When acceptance is at destination, the receiving activity retains the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 forwarded by the contractor (reference I–401, Table 1) before signing Block 21B.

(ii) *Overseas.*

The same criteria as for continental United States applies, except the consolidation period may be extended, if acceptable to the receiving activity, shipping activity, Government finance office, and the authorized Government representative having cognizance at the contractor's facility. In addition, the contractor may include more than one contract line item in each DD Form 250 if the shipped to, marked for, shipped from, mode of shipment, contract quality assurance, and acceptance data are the same for all line items.

(6) Consolidation of Coal Shipments on a Single MIRR.

Contractors may consolidate multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line items, on one MIRR. To permit verification of truck deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250 and the analytical test report. Include a commercial shipping document with each individual truck load showing as a minimum—

(i) The shipper;

(ii) The name or names;

(iii) Location and shipping point of the mine or mines from which the coal originates;

(iv) The contract number;

(v) The exact size of the coal shipped; and

(vi) A certified weighmaster's certification of weight for the truckload. Include a waybill with each rail shipment showing the identical information. To permit verification of rail deliveries, identify each railcar number comprising the shipment to the shipment number in Block 2 of the DD Form 250 and the analytical test report. When acceptance is at destination, the receiving activity must retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250.

(b) DD Form 250–1.

(1) Use a separate form for each tanker or barge cargo loaded.

(2) The contractor may report more than one barge in the same tow on a single form if on the same contract and consigned to the same destination.

(3) When liftings involve more than one contract, prepare separate forms to cover the portion of cargo loaded on each contract.

(4) Prepare a separate form for each product or grade of product loaded.

(5) Use a separate document for each tanker or barge cargo and each grade of product discharged.

(6) For discharge, the contractor may report more than one barge in the same tow on a single form if from the same loading source.

I-105 Forms.

(a) Contractors may get MIRR forms from the contract administration office at no cost.

(b) Contractors may print forms provided that the format and dimensions (DD Forms 250 and 250c: 8½ inches x 11 inches, DD Form 250-1: 8½ inches x 14 inches) are identical to the MIRR forms printed by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250, and 61 lines vertically border to border for the DD Form 250c.

Part 2—Contract Quality Assurance (CQA) On Shipments Between Contractors

I-201 Instructions.

(a) Use the supplier's commercial shipping document/packing list to enter performance of required CQA actions at subcontract level. Make the following entries on the supplier's commercial shipping document/packing list:

Required CQA of listed items has been performed.

(Signature of Authorized Government Representative or DoD Stamp)

(Date)

(Typed Name and Office)

(b) Distribution for Government purposes shall be—

(1) One copy with shipment;

(2) One copy for the Government representative at consignee (via mail); and

(3) One copy for the Government representative at consignor.

Part 3—Preparation of the DD Form 250 and DD Form 250c

I-301 Preparation Instructions.

(a) General.

(1) Dates shall use seven spaces consisting of the last two digits of the year, three alphabetic month abbreviation, and two digits for the day. For example, 90AUG07, 90SEP24.

(2) Addresses shall consist of the name, street address/P.O. box, city, state, and ZIP code.

(3) Enter to the right of and on the same line as the word "Code" in Blocks 9 through 12 and in Block 14—

(i) The Handbook of Non-Government Organizations for MILSCAP (H8-1/H8-2) code,

(ii) DoD Activity Address Directory (DODAAD) code, or

(iii) The Military Assistance Program Address Directory (MAPAD) code.

(4) Enter the DODAAD code or MILSCAP (118-1/118-2) code in Block 13.

(5) The data entered in the blocks at the top of the DD Form 250c must be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(6) Enter overflow data from the DD Form 250 in Block 16 or in the body of the DD Form 250c with an appropriate cross reference. Do not number or distribute additional DD Form 250c sheets, solely for continuation of Block 23 data as part of the MIRR.

(7) Do not include classified information in the MIRR. MIRRs shall not be classified.

(b) Completion instructions.

(1) Block 1—PROC INSTRUMENT IDEN (CONTRACT).

(i) Enter the 13 position alpha-numeric basic Procurement Instrument Identification Number (PIIN) of the contract. When applicable, enter the four alpha-numeric call/order serial number which is supplementary to the 13 position basic PIIN. This number is also referred to as the Supplementary Procurement Instrument Identification Number (SPIIN). Some examples of SPIINs are—

(A) Delivery orders under indefinite delivery type contracts;

(B) Orders under basic ordering agreements; and

(C) Calls under blanket purchase agreements.

(ii) Except as indicated in paragraph (iii), do not enter supplementary numbers used in conjunction with basic PIINs to identify—

(A) Modifications of contracts and agreements;

(B) Modifications to calls/orders; or

(C) Document numbers representing contracts written between contractors.

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1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO.
DAAD01-90-C-0001

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1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO.
DADD01-90-A-0001-0001

(iii) When shipping instructions are furnished by telephone or TWX message and shipment is made before receipt of the confirming contract modification (SF 30, Amendment of Solicitation/Modification of Contract), enter the contract modification six digit number or the two digit call or order number immediately following the PIIN or call/order four digit SPIIN.

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1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO.
DAAD01-90-C-0001-PV0001

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1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO.
DAAD01-90-A-0001-0001AA

(iv) For DoD delivery orders on non-DoD contracts, enter the non-DoD contract number immediately below the PII number.

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1. PROC INSTRUMENT IDEN (CONTRACT) (ORDER) NO.
DSA400-90-F-1684
GS-000S-61917

(v) When a contract number other than PII number is used, enter that contract number.

(2) Block 2—SHIPMENT NO.

(i) The shipment number has a three alpha character prefix and a four numeric or alpha-numeric serial number.

(A) The prime contractor shall control and assign the shipment number prefix. The shipment number shall consist of three alphabetic characters for each "Shipped From" address (Block 11). The shipment number prefix shall be different for each "Shipped From" address and shall remain constant throughout the life of the contract. The prime contractor may assign separate prefixes when shipments are made from different locations within a facility identified by one "Shipped From" address.

(B) Number the first shipment 0001 for shipments made under the contract or contract and order number shown in Block 1 from each "Shipped From" address, or shipping location within the "Shipped From" address. Consecutively number all subsequent shipments with the identical shipment number prefix.

(1) Use alpha-numeric serial numbers when more than 9,999 numbers are required. Serially assign alpha-numeric numbers with the alpha in the first position (the letters I and O shall not be used) followed by the three position numeric serial number. Use the following alpha-numeric sequence:
A000 through A999 (10,000 through 10,999)
B000 through B999 (11,000 through 11,999)
Z000 through Z999 (34,000 through 34,999)

(2) When this series is completely used, start over with 0001.

(ii) Reassign the shipment number of the initial shipment where a "Replacement Shipment" is involved (Block 16(d)(6)).

(iii) The prime contractor shall control deliveries and on the final shipment of the contract shall end the shipment number with a "Z." Where the final shipment is from other than the prime contractor's plant, the prime contractor may elect either to:

(A) Direct the subcontractor making the final shipment to end that shipment number with a "Z"; or

(B) Upon determination that all subcontractors have completed their shipments, to correct the DD Form 250 (see I-305) covering the final shipment made from the prime contractor's plant by addition of a "Z" to that shipment number.

(iv) Contractors follow the procedures in I-306 to use commercial invoices.

(3) Block 3—DATE SHIPPED.

Enter the date the shipment is released to the carrier or the date the services are completed. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an "E" after the date. Do not delay distribution of the MIRR for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

(4) Block 4—B/L TCN.

When applicable, enter—

(i) The commercial or Government bill of lading number after "B/L;"

(ii) The transportation control number after "TCN" (when a TCN is assigned for each line item on the DD Form 250 under Block 16 instructions, insert "See Block 16"); and

(iii) The initial (line haul) mode of shipment code in the lower right corner of the block (see I-302).

(5) Block 5—DISCOUNT TERMS.

(i) The contractor may enter the discount in terms of percentages on all copies of the MIRR.

(ii) Use the procedures in I-306 when the MIRR is used as an invoice.

(6) Block 6—INVOICE NO./DATE.

(i) The contractor may enter the invoice number and actual or estimated date of invoice submission on all copies of the MIRR. When the date is estimated, enter an "E" after the date. Do not correct MIRRs other than invoice copies to reflect the actual date of invoice submission.

(ii) Use the procedures in I-306 when the MIRR is used as an invoice.

(7) Block 7—PAGE/OF.

Consecutively number the pages of the MIRR. On each page enter the total number of pages of the MIRR.

(8) Block 8—ACCEPTANCE POINT.

Enter an "S" for Origin or "D" for destination.

(9) Block 9—PRIME CONTRACTOR/CODE.

Enter the code and address.

(10) Block 10—ADMINISTERED BY/CODE.

Enter the code and address of the contract administration office (CAO) cited in the contract.

(11) Block 11—SHIPPED FROM/CODE/FOB.

(i) Enter the code and address of the "Shipped From" location. If identical to Block 9, enter "See Block 9."

(ii) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations, or if identical to Block 9, enter "See Block 9."

(iii) Enter on the same line and to the right of "FOB" an "S" for Origin or "D" for Destination as specified in the contract. Enter an alphabetic "O" if the "FOB" point cited in the contract is other than origin or destination.

(iv) For destination or origin acceptance shipments involving discount terms, enter "DISCOUNT EXPEDITE" in at least one-half inch outline-type style letters across Blocks 11 and 12. Do not obliterate other information in these blocks.

(12) Block 12—PAYMENT WILL BE MADE BY/CODE.

Enter the code and address of the payment office cited in the contract.

(13) Block 13—SHIPPED TO/CODE.

Enter the code and address from the contract or shipping instructions.

(14) Block 14—MARKED FOR/CODE.

Enter the code and address from the contract or shipping instructions. When three-character project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by "Proj"; do not enter in the code block.

(15) Block 15—ITEM NO.

Enter the item number used in the contract.

(i) Use item numbers under the Uniform Contract Line Item Numbering System (see 204.71).

(ii) Position the item numbers as follows—

(A) For item numbers with four or less digits, enter the number immediately to the left of the vertical dashed line and prefix them with zeros, to achieve four digits.

(B) For item numbers with six digits, with alpha digits in the final two positions, enter the last two digits to the right of the vertical dashed line.

(C) For item numbers with six digits, with numbers in the final two positions, enter the first four digits immediately to the left of the vertical dashed line. Do not use the last two digits.

(iii) Line item numbers not in accordance with the Uniform Contract Line Item Numbering System may be entered without regard to positioning.

(16) Block 16—STOCK/PART NO./DESCRIPTION.

(i)Use single or double spacing between line items when there are less than four line items. Use double spacing when there are four or more line items. Enter the following for each line item:

(A) The national stock number (NSN) or noncatalog number. Where applicable, include a prefix or suffix. If a number is not provided, or it is necessary to supplement the number, include other identification such as the manufacturer's name or federal supply code (as published in Cataloging Handbook H4-1), and the part number. Show additional part numbers in parentheses or slashes. Show the descriptive noun of the item nomenclature and if provided, the Government assigned management/material control code. The contractor may use the following technique in the case of equal kind supply items. The first entry shall be the description without regard to kind. For example, "Shoe-Low Quarter-Black," "Resistor," "Vacuum Tube," etc. Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(B) On the next printing line, if required by the contract for control purposes, enter: the make, model, serial number, lot, batch, hazard indicator, or similar description.

(C) On the next printing lines enter—

(1) The MIPR number prefixed by "MIPR" or the MILSTRIP requisition number(s) when provided in the contract; or

(2) Shipping instructions followed on the same line (when more than one requisition is entered) by the unit for payment and the quantity shipped against each requisition.

Example:

V04690- 185-750XY19059A---EA 5

N0018801776038XY3211BA—EA 200

AT850803050051AAT6391J—EA 1000

(D) When a TCN is assigned for each line item, enter on the next line the transportation control number prefixed by "TCN."

(ii) For service line items, enter the word "SERVICE" followed by as short a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4,13, and 14 when there is no shipment of material.

(iii) For all contracts administered by Defense Contract Management Command, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. _____ _____

State weight in pounds only.

(iv) Starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries apply to more than one line item in the MIRR, enter them only once after the last line item entry. Reference applicable line item numbers.

(A) Enter in capital letters any special handling instructions/limits for material environmental control, such as temperature, humidity, aging, freezing, shock, etc.

(B) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, bureau control number (BCN), and authorization accounting activity (AAA) number (e.g., 17X4911-14003-104).

(C) When the Navy transaction type code (TC), "2T" or "7T" is included in the appropriation data, enter "TC 2T" or "TC 7T."

(D) When an NSN is required by but not cited in a contract and has not been furnished by the Government, the contractor may make shipment without the NSN at the direction of the contracting officer. Enter the authority for such shipment.

(E) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP."

(F) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See I-301, Block 17, for replacement indicators).

(G) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, e.g., "AERNO 60-6354."

(H) For items shipped with missing components, enter and complete the following:

"Item(s) shipped short of the following component(s):

NSN or comparable identification _____,

Quantity _____, Estimated Value _____,

Authority _____"

(I) When shipment is made of components which were short on a prior shipment, enter and complete the following:

"These components were listed as shortages on shipment number _____, date shipped _____"

(J) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:

"Return to _____, Quantity _____,Item _____, Ownership (Government/contractor)."

(K) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(L) On foreign military sales (FMS) shipments, enter the special markings, the applicable FMS country and case identifier from the contract. Also enter the special markings.

(M) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

"Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results."

The contracting officer will advise—

(1) The consignee of the results (approval/disapproval); and

(2) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(N) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: enter "PAYMENT COPY" in approximately one-half inch outline type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(O) For clothing and textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(P) When the initial unit incorporating an approved value engineering change proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP

No. _____, Contract Modification

No. _____, dated _____

(17) Block 17—QUANTITY SHIPPED/RECEIVED.

(i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(ii) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a "Z" below the last digit of the quantity. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect either to—

(A) Direct the subcontractor making the final shipment to enter a "Z" below the quantity; or

(B) Upon determination that all subcontractors have completed their shipments, correct the DD Form 250 (see I-305) coving the final shipment of the line item from the prime contractor's plant by addition of a "Z" below the quantity. Do not use the "Z" on deliveries which equal or exceed the contract line item quantity.

(iii)For replacement shipments, enter "A" below the last digit of the quantity, to designate first replacement, "B" for second replacement, etc. Do not use the final shipment indicator "Z" on underrun deliveries when a final line item shipment is replaced.

17. QUANTITY
SHIP/REC'D
1000
(10)
Z

(iv) If the quantity received is the same quantity shipped and all items are in apparent good condition, enter by a check mark. If different, enter actual quantity received in apparent good condition below quantity shipped and circle. The receiving activity will annotate the DD Form 250 stating the reason for the difference.

(18) Block 18—UNIT.

Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD- 129, Marking for Shipping and Storage. For example, LB for pound, SH for sheet.

18—UNIT
LB
(SH)

(19) Block 19—UNIT PRICE.

The contractor may, at its option, enter unit prices on all MIRR copies, except as a minimum:

(i)The contractor shall enter unit prices on all MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter an "E" after the unit price.

(ii) Use the procedures in I-306 when the MIRR is used as an invoice.

(iii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(iv) Price all copies of DD Forms 250 for FMS shipments with actual prices, if available. If actual price are not available, use estimated prices. When the price is estimated, enter an "E" after the price.

(20) Block 20—AMOUNT.

Enter the extended amount when the unit price is entered in Block 19.

(21) Block 21—CONTRACT QUALITY ASSURANCE (CQA).

(i)The words "conform to contract" contained in the printed statements in Blocks A and B relate to quality and to the quantity of the items on the report. Do not modify the statements. Enter notes taking exception in Block 16 or on attached supporting documents with an appropriate block cross reference.

(ii) When a shipment is authorized under alternative release procedure, attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate contractor certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Management Command (DCMC).

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter "Certificate of Conformance" in Block 21A on the next line following the CQA and acceptance statements. Attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by DCMC. In addition, attach a copy of the signed certificate to, or enter on, copies of the MIRR sent with shipment.

(iv) ORIGIN.

(A) The authorized Government representative shall—

(1) Place an "X" in the appropriate CQA and/or acceptance box(es) to show origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, enter an asterisk at the end of the statement and an explanatory note in Block 16;

(2) Sign and date;

(3) Enter the typed, stamped, or printed name and office DODAAD code.

(B) When alternative release procedures apply—

(1) The contractor or subcontractor shall complete the entries required under paragraph (A) and enter in capital letters "ALTERNATIVE RELEASE PROCEDURE" on the next line following the printed CQA/acceptance statemen.

(2) When acceptance is at origin and contract administration is performed by an office other than DCMC, the contractor shall furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy and forwarding of all copies to the payment office.

(3) When acceptance is at origin and contract administration is performed by DCMC, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see I-401, Table 1).

(C) When fast pay procedures apply, the contractor or subcontractor shall enter in capital letters "FAST PAY" on the next line following the printed CQA/acceptance statement. When CQA is required, the authorized Government representative shall execute the block as required by paragraph (A).

(D) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor's Certificate of Conformance is required, the contractor shall make entries required by paragraph (iv) (A).

(1) For contracts administered by an office other than DCMC, furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy, and forwarding of all copies to the payment office.

(2) For contracts administered by DCMC, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see I-401, Table 1).

(3) When acceptance is at destination, no entry shall be made other than "CERTIFICATE OF CONFORMANCE."

(v) Destination

(A) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(B) When CQA and acceptance or acceptance is at destination, the authorized Government representative shall—

(1) Place an "X" in the appropriate box(es);

(2) Sign and date; and

(3) Enter typed, stamped, or printed name and title.

(C)When "ALTERNATIVE RELEASE PROCEDURE" is entered in Block 21A and acceptance is at destination, the authorized Government representative shall complete the entries required by paragraph (B).

(D) Forward the executed payment copy or MILSCAP format identifier PKN or PKP to the payment office cited in Block 12 within 4 work days (5 days when MILSCAP Format is used) after delivery and acceptance of the shipment by the receiving activity. Forward one executed copy of the final DD Form 250 to the contract administration office cited in Block 10 for implementing contract closeout procedures, except where a Defense Contract Management Region or the DLA Finance Center is cited as the payment office in Block 12.

(E) When "FAST PAY" is entered in Block 21A, make no entries in this block.

(22)Block 22—RECEIVER'S USE.

The receiving activity (Government or contractor) shall use this block to show receipt, quantity, and condition. The receiving activity shall enter the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(23) Block 23—CONTRACTOR USE ONLY. Self explanatory.

I.302 Mode/method of shipment codes.

Code	Description
A	Motor, truckload.
B	Motor, less than truckload.
C	Van (unpacked, uncrated personal or Government property).
D	Driveaway, truckaway, towaway.
E	Bus.
F	Military Airlift Command (Channel and Special Assignment Airlift Mission).
G	Surface parcel post.
H	Air parcel post.
I	Government trucks, for shipment outside local delivery area.
I	Air, small package carrier.
K	Rail, carload [1].
L	Rail, lessthancarload.
M	Surface, freight forwarder.
N	LOGAIR.
O	Organic military air (including aircraft of foreign governments).
P	Through Government Bill of Lading (TGBL).
Q	Commercial air freight (includes regular and expedited service, provided by major airlines; charters and air taxis).
R	European Distribution System or Pacific Distribution System.
S	Scheduled Truck Service (STS) (applies to contract carriage, guaranteed traffic routings and/or scheduled service).
T	Air freight forwarder.
U	QUICKTRANS.
V	SEAVAN.
W	Water, river, lake, coastal (commercial).
X	Bearer, walk-thru (customer pickup of material).
Y	Military Intratheater Airlift Service.
Z	Military Sealift Command (MSC) (controlled contract or arranged space).
2	Government watercraft, barge, lighter.
3	Roll-on Roll-off (RORO) service.
4	Armed Forces Courier Service (ARFCOS).
5	Surface, small package carrier.
6	Military official mail (MOM).
7	Express mail.
8	Pipeline.
9	Local delivery by Government or commercial truck (includes on base transfers; deliveries between air, water, or motor terminals; and adjacent activities). Local delivery areas are identified in commercial carriers' tariffs which are filed and approved by regulatory authorities.

[1] Includes trailer/container-on-flat-car (excluding SEAVAN).

I-303 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single bill of lading, the contractor may prepare the DD Forms 250 at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

I-304 Multiple consignee instructions.

The contractor may prepare one MIRR when the identical line item(s) of a contract are to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this appendix with the following changes—

(a) Blocks 2,4,13, and, if applicable, 14–Enter "See Attached Distribution List."

(b) Block 15–The contractor may group item numbers for identical stock/part number and description.

(c) Block 17–Enter the "total" quantity shipped by line item or, if applicable, grouped identical line items.

(d) Use the DD Form 250c to list each individual "Shipped To" and "Marked For" with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Line item number(s);

(3) Quantity;

(4) MIPR number(s), preceded by "MIPR," or the MILSTRIP requisition number, and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number, TCN, and mode of shipment code.

(e) The contractor may omit those distribution list pages of the DD Form 250c that are not applicable to the consignee. Provide a complete MIRR for all other distribution.

I-305 Correction instructions.

Make a new revised MIRR or correct the original when, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made. Use identical data of the original MIRR. Do not correct MIRRs for Blocks 19 and 20 entries. Make the corrections as follows—

(a) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block. Enter omissions in Block 16 referencing omission page and block.

---

2. SHIPMENT NO.
(AAA0001)
See Block 16

---

16. STOCK/PART NO. DESCRIPTION

---

17. QUANTITY SHIP/REC'D
19
(17)

CORRECTIONS:
Refer Block 2: Change shipment No. AAA001 to AAA0010 on all pages of the MIRR.
Refer Blocks 15, 16, 17, and 18, page 2: Delete in entirety Line Item No. 0006. This item was not shipped.

(b) When corrections have been made to entries for line items (Block 15) or quantity (Block 17) enter the words "CORRECTIONS HAVE BEEN VERIFIED" on page 1. The authorized Government representative will date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) Clearly mark the pages of the MIRR requiring correction with the words "CORRECTED COPY." Avoid obliterating any other entries. Where corrections are made only on continuation sheets, also mark page number 1 with the words "CORRECTED COPY."

(d) Page 1 and only those continuation pages marked "CORRECTED COPY" shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

I-306 Invoice instructions.

The Government encourages, but does not require, contractors to use copies of the MIRR as an invoice, in lieu of a commercial form. If commercial forms are used, identify the related MIRR shipment number(s) on the form. If using the MIRR as an invoice, prepare and forward four copies to the payment office as follows—

(a) Complete Blocks 5, 6, 19, and 20. Block 6 shall contain the invoice number and date. Column 20 shall be totaled.

(b) Mark in letters approximately one inch high, first copy: "ORIGINAL INVOICE;" three copies "INVOICE COPY."

(c) Forward the four copies to the payment office (Block 12 address), except when

acceptance is at destination and a Navy finance office will make payment, forward to destination.

(d) Be sure to separate the four copies of the MIRR used as an invoice from the copies the MIRR used as a receiving report.

I-307 Packing list instructions.

Contractors may use copies of the MIRR as a packing list. The packing list copies are in addition to the copies of the MIRR required for standard distribution (see I-401). Mark them "PACKING LIST."

I-308 Receiving instructions.

When the MIRR is used for receiving purposes, local directives shall prescribe procedures. If CQA and acceptance or acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

Part 4—Distribution of DD Form 250 and DD Form 250c

I-401 Distribution.

(a) The contractor is responsible for distributing the DD Form 250, including mailing and payment of postage.

(b) Contractors shall distribute MIRRs using the instructions in Tables 1 and 2.

(c) Contractors shall distribute MIRRs on non-DoD contracts using this appendix as amended by the contract.

(d) Contractors shall make distribution promptly, but no later than the close of business of the work day following—

(1) Signing of the DD Form 250 (Block 21A) by the authorized Government representative; or

(2) Shipment when authorized under terms of alternative release, certificate of conformance, or fast pay procedures; or

(3) Shipment when CQA and acceptance are to be performed at destination.

(e) Do not send the consignee copies (via mail) on overseas shipments to port of embarkation (POE). Send them to consignee at APO/FPO address.

(f) Copies of the MIRR forwarded to a location for more than one recipient shall clearly identify each recipient.

MATERIAL INSPECTION AND RECEIVING REPORT TABLE 1

STANDARD DISTRIBUTION

With Shipment* 4
Consignee (via mail) 2
(For Navy procurement, include unit price)
(For foreign military sales, consignee copies are not required)
Contract Administration Office 1
(Forward direct to address in Block 10 except when addressee is a DCMR, DCMAO, or a DPRO and a certificate of conformance or the alternate release procedures (see I-301, Block 21) is involved, and acceptance is at origin; then, forward through the authorized Government representative.)
Purchasing Office 1
Payment Office** 4
(Forward direct to address in Block 12 except—
(i) When address in Block 10 is a DCMR or DCMAO and payment office in Block 12 is a DCMR or the DLA Finance Center, do not make distribution to the Block 12 addressee;
(ii) When address in Block 12 is Defense Contract Management Operations Office (DCMOO), Kirtland AFB, NM, attach only one copy to the required number of copies of the contractor's invoice;
(iii) When acceptance is at destination and a Navy finance office will make payment, forward to destination; and
(iv) When a certificate of conformance or the alternative release procedures (see I-301, Block 21) are involved and acceptance is at origin, forward the copies through the authorized Government representative.

ADP Point for CAO (applicable to Air Force only) 1
(When DCMOO is the payment office in Block 12, send one copy to DCMOO immediately after signature. If submission of delivery data is made electronically, distribution of this hard copy need not be made to DCMOO.)
CAO of Contractor Receiving GFP 1
(For items fabricated or acquired for the Government and shipped to a contractor as Government furnished property, send one copy directly to the CAO cognizant of the receiving contractor, ATTN: Property Administrator (see DoD 4105.59-H).)

*Attach as follows:

Type of Shipment	Location
Carload or truckload.	Affix to the shipment where it will be readily visible and available upon receipt.
Less than carload or truckload.	Affix to container number one or container bearing lowest number.
Mail, including parcel post.	Attach to outside or include in the package. Include a copy in each additional package of multi-package shipments.
Pipeline, tank car, or railroad cars for coal movements.	Forward with consignee copies

**Payment by DCMRs or the DLA Finance Center will be based on the source acceptance copies of DD Forms 250 forwarded to the contract administration office, except when distribution will be made to DCMR or DLA Finance Center payment offices.

MATERIAL INSPECTION AND RECEIVING REPORT—TABLE 2

SPECIAL DISTRIBUTION

As Required	Address	Number of Copies
Each: Navy Status Control Activity, Army, Air Force, DLA Inventory Control Manager.	Address specified in contract	1 Each addressee
Quality Assurance Representative	Address specified by the assigned quality assurance representative	1
Transportation Office issuing GBL (attach to GBL memorandum copy)	CAO address unless otherwise specified in the contract	1
Purchasing Office other than office issuing contract	Address specified in the contract	1
Foreign Military Sales Representative	Address specified in the contract	8
Military Assistance Advisory Group (Grant Aid shipments)	U.S. Military Advisory Group, Military Attache, Mission, or other designated agency address as specified in the contract.	1
Army—Foreign Military Sales	Commander, US Army Security Asst. Center ATTN: (See * below) 3rd Street and "M" Avenue, New Cumberland Army Depot, New Cumberland, PA 17070-5096.	1
*Director, AMSAC-OE for these country codes	AG, AU, A2, AID, BC, BE, BY, CD CI, CM, CN, CV, CX, DA, DE, DK, EG, EI, FI, FR, GA, GB, GH, GR, GV, GY, IS, IT, IV, KE, LI, LX, MI, MO, MR, NE, NI, NK, NO, NATO, PT, PU, RM, RW, SK, SL, SO, SP, SU, SW, SZ, SECPO, TK, TO, TU, UG, UK, UV.	
*Director, AMSAC-OX for these country codes	AC, AR, AT, A1, BA, BB, BD, BF, BG, BH, BL, BM, BR, BX, CB, CE, CH, CO, CS, DO, DR, EC, ES, FJ, GJ, GT, GU, HA, HO, ID, IN, IR, JA, JM, JO, KS, KU, LE, MF, MU, MX, NP, NU, NS, NZ, PA, PE, PI, PK, PN, PP, QA, SC, SI, SN, SR, ST, TC, TD, TH, TW, UY, VC, VE, YE.	
Air Force—On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones.	Air Force Logistics Command, Aerospace Vehicle Distribution Office (MCNAPV), Wright-Patterson AFB, OH 45433.	1
When above items are delivered to aircraft modification centers	DPRO	1

MATERIAL INSPECTION AND RECEIVING REPORT—TABLE 2—Continued

SPECIAL DISTRIBUTION

As Required	Address	Number of Copies
Foreign Military Sales/Military Assistance Program (Grant Aid) shipments to Canada.	National Defense Headquarters, Ottawa, Ontario, Canada, K1A OK4, ATTN: DPSUPS3.	1
Other than Canada	Address in the contract	1
When consignee is an Air National Guard Activity	Consignee address (Block 13) ATTN; Property Officer	3
Navy		
Navy Foreign Military Sales	U.S. Navy International Logistics Control Office (NAVILCO), 700 Robbins Avenue, Philadelphia, PA 19111-5095.	2
When typed code (TC) 2T or 7T is shown in Block 16, or when shipment is consigned to another contractor's plant for a Government representative or when Block 16 indicates shipment includes GFP.	Aviation Supply Office (ASO) (Code 0142) for aviation type material 700 Robbins Avenue, Philadelphia, PA 19111-5098 and Ships Parts Control Center (SPCC) (Code 0143) for all other material 5450 Carlisle Pike, PO Box 2020, Mechanicsburg, PA 17055-0788.	2 2
Marine Corps		
All shipments consigned to a Marine Corps Activity (excluding aeronautical spares).	Commandant of the Marine Corps Headquarters, USMC Washington, DC 20380-0001.	1
	Commanding General, Marine Corps Logistics Base, Albany, GA 31704-5000.	3
Bulk Petroleum Shipments	Cognizant Defense Fuel Region (see Table 4)	1

Part 5—Preparation of the DD Form 250-1 (Loading Report)

I-501 Instructions.

Prepare the DD Form 250-1 using the following instructions when applied to a tanker or barge cargo lifting. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—TANKER/BARGE.

Line out "TANKER" or "BARGE" as appropriate and place an "X" to indicate loading report.

(b) Block 2—INSPECTION OFFICE.

Enter the name and location of the Government office conducting the inspection.

(c) Block 3—REPORT NO.

Number each form consecutively, starting with number 1, to correspond to the number of shipments made against the contract. If shipment is made from more than one location against the same contract, use this numbering system at each location.

(d) Block 4—AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (LOADING).

Enter the applicable Government activity.

(e) Block 5—DEPARTMENT.

Enter military department owning product being shipped.

(f) Block 6—PRIME CONTRACT OR P.O. NO.

Enter the contract or purchase order number.

(g) Block 7—NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (LOADING).

Enter the name and address of the contractor as shown in the contract.

(h) Block 8—STORAGE CONTRACT.

Enter storage contract number if applicable.

(i) Block 9—TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS.

Enter the name and location of the contractor facility from which shipment is made. Also enter delivery point in this space as either "FOB Origin" or "FOB Destination."

(j) Block 10—ORDER NO. ON SUPPLIER.

Enter number of the delivery order, purchase order, subcontract or suborder placed on the supplier.

(k) Block 11—SHIPPED TO: (RECEIVING ACTIVITY, CITY, STATE AND/OR LOCAL ADDRESS.

Enter the name and geographical address of the consignee as shown on the shipping order.

(l) Block 12—B/L NUMBER.

If applicable, enter the initials and number of the bill of lading. If a commercial bill of lading is later authorized to be converted to a Government bill of lading, show "Com. B/L to GB/L."

(m) Block 13—REQN. OR REQUEST NO.

Enter number and date from the shipping instructions.

(n) Block 14—CARGO NO.

Enter the cargo number furnished by the ordering office.

(o) Block 15—VESSEL.

Enter the name of tanker or barge.

(p) Block 16—DRAFT ARRIVAL.

Enter the vessel's draft on arrival.

(q) Block 17—DRAFT SAILING.

Enter the vessel's draft on completion of loading.

(r) Block 18—PREVIOUS TWO CARGOES.

Enter the type of product constituting previous two cargoes.

(s) Block 19—PRIOR INSPECTION.

Leave blank.

(t) Block 20—CONDITION OF SHORE PIPELINE.

Enter condition of line (full or empty) before and after loading.

(u) Block 21—APPROPRIATION (LOADING).

Enter the appropriation number shown on the contract, purchase order or distribution plan. If the shipment is made from departmentally owned stock, show "Army, Navy, or Air Force (as appropriate) owned stock.

(v) Block 22—CONTRACT ITEM NO.

Enter the contract item number applicable to the shipment.

(w) Block 23—PRODUCT.

Enter the product nomenclature and grade as shown in the contract or specification, the stock or class number, and the NATO symbol.

(x) Block 24—SPECIFICATIONS.

Enter the specification and amendment number shown in the contract.

(y) Block 25—STATEMENT OF QUANTITY.

Enter in the "LOADED" column, the net barrels, net gallons, and long tons for the cargo loaded. NOTE: If more than 1/2 of 1 percent difference exists between the ship and shore quantity figures, the contractor shall immediately investigate to determine the cause of the difference. If necessary, prepare corrected documents; otherwise, put a statement in Block 28 as to the probable or actual cause of the difference.

(z) Block 26—STATEMENT OF QUALITY.

(1) Under the heading "TESTS" list all inspection acceptance tests of the specification and any other quality requirements of the contract.

(2) Under the heading "SPECIFICATION LIMITS" list the limits or requirements as stated in the specification or contract directly opposite each entry in the "TESTS" column. List waivers to technical requirements.

(3) Under the heading "TEST RESULTS" list the test results applicable to the storage tank or tanks from which the cargo was lifted. If more than one storage tank is involved, list the tests applicable to each tank in separate columns headed by the tank number, the date the product in the tank was approved, and the quantity loaded from the tank. Each column shall also list such product characteristics as amount and type of corrosion inhibitor, etc.

(aa) Block 27—TIME STATEMENT.

Line out "DISCHARGE" and "DISCHARGING." Complete all applicable entries of the time statement using local time. Take these dates and times from either the vessel or shore facility log. The Government representative shall ensure that the logs are in agreement on those entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reasons in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed

aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 67). The term FINISHED BALLAST DISCHARGE is meant to include all times needed to complete deballasting and mopping/drying of ship's tanks. The inspection of ship's tanks for loading is normally performed immediately upon completion of drying tanks.

(bb) Block 28—REMARKS.

Use this space for reporting—

(1) All delays, their cause and responsible party (vessel, shore facility, Government representative, or other).

(2) Details of loading abnormalities such as product losses due to overflow, leaks, delivery of product from low level in shore tanks, etc.

(3) In the case of multiple consignees, enter each consignee, the amount consigned to each, and if applicable, the storage contract numbers appearing on the delivery order.

(4) When product title is vested in the U.S. Government, insert in capital letters "U.S. GOVERNMENT OWNED CARGO." If title to the product remains with the contractor and inspection is performed at source with acceptance at destination, insert in capital letters "CONTRACTOR OWNED CARGO."

(5) Seal numbers and location of seals. If space is not adequate, place this information on the ullage report or an attached supplemental sheet.

(cc) Block 29—COMPANY OR RECEIVING TERMINAL.

Line out "OR RECEIVING TERMINAL" and get the signature of the supplier's representative.

(dd) Block 30—CERTIFICATION BY GOVERNMENT REPRESENTATIVE.

Line out "DISCHARGED." The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing this certification, as well as the names applied in Blocks 29 and 31, shall be typed or hand lettered. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—CERTIFICATION BY MASTER OR AGENT.

Obtain the signature of the master of the vessel or its agent.

Part 6—Preparation of the DD Form 250-1 (Discharge Report)

I-601 Instructions.

Prepare the DD Form 250-1 using the following instructions when applied to a tanker or barge discharge. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—TANKER/BARGE.

Line out "TANKER" or "BARGE" as applicable and place an "X" to enter discharge report.

(b) Block 2—INSPECTION OFFICE.

Enter Government activity performing inspection on the cargo received.

(c) Block 3—REPORT NO.

Leave blank.

(d) Block 4—AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (LOADING).

Enter Government agency shown on loading report.

(e) Block 5—DEPARTMENT.

Enter Department owning product being received.

(f) Block 6—PRIME CONTRACT OR P.O. NO.

Enter the contract or purchase order number shown on the loading report.

(g) Block 7—NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (LOADING).

Enter the name and location of contractor who loaded the cargo.

(h) Block 8—STORAGE CONTRACT.

Enter the number of the contract under which material is placed in commercial storage where applicable.

(i) Block 9—TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS.

Enter source of cargo.

(j) Block 10—ORDER NO. ON SUPPLIER.

Make same entry appearing on loading report.

(k) Block 11—SHIPPED TO: (RECEIVING ACTIVITY, CITY, STATE AND/OR LOCAL ADDRESS).

Enter receiving activity's name and location.

(l) Block 12—B/L NUMBER.

Enter as appears on loading report.

(m) Block 13—REQN. OR REQUEST NO.

Leave blank.

(n) Block 14—CARGO NO.

Enter cargo number shown on loading report.

(o) Block 15—VESSEL.

Enter name of tanker or barge discharging cargo.

(p) Block 16—DRAFT ARRIVAL.

Enter draft of vessel upon arrival at dock.

(q) Block 17—DRAFT SAILING.

Enter draft of vessel after discharging.

(r) Block 18—PREVIOUS TWO CARGOES.

Leave blank.

(s) Block 19—PRIOR INSPECTION.

Enter the name and location of the Government office which inspected the cargo loading.

(t) Block 20—CONDITION OF SHORE PIPELINE.

Enter condition of line (full or empty) before and after discharging.

(u) Block 21—APPROPRIATION (LOADING).

Leave blank.

(v) Block 22—CONTRACT ITEM NO.

Enter the item number shown on the loading report.

(w) Block 23—PRODUCT.

Enter information appearing in Block 23 of the loading report.

(x) Block 24—SPECIFICATIONS.

Enter information appearing in Block 24 of the loading report.

(y) Block 25—STATEMENT OF QUANTITY.

Enter applicable data in proper columns.

(1) Take "LOADED" figures from the loading report.

(2) Determine quantities discharged from shore tank gauges at destination.

(3) If a grade of product is discharged at more than one point, calculate the loss or gain for that product by the final discharge point. Report amounts previously discharged on discharge reports prepared by the previous discharge points. Transmit volume figures by routine message to the final discharge point in advance of mailed documents to expedite the loss or gain calculation and provide proration data when more than one department is involved.

(4) The loss or gain percentage shall be entered in the "PERCENT" column followed by "LOSS" or "GAIN," as applicable.

(5) On destination acceptance shipments, accomplish the "DISCHARGED" column only, unless instructed to the contrary.

(z) Block 26—STATEMENT OF QUALITY.

(1) Under the heading "TESTS" enter the verification tests performed on the cargo preparatory to discharge.

(2) Under "SPECIFICATION LIMITS" enter the limits, including authorized departures (if any) appearing on the loading report, for the tests performed.

(3) Enter the results of tests performed under the heading "TEST RESULTS."

(aa) Block 27—TIME STATEMENT.

Line out "LOAD" and "LOADING." Complete all applicable entries of the time statement using local time. Take the dates and times from either the vessel or shore facility log. The Government representative shall ensure that these logs are in agreement with entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reason(s) in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 67).

(bb) Block 28—REMARKS.

Use this space for reporting important facts such as—

(1) Delays, their cause, and responsible party (vessel, shore facility, Government representative, or others).

(2) Abnormal individual losses contributing to the total loss. Enter the cause of such losses as well as actual or estimated volumes involved. Such losses shall include, but not be restricted to, product remaining aboard (enter tanks in which contained), spillages, line breaks, etc. Note where gravity group change of receiving tank contents results in a fictitious loss or gain. Note irregularities observed on comparing vessel ullages obtained at loading point with those at the discharge point if they indicate an abnormal transportation loss or contamination.

(cc) Block 29.—COMPANY OR RECEIVING TERMINAL.

Line out "COMPANY OR." Secure the signature of a representative of the receiving terminal.

(dd) Block 30—CERTIFICATION BY GOVERNMENT REPRESENTATIVE.

Line out "LOADED." The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing the certification as well as the names applied in Blocks 29 and 31, shall be typed or hand lettered on the master or all copies of the form. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—CERTIFICATION BY MASTER OR AGENT.

Obtain the signature of the master of the vessel or the vessel's agent.

Part 7—Distribution of the DD Form 250–1

I–701 Distribution.

(a) The Government representative shall distribute the completed DD Form 250–1 using Table 3 of this appendix as amended by the provisions of the contract or shipping order.

(b) The contractor shall furnish the Government representative sufficient copies of the completed form to permit the required distribution.

(c) Distribution of the form shall be made as soon as possible, but not later than 24 hours following completion of the form. (See Table 3 on following pages)

I–702 Corrected DD Form 250–1.

When errors are made in entries on the form which would affect payment or accountability, make corrected copies. Circle the corrected entries on all copies and mark the form "CORRECTED COPY." Enter the statement, "Corrections Have Been Verified," in Block 26 with the authorized Government representative's dated signature directly below. Make distribution of the certified corrected copy to all recipients of the original distribution.

TABLE 3

Column Headings
1. TYPE OF SHIPMENT
2. RECIPIENT OF DD FORM 250–1
3. NUMBER OF COPIES
   A. LOADING—PREPARED BY SHIPPER/GOVT. REPRESENTATIVE
      (1) TANKER
      (2) BARGE
   B. DISCHARGE—PREPARED BY RECEIVING ACTIVITY
      (1) TANKER
      (2) BARGE

1.	2.	3. A(1)	3. A.(2)	3. B.(1)	3. B.(2)
On all overseas shipments provide for a minimum of 4 consignees.	Each Consignee By mail (CONUS shipments only)	2	1	(5)	(5)
Place 1 copy (attached to ullage report) in each of 4 envelopes & mark envelopes "Consignee-First Destination," "Consignee-Second Destination," etc., for delivery via the tanker.	With shipment	1	1	(5)	(5)
	Master of Vessel	1	1	1	1
	Tanker of Barge Agent	2	2	2	2
	Contractor	(5)	(5)	(5)	(5)
	Cognizant Inspection Office Government Representative at each Destination responsible for Quality.	1	1	1	1
	Government Representative at Cargo Loading Point	1	1	(1)	(1)
On all USNS tankers and all MSC chartered tankers and MSC chartered barges.	Military Sealift Command, Code N322, Washington, DC 20398–51000.	2	2	2	2
See contract or shipping order for finance documentation and any supplemental requirements for Government-owned product shipments and receipts.	Payment Office: If this is DASC–F, send copies to Defense Fuel Supply Center, ATTN: DFSC-CDX, Cameron Station, Bldg 5, Alexandria, VA 22314 (Do not send copies to DASC–F).	2	2	2	2
For shipments and receipts of DFSC financed cargoes for which DASC–F is not the paying office.	Defense Fuels Supply Center, ATTN: DFSC–RF, Room 8D490, Cameron Station, Alexandria, VA 22304–6160.	1	1	1	1
For shipments on all USNS tankers, MSC chartered tankers & barges, & FOB destination tankers with copy of ullage report.	Defense Fuels Supply Center, ATTN: DFSC–OI, Alexandria, VA 22304–6160.	1	1	[2] 1	1
On Army ILP shipments	U.S. Army International Logistics Center, New Cumberland Army Depot, New Cumberland, PA 17070.	2	2	2	2
NAVY—On all shipments to Navy-Operated Terminals	Navy Fuel Petroleum Office, Cameron Station, Alexandria, VA 22304–6180.	2	1	2	1
On all shipments to AF bases	Directorate of Energy Mgmt, SA ALC (SFT), Kelly AFB, TX 78241–5000.	1	1	1	1
On all CONUS loadings	DFSC Fuel Region(s) cognizant of Shipping Point	1	1	1	1
On all shipments to CONUS Destinations	DFSC Fuel Region(s) cognizant of Shipping and Receiving Point.[4]	1	1	0	0
For all discharges of cargoes originating at DFSPs & discharging at activities not a Defense Fuel Support Point.	Defense Fuels Supply Center, ATTN: DFSC–RF, Cameron Station, Alexandria, VA 22304–6160.			[2] 1	[2] 1

[1] With copy of ullage report.
[2] Dry tank certificate to accompany DD Form 250–1 and ullage report.
[3] The copies of DD Form 250–I, forwarded by bases, will include the following in Block 11: Shipped to: Supplementary Address, if applicable; Signal Code; and Fund Code.
[4] See Table 4.
[5] As required.

TABLE 4.—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY

a. DFR Northeast	Defense Fuel Region Northeast, Building 2404, McGuire AFB, NJ 08641–5000.
Area of Responsibility	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

TABLE 4.—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY—Continued

b. DFR Central	Defense Fuel Region, Central, 8900 S. Broadway, Building 2, St. Louis, MO 63125–1513.
Area of Responsibility	Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin, and Wyoming.
c. DFR South	Defense Fuel Region, South, Federal Office Building, 2320 La Branch, Room 1213, Houston, TX 77004–1091.
Area of Responsibility	Alabama, Arizona, Arkansas, Caribbean Area, Florida, Georgia, Louisiana, Mexico, Mississippi, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, West Indies, Central America, and South America.
d. DFR West	Defense Fuel Region, West, 3171 N. Gaffney Street, San Pedro, CA 90731–1099.
Area of Responsibility	California, Idaho, Montana, Nevada, Oregon, Utah, and Washington.
e. DFR Alaska	Defense Fuel Region, Alaska, Elmendorf AFB, Alaska 99506–5000.
Area of Responsibility	Alaska and Aleutians.
f. DFR Europe	Defense Fuel Region, Europe, Building 2304, APO New York 09128–4105.
Area of Responsibility	Continental Europe, United Kingdom, Mediterranean Area, Turkey, and Africa (less Djibouti, Egypt, Ethiopia, Kenya, Somalia).
g. DFR Mideast	Defense Fuels Region, Middle East, P.O. Box 386, Awali, Bahrain, APO New York 09526–2930.
Area of Responsibility	Afghanistan, Bahrain, Djibouti, Egypt, Ethiopia, Iran, Iraq, Jordan, Kenya, Kuwait, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, United Arab Emirates, and Yemen.
h. DFR Pacific	Defense Fuel Region, Pacific, Camp H. M. Smith, Honolulu, HI 96861–5000.
Area of Responsibility	Australia, Burma, East Indies, Hawaii, Indian Ocean, Japan, Korea, Malaya, Marianas, New Zealand, Philippines, Ryukyu Islands, South Pacific Islands, Sri Lanka, Taiwan, and Thailand.

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federal register

Friday
September 28, 1990

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons and additional early-seasons on which States deferred selection. Taking of migratory birds is prohibited unless specifically provided. These rules will permit taking of the designated species during the 1990–91 season.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634–Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1990

On March 14, 1990, the Service published for public comment in the **Federal Register** (55 FR 9618) a proposal to amend 50 CFR Part 20, with comment periods ending July 20, 1990, for early-season proposals; and August 27, 1990, for the late-season proposals. The March 14 document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107, 20.109 and 20.110 of subpart K. On June 6, 1990, the Service published in the **Federal Register** (55 FR 23178) a second document consisting of a supplemental proposed rulemaking dealing with both the early-and late-season frameworks. On June 21, 1990, a public hearing was held in Washington, DC, as announced in the **Federal Register** of March 14 (55 FR 9618), June 6 (55 FR 23178), and June 8 (55 FR 23487), 1990, to review the status of migratory shore and upland game birds. Proposals hunting regulations were discussed for these species and for other early seasons. On July 10, 1990, the Service published in the **Federal Register** (55 FR 28352) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On August 2, 1990, a public hearing was held in Washington, DC, as announced in the **Federal Register** of March 14 (55 FR 9618), June 6 (55 FR 23178), and July 10 (55 FR 28352), 1990, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 14, 1990, the Service published a fourth document (55 FR 33264) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1990–91. The fifth document in the series, published August 17, 1990, in the **Federal Register** (55 FR 33842), deals specifically with proposed frameworks for the 1990–91 late-season migratory bird hunting regulations. On August 28, 1990, the Service published in the **Federal Register** (55 FR 35266) a sixth document consisting of a final rule amending subpart K of Title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early-seasons. On September 21, 1990, the Service published in the **Federal Register** a seventh document (55 FR 38898) consisting of a final rulemaking for the late-season frameworks for migratory game bird hunting regulations from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 1990–91.

The final rule described here is the eighth in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR part 20 to set hunting seasons, hours, areas, and limits for species subject to late hunting regulations.

Nontoxic Shot Regulations

In the August 16, 1990, **Federal Register** (55 FR 33626), the Service published a final rule describing zones in which lead shot is prohibited for hunting waterfowl, coots, and certain other species in the 1990–91 season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Bird (FSES 88–14)", filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options were considered in the Environmental Assessment, *Waterfowl Hunting Regulations for 1990.* Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

On July 12, 1990, the Division of Habitat Conservation concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. On July 23, 1990, the Office of Migratory Bird Management requested reinitiation to further consider the effects of the increasing population of Aleutian Canada geese and the variable nature of incidental take of this species. On August 2, 1990, the Division of Habitat Conservation issued another biological opinion that addressed this issue. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 14, 1990 (55 FR 9618), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and revising the Final Regulatory Impact Analysis. In the August 14, 1990, **Federal Register** (55 FR 33264), the Service published a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are

available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, Department of the Interior, Washington, DC 20240. These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated August 14, 1990 (55 FR 33264).

Authorship

The primary author of this proposed rule is Robert J. Blohm, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

Regulations Promulgation

After analysis of the migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the late-season proposals, the Service published in the **Federal Register** on September 21, 1990 (55 FR 38898) final late-season frameworks. Copies of the proposed and final frameworks were sent to the officials of the State conservation agencies who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas, and limits specified in the final frameworks. The Service has long recognized, consistent with 16 U.S.C. 708, that States need not select maximum bag limits and season length delineated in annual Federal frameworks. Local resource needs and the health of portions of a population using a particular area may require stricter local controls than prevail elsewhere in a flyway.

The taking of migratory birds is prohibited unless specifically provided. The following amendments will permit taking of the designated species within specified time periods and will benefit the public by relieving existing restrictions.

The rulemaking process for migratory game bird hunting, must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 14, June 6, and August 17, 1990, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication.

Accordingly, with each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby corrected and amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 24, 1990.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K is amended as follows:

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; U.S.C. 701–711), and the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712).

2. Section 20.107 is revised to read as follows:

§ 20.107 Seasons, limits, and shooting hours for tundra swans.

This section provides for the annual hunting of tundra swans in designated portions of the 48 contiguous United States.

BILLING CODE 4310-55-M

Note - The following annual hunting regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

3. Section 20.104 is amended as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

NOTE: The following seasons are in addition to other seasons published previously in the August 28, 1990, Federal Register (55 FR 35266).

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	25 (1)	See footnote (2).	5 (3)	8
Possession limit	25 (1)	See footnote (2).	10 (3)	16

Shooting and Hawking Hours: One-half hour before sunrise until sunset daily on all species, unless otherwise restricted.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

* * * * *

Seasons in the Mississippi Flyway:

* * * * *

Kentucky	Nov. 22-Jan. 20	Closed	Oct. 1-Dec. 4	Oct. 1-Dec. 4

* * * * *

Tennessee	Dec. 8-Jan. 6	Closed	Oct. 20-Nov. 25 & Feb. 1-Feb. 28	Nov. 14-Feb. 28
Wisconsin:				
North Zone	Oct. 6-Nov. 4	Closed	Sept. 15-Nov. 18	Oct. 6-Nov. 4
South Zone	Oct. 6-Oct. 9 & Oct. 17-Nov. 11	Closed	Sept. 15-Nov. 18	Oct. 6-Oct. 9 & Oct. 17-Nov. 11

* * * * *

Seasons in the Central Flyway:

* * * * *

New Mexico (6)(11):				
North Zone	Oct. 22-Nov. 11 & Dec. 8-Jan. 6	Closed	Closed	Oct. 22-Nov. 11 & Dec. 8-Jan. 6
South Zone	Nov. 17-Jan. 6	Closed	Closed	Nov. 17-Jan. 6

* * * * *

Texas	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 24-Jan. 27	Oct. 27-Feb. 10

* * * * *

Seasons in the Pacific Flyway:

Arizona (12)	Closed	Closed	Closed	Oct. 12-Nov. 16 & Dec. 15-Jan. 6
California	Closed	Closed	Closed	Pending

* * * * *

Idaho (4)				
Zone 1	Closed	Closed	Closed	Oct. 20-Dec. 17
Zone 2	Closed	Closed	Closed	Sept. 22-Jan. 6

* * * * *

Nevada:				
Clark County	Closed	Closed	Closed	Nov. 10-Jan. 6
Remainder of State	Closed	Closed	Closed	Oct. 20-Dec. 17
New Mexico(6)(11)	Oct. 6-Oct. 21 & Nov. 24-Jan. 5	Closed	Closed	Oct. 6-Oct. 21 & Nov. 24-Jan. 5
Oregon	Closed	Closed	Closed	Oct. 20-Jan 20
Utah	Closed	Closed	Closed	Oct. 6-Dec. 3

Washington:

Eastern Washington (4)	Closed	Closed	Closed	Oct. 13-Oct. 21 & Nov. 4-Dec. 30
Western Washington (4)	Closed	Closed	Closed	Oct. 13-Oct. 21 & Nov. 11-Dec. 30

* * * * *

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.

(2) In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

(4) For description of zones or management units within a State, see State regulations.

* * * * *

(6) The Central Flyway portion consists of: Colorado and Wyoming -- the area lying east of the Continental Divide; Montana -- the area lying east of Hill, Chouteau, Casade, Meagher, and Park Counties; New Mexico -- the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.

* * * * *

(11) In New Mexico, the rail limits are 10 daily and 10 in possession.

(12) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

4. Section 20.105 is revised to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

ATLANTIC FLYWAY

Definitions

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

White geese include lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark geese include Canada geese, white-fronted geese, and brant.

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted--Check State regulations. States that further restrict shooting hours (in specified seasons, dates, or locations) include, but are not limited to: Connecticut, South Carolina, Vermont, and West Virginia.

Duck Limits: The daily bag limit may include no more than 1 female mallard, 1 pintail, 1 black duck, 1 mottled duck, 2 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

Gallinule Limits: The daily bag and possession limit for purple gallinules and common moorhens is singly or in the aggregate of the two species.

Zones: Boundaries are described in the September 21, 1990, Federal Register (55 FR 38898) and in the appropriate State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits: Bag	Limits: Possession
Connecticut			
Ducks:			
North Zone	Oct. 20-Oct. 27 &	3	6
	Nov. 21-Dec. 12	3	6
South Zone	Oct. 20 only &	3	6
	Dec. 8-Jan. 5	3	6

	Season Dates	Limits Bag	Possession
Connecticut (cont.)			
Sea ducks (1)(2)	Oct. 1-Jan. 15	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 20-Jan. 17	3	6
South Zone	Oct. 20-Oct. 27 &	3	6
	Nov. 16-Jan. 14	3	6
(special season)	Jan. 15-Feb. 5	5	10
White Geese:			
North Zone	Oct. 20-Feb. 2	5	10
South Zone	Oct. 20-Feb. 2	5	10
Brant:			
North Zone	Oct. 20-Oct. 27 &	2	4
	Nov. 21-Jan. 1	2	4
South Zone	Oct. 20-Oct. 27 &	2	4
	Dec. 8-Jan. 18	2	4
Delaware			
Ducks	Nov. 1-Nov 7 &	3	6
	Nov 20-Nov 24 &	3	6
	Dec. 19-Jan. 5	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Nov. 1-Nov. 7 &	1	2
	Dec. 12-Jan. 12	1	2
White Geese:			
Bombay Hook NWR Only	Nov. 8-Nov. 18	5	10
Statewide	Oct. 12-Nov. 7 &	5	10
	Nov. 19-Nov. 24 &	5	10
	Dec. 10-Feb. 9	5	10
Brant	Nov. 20-Nov. 24 &	2	4
	Dec. 6-Jan. 19	2	4
Florida			
Ducks	Nov 21-Nov. 25 &	3	6
	Dec. 13-Jan. 6	3	6
Coots	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Geese	Closed		
Georgia			
Ducks	Nov 22-Nov. 25 &	3	6
	Dec. 12-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese (Special Area)	Jan. 10-Jan. 13 &	State Permit Only	
	Jan. 17-Jan. 20	State Permit Only	
Brant	Closed		

	Season Dates	Limits Bag	Possession
Maine			
Ducks:			
North Zone	Oct. 8-Oct. 27 &	3	6
	Nov. 8-Nov. 17	3	6
South Zone	Oct. 8-Oct. 20 &	3	6
	Nov. 22-Dec. 8	3	6
Sea ducks (1)(2)	Oct. 8-Jan. 19	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 1-Dec. 8	3	6
White Geese	Oct. 1-Jan. 15	5	10
Brant	Oct. 1-Nov. 19	2	4
Maryland			
Ducks (3)	Oct. 19-Oct. 20 &	3	6
	Nov. 22-Nov. 23 &	3	6
	Dec. 11-Jan. 5	3	6
Sea Ducks (1)(2)	Oct. 12-Jan. 19	5	10
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Nov. 14-Nov. 23 &	1	2
	Dec. 3-Dec. 8 &	1	2
	Dec. 9-Jan. 12	2	4
White Geese	Oct. 17-Nov. 23 &	4	8
	Dec. 3-Feb. 9	4	8
Brant	Nov. 14-Nov. 23 &	2	4
	Dec. 11-Jan. 19	2	4
Massachusetts			
Ducks:			
Berkshire Zone	Oct. 12-Nov. 10	3	6
Central Zone	Oct. 16-Oct. 27 &	3	6
	Nov. 21-Dec. 8	3	6
Coastal Zone	Oct. 18-Oct. 27 &	3	6
	Dec. 13-Jan. 1	3	6
Sea ducks (1)(2)	Oct. 5-Jan. 19	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Berkshire Zone	Oct. 12-Nov. 24 &	3	6
	Dec. 7-Jan. 1	3	6
Central Zone	Oct. 16-Oct. 27 &	3	6
	Nov. 21-Jan. 17	3	6
Coastal Zone	Oct. 18-Nov. 17 &	3	6
	Dec. 13-Jan. 19	3	6
(special season)	Jan. 21-Feb. 5	5	10
White Geese:			
Berkshire Zone	Oct. 12-Nov. 24 &	5	10
	Dec. 7-Jan. 1	5	10
Central Zone	Oct. 16-Oct. 27 &	5	10
	Nov. 21-Jan. 17	5	10

	Season Dates	Limits Bag	Possession
Massachusetts (cont.)			
Coastal Zone	Oct. 18-Nov. 17 &	5	10
	Dec. 13-Jan. 19	5	10
Brant:			
Berkshire & Central Zone	Closed		-
Coastal Zone	Nov. 6-Nov. 17 &	2	4
	Dec. 13-Jan. 19	2	4
New Hampshire			
Ducks:			
Inland Zone	Oct. 10-Oct. 28 &	3	6
	Nov. 21-Dec. 1	3	6
Coastal Zone	Oct. 11-Oct. 14 &	3	6
	Nov. 21-Dec. 16	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Inland Zone	Oct. 10-Dec. 18	3	6
Coastal Zone	Oct. 21-Dec. 29	3	6
White Geese:			
Inland Zone	Oct. 10-Dec. 18	5	10
Coastal Zone	Oct. 21-Dec. 29	5	10
Brant:			
Inland Zone	Oct. 10-Nov. 28	2	4
Coastal Zone	Oct. 21-Dec. 9	2	4
New Jersey			
Ducks:			
North Zone	Oct. 16-Oct. 27 &	3	6
	Nov. 21-Dec. 8	3	6
South Zone	Oct. 20-Oct. 27 &	3	6
	Nov. 22-Dec. 13	3	6
Coastal Zone	Nov. 3-Nov. 10 &	3	6
	Dec. 15-Jan. 5	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 16-Nov. 10 &	3	6
	Nov. 21-Jan. 23	3	6
South Zone	Oct. 20-Nov. 7 &	3	6
	Nov. 22-Jan. 31	3	6
Coastal Zone	Oct. 16-Dec. 8 &	3	6
	Dec. 15-Jan. 19	3	6
White Geese:			
North Zone	Oct. 16-Jan. 30	5	10
South Zone	Oct. 20-Nov. 17 &	5	10
	Nov. 22-Feb. 7	5	10
Coastal Zone	Oct. 16-Jan. 30	5	10
Brant:			
North Zone	Oct. 16-Nov. 10 &	2	4
	Nov. 21-Dec. 14	2	4

	Season Dates	Limits Bag	Possession
New Jersey (cont.)			
South Zone	Oct. 20-Nov. 10 &	2	4
	Nov. 22-Dec. 19	2	4
Coastal Zone	Nov. 3-Nov. 30 &	2	4
	Dec. 15-Jan. 5	2	4
New York			
Ducks:			
Long Island Zone	Nov. 16-Nov. 25 &	3	6
	Dec. 18-Jan. 6	3	6
Lake Champlain Zone	Oct. 10-Oct. 21 &	3	6
	Nov. 15-Dec. 2	3	6
Northeastern Zone	Oct. 6-Oct. 13 &	3	6
	Oct. 27-Nov. 17	3	6
Southeastern Zone	Oct. 6-Oct. 14 &	3	6
	Nov. 20-Dec. 10	3	6
Western Zone	Oct. 6-Oct. 13 &	3	6
	Oct. 27-Nov. 17	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Long Island Zone	Nov. 3-Jan. 31	3	6
Lake Champlain Zone	Oct. 10-Dec. 18	3	6
Northeastern Zone	Oct. 6-Oct. 15 &	1	2
	Oct. 16-Jan. 3	3	6
Southeastern Zone	Oct. 6-Oct. 15 &	1	2
	Oct. 16-Jan. 3	3	6
Western Zone	Oct. 16-Jan. 13	3	6
White Geese:			
Long Island Zone	Nov. 3-Jan. 31	5	10
Lake Champlain Zone	Oct. 10-Dec. 18	5	10
Northeastern Zone	Oct. 6-Jan. 3	5	10
Southeastern Zone	Oct. 6-Jan. 3	5	10
Western Zone	Oct. 16-Jan. 13	5	10
Brant:			
Long Island Zone	Nov. 16-Nov. 25 &	2	4
	Nov. 28-Jan. 6	2	4
Lake Champlain Zone	Oct. 10-Nov. 28	2	4
Northeastern Zone	Oct. 6-Nov. 24	2	4
Southeastern Zone	Oct. 6-Nov. 24	2	4
Western Zone	Oct. 16-Dec. 4	2	4
North Carolina			
Ducks	Oct. 11-Oct. 13 &	3	6
	Nov. 22-Nov. 24 &	3	6
	Dec. 13-Jan. 5	3	6
Sea ducks (1)	Oct. 1-Jan. 15	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
East of I-95	Jan. 21-Jan. 31	1	2
West of I-95	Closed	-	-

	Season Dates	Limits Bag	Possession
North Carolina (cont.)			
White Geese	Nov. 3-Jan. 31	5	10
Brant	Oct. 11-Oct. 13 &	2	4
	Nov. 22-Nov. 24 &	2	4
	Dec. 13-Jan. 19	2	4
Pennsylvania			
Ducks (4):			
North Zone	Oct. 17-Nov. 15	3	6
South Zone	Oct. 22-Oct. 27 &	3	6
	Nov. 19-Dec. 12	3	6
Northwest Zone	Oct. 15-Oct. 20 &	3	6
	Nov. 12-Dec. 5	3	6
Lake Erie Zone	Nov. 5-Nov. 24 &	3	6
	Dec. 13-Dec. 22	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 8-Dec. 15	3	6
South Zone (5)	Oct. 16-Dec. 24	3	6
Northwest Zone (5)	Oct. 8-Dec. 15	3	6
Lake Erie Zone (5)	Oct. 8-Nov. 26	2	4
Southeast Zone	Oct. 16-Jan. 12	3	6
White Geese:			
North Zone	Oct. 8-Dec. 15	3	6
South Zone	Oct. 16-Dec. 24	3	6
Northwest Zone	Oct. 8-Dec. 15	3	6
Lake Erie Zone	Oct. 8-Nov. 26	3	6
Southeast Zone	Oct. 16-Jan. 12	3	6
Brant	Oct. 16-Dec. 4	2	4
Rhode Island			
Ducks	Oct. 12-Oct. 14 &	3	6
	Nov. 21-Nov. 25 &	3	6
	Dec. 15-Jan. 5	3	6
Sea ducks (1)(2)	Oct. 12-Jan. 19	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 12-Oct. 14 &	3	6
	Nov. 6-Jan. 31	3	6
White Geese	Oct. 12-Oct. 14 &	5	10
	Nov. 6-Jan. 31	5	10
Brant	Dec. 1-Jan. 19	2	4
South Carolina (6)			
Ducks (7)	Nov. 21-Nov. 24 &	3	6
	Dec. 11-Jan. 5	3	6
Sea ducks (1)	Oct. 6-Jan. 20	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Closed	-	-

	Season Dates	Limits Bag	Possession
South Carolina (cont.)			
White Geese	Nov. 21-Nov. 24 &	5	10
	Dec. 11-Jan. 5	5	10
Brant	Nov. 21-Nov. 24 &	2	4
	Dec. 11-Jan. 5	2	4
Vermont			
Ducks:			
Lake Champlain Zone	Oct. 10-Oct. 21 &	3	6
	Nov. 15-Dec. 2	3	6
Interior Vermont Zone	Oct. 10-Nov. 4 &	3	6
	Nov. 22-Nov. 25	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 10-Dec. 18	3	6
White Geese	Oct. 10-Dec. 18	5	10
Brant	Oct. 10-Nov. 28	2	4
Virginia			
Ducks	Oct. 10-Oct. 13 &	3	6
	Nov. 22-Nov. 24 &	3	6
	Dec. 14-Jan. 5	3	6
Sea ducks (1)(2)	Oct. 5-Jan. 19	7	14
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Gallinules/Moorhens	Same as for ducks	15	30
Canada Geese:			
Back Bay Area	Closed	-	-
Remainder of State	Nov. 19-Nov. 24 &	2	4
	Nov. 26-Dec. 1 &	2	4
	Dec. 3-Jan. 19	2	4
White Geese	Oct. 24-Oct. 27 &	5	10
	Oct. 29-Nov. 3 &	5	10
	Nov. 5-Feb. 9	5	10
Brant	Nov. 29-Dec. 22 &	2	4
	Dec. 24-Dec. 29 &	2	4
	Dec. 31-Jan. 19	2	4
West Virginia			
Ducks:			
Zone 1	Oct. 6-Oct. 13 &	3	6
	Dec. 15-Jan. 5	3	6
Zone 2	Oct. 6-Oct. 13 &	3	6
	Oct. 27-Nov. 17	3	6
Gallinules/Moorhens	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Zone 1	Oct. 1-Oct. 13 &	3	6
	Nov. 22-Jan. 17	3	6
Zone 2	Oct. 1-Nov. 17 &	3	6
	Dec. 27-Jan. 17	3	6

	Season Dates	Limits Bag	Possession
West Virginia (cont.)			
White Geese:			
Zone 1	Oct. 1-Oct. 13 &	5	10
	Nov. 22-Jan. 17	5	10
Zone 2	Oct. 1-Nov. 17 &	5	10
	Dec. 27-Jan. 17	5	10
Brant	Nov. 29-Jan. 17	2	4

(1) Special sea duck hunting areas are limited to coastal waters and waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; to waters of the Atlantic Ocean and, in addition, to tidal waters of any bay which are separated by at least one mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and to waters of the Atlantic Ocean and/or tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits. Within the special sea duck areas, the daily bag limit is 7 and possession limit is 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate. These limits may be in addition to the regular duck bag limits during the regular duck season in the special sea duck hunting areas.

(2) Notwithstanding the provisions of this Part 20 the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia, and Maryland in those areas described, delineated, and designated in their respective hunting regulations as being open to sea duck hunting.

(3) In Maryland, the daily bag limit may include no more than 1 redhead; and the black duck season is closed Oct. 19-Oct. 20.

(4) In Pennsylvania, the black duck season is closed Oct. 17-Oct. 31 in the North Zone; Oct. 22-Oct. 27 in the South Zone; Oct. 15-Oct. 20 in the Northwest Zone; and Dec. 13-Dec. 22 in the Lake Erie Zone.

(5) In Pennsylvania, in Mercer and Butler Counties in the South Zone, the goose season is Oct. 16-Dec. 4 with a daily bag limit of 2 and a possession limit of 4. In Crawford, Erie, Mercer, and Butler Counties, in the Lake Erie and Northwest Zones, the goose season is Oct. 8-Nov. 26 with a daily bag limit of 2 and the possession limit of 4. In Crawford County, on the controlled hunting areas of the Pymatuning Wildlife Management Area, the goose season is Oct. 8-Dec. 8 with a 1 goose daily bag limit.

(6) In South Carolina, except on December 30, there will be no Sunday hunting in Georgetown County or Charleston County from the Georgetown County line (South Santee River) to the Wando River, East of US Highway 17. The shooting hours in this area will be one-half hour before sunrise to 12:00 noon daily except on November 24 and on January 5 when shooting hours will be one-half hour before sunrise to sunset. During the period December 12 to January 6, shooting hours are one-half hour before sunrise to 12:00 noon daily on all lands and waters of that portion of Lake Marion and Santee Swamp west of the Interstate 95 Bridge upstream to the confluence of the Wateree and Congaree Rivers. The affected area being further described as all lands west of I-95 within or adjacent to Lake Marion which is owned by Santee Cooper or the State of South Carolina in the counties of Clarendon, Sumter, Orangeburg, and Calhoun. This regulation shall apply to all land in the area described above whether such land shall be exposed or inundated. During the November season and on January 6, shooting hours in the area will be one-half hour before sunrise to sunset. NOTE: These regulations shall apply to land owned by Santee Cooper or the State of South Carolina ONLY. In Hampton, Colleton, Dorchester, Japser, Beaufort and Charleston Counties the shooting hours will be one-half hour before sunrise to 12:00 noon daily except on November 24 and January 5 when shooting hours will be one-half hour before sunrise to sunset.

(7) In South Carolina, the bag limit of 3 may include no more than 1 female mallard or 1 black duck or 1 mottled duck.

MISSISSIPPI FLYWAY

Definitions

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Light geese include lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark geese include Canada geese, white-fronted geese, and brant.

Flywaywide Restrictions

Shooting hours: One-half hour before sunrise to sunset daily except as otherwise noted--Check State regulations for further restrictions. States that further restrict shooting hours (in specified seasons, dates, or locations) include, but are not limited to: Arkansas, Illinois, Kentucky, Minnesota, and Wisconsin.

Duck Limits: The daily bag limit may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead. The possession limit is twice the daily bag limit.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: The merganser limit includes no more than 1 hooded merganser daily and 2 in possession.

Gallinule Limits: The daily bag and possession limit for purple gallinules and common moorhens is singly or in the aggregate of the two species.

Zones: Boundaries are described in the September 21, 1990, Federal Register (55 FR 38898) and in the appropriate State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits Bag	Possession
Alabama			
Ducks:			
North Zone	Dec. 8-Jan. 6	3	6
South Zone	Nov. 15-Nov. 18 &	3	6
	Dec. 12-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		5	5
Canada or white-fronted:			
North Zone	Dec. 8-Jan. 26	2	4
South Zone	Nov. 15-Nov. 18 &	2	4
	Dec. 12-Jan. 26	2	4
Light Geese and Brant	Same as for Canada geese	5	5

	Season Dates	Limits Bag	Possession
Arkansas			
Ducks	Nov. 23-Dec. 10 &	3	6
	Dec. 26-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (limited area)	Jan. 5-Jan. 27	1	2
White-fronted	Nov. 23-Jan. 31	2	4
Brant	Nov. 23-Jan. 31	7	14
Light Geese	Nov. 23-Feb. 10	7	14
Illinois			
Ducks:			
North Zone	Oct. 20-Nov. 18	3	6
Central Zone	Oct. 27-Nov. 25	3	6
South Zone	Nov. 10-Dec. 9	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese (1):		5	10
Canada (2):			
North Zone	Sept. 29-Oct. 8 &	3	10
	Oct. 20-Dec. 18	3	10
Central Zone:			
Tri-County Zone	Oct. 27-Dec. 15	2	10
Remainder of Central Zone	Sept. 29-Oct. 8 &	3	10
	Oct. 27-Dec. 25	3	10
South Zone:			
Southern Illinois Quota Zone (2)	Nov. 10-Nov. 12 &	3	10
	Nov. 19-Jan. 24	3	10
Rend Lake Quota Zone (2)	Nov. 10-Jan. 18	3	10
Remainder of South Zone	Nov. 10-Jan. 18	3	10
White-fronted	Same as for Canada geese	2	4
Light Geese and Brant	Same as for Canada geese	5	10
Indiana			
Ducks:			
North Zone	Oct. 20-Oct. 23 &	3	6
	Nov. 7-Dec. 2	3	6
South Zone	Oct. 27-Oct. 30 &	3	6
	Dec. 1-Dec. 26	3	6
Ohio River Zone	Nov. 22-Nov. 25 &	3	6
	Dec. 8-Jan. 2	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (2):			
North Zone	Oct. 20-Oct. 28 &	2	4
	Nov. 7-Jan. 6	2	4
South Zone:			
Posey County (2)	Nov. 22-Jan. 30	3	6

	Season Dates	Limits Bag	Possession
Indiana (cont.)			
Remainder of South Zone	Oct. 27-Nov. 4 &	2	4
	Nov. 21-Jan. 20	2	4
Ohio River Zone:			
Posey County (2)	Nov. 22-Jan. 30	3	6
Remainder of Ohio River Zone	Nov. 12-Jan. 20	2	4
White-fronted	Same as for Canada geese	2	4
Light Geese and Brant	Same as for Canada geese	7	14
Iowa			
Ducks:			
North Zone	Oct. 6-Oct. 7 &	3	6
	Oct. 20-Nov. 16	3	6
South Zone	Oct. 20-Oct. 26 &	3	6
	Nov. 3-Nov. 25	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada:			
Southwest Zone	Oct. 13-Dec. 21	2	4
Remainder of State	Sept. 29-Dec. 7	2	4
White-fronted:			
Southwest Zone	Oct. 13-Dec. 21	2	4
Remainder of State	Sept. 29-Dec. 7	2	4
Brant	Same as for white-fronted geese	7	14
Light Geese:			
Southwest Zone	Oct. 13-Dec. 31	7	14
Remainder of State	Sept. 29-Dec. 17	7	14
Kentucky			
Ducks (3)	Nov. 22-Nov. 25 &	3	6
	Dec. 12-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Gallinules/Moorhens	Nov. 22-Jan. 20	15	30
Geese (1):		7	14
Canada:			
Western Zone (2):			
Fulton County	Nov. 22-Nov. 25 &	3	6
	Dec. 1-Feb. 4	3	6
Remainder of Western Zone	Nov. 22-Nov. 25 &	3	6
	Dec. 1-Jan. 31	3	6
Remainder of State	Nov. 22-Nov. 25 &	1	2
	Dec. 1-Jan. 31	1	2
White-fronted	Nov. 22-Nov. 25 &	2	4
	Dec. 1-Jan. 31	2	4
Light Geese and Brant	Nov. 22-Nov. 25 &	7	14
	Dec. 1-Jan. 31	7	14

	Season Dates	Limits Bag	Possession
Louisiana			
Ducks:			
East Zone	Nov. 17-Nov. 25 &	3	6
	Dec. 17-Jan. 6	3	6
West Zone	Nov. 17-Dec. 5 &	3	6
	Dec. 27-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (Southwest Zone Only)	Jan. 23-Jan. 31	1	2
White-fronted (4)	Nov. 17-Dec. 8 &	2	4
	Dec. 15-Jan. 31	2	4
Brant	Nov. 17-Dec 8. &	7	14
	Dec. 15-Jan. 31	7	14
Light Geese	Nov. 17-Dec. 8 &	7	14
	Dec. 15-Feb. 10	7	14
Michigan			
Ducks:			
North Zone	Oct. 6-Nov. 4	3	6
Middle Zone	Oct. 6-Nov. 4	3	6
South Zone	Oct. 13-Nov. 8 &	3	6
	Nov. 23-Nov. 25	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Gallinules/Moorhens	Same as for ducks	15	30
Geese:		7	14
Canada (2):			
North Zone:			
Superior Counties Goose Management Unit (2)	Sept. 22-Nov. 30	3	6
Remainder of North Zone:			
West of Forest Highway 13	Sept. 22-Nov. 30	3	6
East of Forest Highway 13	Sept. 26-Nov. 14	2	4
Middle Zone	Oct. 6-Nov. 24	2	4
South Zone:			
Allegan County Goose Management Unit (2)	Oct. 13-Dec. 6	1	2
Muskegon Wastewater Goose Management Unit (2)	Oct. 13-Nov. 14 &	2	4
	Dec. 1-Dec. 17	2	4
Saginaw County Goose Management Unit (2)	Sept. 29-Nov. 14 &	1	2
	Nov 23-Nov. 25	1	2
Fish Point Goose Management Unit (2)	Sept. 29-Nov. 14 &	1	2
	Nov. 23-Nov. 25	1	2
Michigan (cont.)			
Southern Michigan Goose Management Unit:			
East of U.S. 27/127	Oct. 13-Nov. 11 &	1	2
	Nov. 23-Dec. 2	1	2
(special season)	Jan. 5-Feb. 3	2	4
West of U.S. 27/127	Oct. 13-Nov. 14 &	2	4
	Nov. 23-Dec. 9	2	4
(special season)	Jan. 5-Feb. 3	2	4
Remainder of South Zone:			
East of U.S. 27/127	Oct. 13-Nov. 11 &	1	2
	Nov. 23-Dec. 2	1	2
West of U.S. 27/127	Oct. 13-Nov. 14 &	2	4
	Nov. 23-Dec. 9	2	4
White-fronted	See Footnote 5	2	4
Light Geese and Brant	See Footnote 5	7	14
Minnesota			
Ducks	Oct. 6-Nov. 4	3	6
Mergansers	Same as for ducks	5	10
Coots, Gallinules/Moorhens (singly or in the aggregate)	Same as for ducks	15	30
Geese:		7	14
Canada:			
West Central Zone:			
Lac qui Parle Zone (2)	Sept. 29-Nov. 7	1	2
Remainder of West Central Zone	Sept. 29-Nov. 7	1	2
Southeast Zone:			
Twin Cities Metro Goose Zone and Olmsted County	Sept. 29-Dec. 7 &	2	4
	Dec. 15-Dec. 24	2	4
Remainder of Southeast Zone	Sept. 29-Dec. 7	2	4
Remainder of State	Sept. 29-Nov. 17	2	4
White-fronted:			
West Central Zone	Sept. 29-Nov. 7	2	4
Southeast Zone	Sept. 29-Dec. 7	2	4
Remainder of State	Sept. 29-Nov. 17	2	4
Brant	Same as for white-fronted geese	7	14
Light Geese	Sept. 29-Dec. 17	7	14
Mississippi			
Ducks	Dec. 8-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada	Dec. 8-Jan. 31	2	4
White-fronted	Nov. 23-Jan 31	2	4
Brant	Nov. 23-Jan. 31	7	14
Light Geese	Nov. 13-Jan. 31	7	14

	Season Dates	Limits Bag	Possession
Missouri (6)			
Ducks and Mergansers:			
North Zone	Nov. 3-Dec. 2	3	6
South Zone	Nov. 17-Dec 4 &	3	6
	Dec. 26-Jan. 6	3	6
Coots	Same as for ducks	15	30
Geese (1):		7	14
Canada:			
North Goose Zone:			
Swan Lake Zone (2)	Nov. 3-Nov. 11 &	2	4
	Nov. 21-Dec. 31	2	4
Remainder of North Goose Zone	Nov. 3-Nov. 11 &	2	4
	Nov. 21-Dec. 31	2	4
Southeast Goose Zone	Dec. 1-Jan. 19	2	4
South Goose Zone	Nov. 17-Dec. 11 &	2	4
	Dec. 26-Jan. 19	2	4
White-fronted	Nov. 3-Jan. 11	2	4
Brant	Nov. 3-Jan. 11	7	14
Light Geese	Nov. 3-Jan. 19	7	14
Ohio			
Pymatuning Area:			
Ducks (7)	Oct. 15-Oct. 20 &	3	6
	Nov. 12-Dec. 5	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Gallinules/Moorhens	Sept. 1-Nov. 3	15	30
Canada Geese	Oct. 8-Nov. 26	3	6
Light Geese	Oct. 8-Nov. 26	3	6
Brant	Oct. 16-Dec. 4	2	4
Remainder of State:			
Ducks:			
North Zone	Oct. 18-Oct. 28 &	3	6
	Nov. 6-Nov. 24	3	6
South Zone	Oct. 18-Oct. 28 &	3	6
	Dec. 19-Jan. 6	3	6
Ohio River Zone	Oct. 18-Oct. 28 &	3	6
	Dec. 19-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (8)	Oct. 18-Nov. 24 &	2	4
	Dec. 6-Jan. 6	2	4
White-fronted	Same as for Canada geese	2	4
Light Geese and Brant	Same as for Canada geese	7	14
Tennessee			
Ducks	Dec. 8-Jan. 6	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Gallinules/Moorhens	Same as for ducks	15	30

	Season Dates	Limits Bag	Possession
Tennessee (cont.)			
Geese:		7	14
Canada:			
Northwest Zone (2)	Dec. 8-Feb. 15	3	6
Southwest Zone	Dec. 8-Jan. 6	2	4
Kentucky/Barkley Lake Zone	Dec. 13-Jan. 31	2	4
Remainder of State (9)	Dec 8-Jan. 31	2	4
White-fronted	Nov. 23-Jan. 31	2	4
Light Geese and Brant	Nov. 23-Jan. 31	7	14
Wisconsin			
Ducks:			
North Duck Zone	Oct. 6-Nov. 4	3	6
South Duck Zone	Oct. 6-Oct. 9 &	3	6
	Oct. 17-Nov. 11	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	5	10
Gallinules/Moorhens	Same as for ducks	5	10
Geese:		7	14
Canada (2):			
Horicon Zone	Sept. 22-Nov. 16 &	Tag System--See	
	Nov. 26-Dec. 16	State Regulations	
Pine Island Zone	Sept. 22-Nov. 30	Tag System	
Collins Zone	Sept. 22-Nov. 16 &		
	Nov. 26-Nov. 30	Tag System	
Theresa Zone	Sept. 22-Nov. 16 &		
	Nov. 26-Nov. 30	Tag System	
Exterior Zone:			
Mississippi River Subzone:			
North Duck Zone	Oct 6-Nov. 4	1	2
	Nov. 5-Nov. 12 &	2	4
	Nov. 20-Dec. 21	2	4
South Duck Zone	Oct. 6-Oct. 9 &	1	2
	Oct. 17-Nov. 11	1	2
	Nov. 12-Dec. 21	2	4
Rock Prairie Subzone	Sept. 22-Oct. 5	1	2
	Oct. 6-Nov. 4	2	4
(special season)	Nov. 5-Dec. 9	1	2
Brown County Subzone	Sept. 22-Oct. 5	1	2
	Oct. 6-Nov. 30	2	4
(special season)	Dec. 1-Dec. 31	3	6
Remainder of Exterior Zone:			
North Duck Zone	Sept. 22-Oct. 5 &	1	2
	Oct. 6-Nov. 30	2	4
South Duck Zone	Sept. 22-Oct. 5 &	1	2
	Oct. 6-Nov. 30	2	4
White-fronted	See Footnote 10	2	4
Light Geese and Brant	See Footnote 10	7	14

(1) Geese taken in Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided

that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

(2) Harvests of Canada geese will be limited as follows:

Illinois:
- Southern Illinois Quota Zone - 71,100
- Rend Lake Quota Zone - 21,300
- Remainder of State - 49,800

Indiana:
- Posey County - 15,900
- Remainder of State - 38,650

Kentucky:
- Western Zone:
  - Ballard Reporting Area - 28,000
  - Henderson/Union Reporting Area - 8,200
  - Remainder of Western Zone - 7,000

Michigan:
- Superior Counties Goose Management Area - 25,000
- Allegan County Goose Management Area - 5,500
- Muskegon Wastewater Goose Management Area - 700
- Saginaw County Goose Management Area - 4,500
- Fish Point Goose Management Area - 2,500
- Remainder of State - 101,800

Minnesota: Lac qui Parle Zone - 6,000

Missouri: Swan Lake Zone - 10,000

Tennessee:
- Northwest Zone:
  - Reelfoot Subzone - 11,500
  - Remainder of Northwest Zone - 5,000
- Southwest Zone - 1,500

Wisconsin:
- Horicon Zone - 148,800
- Theresa Zone - 6,500
- Pine Island Zone - 1,000
- Collins Zone - 3,700
- Exterior Zone - 40,000

When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Lac qui Parle Zone in Minnesota, the Ballard and Henderson/Union Reporting Areas in Kentucky, the Reelfoot Subzone in Tennessee, and the Superior Counties, Allegan County, Muskegon Wastewater, Fish Point, and Saginaw County Goose Management Areas in Michigan, will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

(3) In Kentucky, the daily bag limit may include no more than 1 hen mallard or 1 black duck.

(4) In Louisiana, in the Southwest Zone during the experimental Canada goose season, the daily bag limit is 2 Canada and white-fronted geese in the aggregate, no more than 1 of which may be a Canada goose. The possession limit is twice the daily bag limit. A special permit is required by the State.

(5) In Michigan, the seasons for white-fronted geese, light geese, and brant are concurrent with the seasons for Canada geese, except in the Southern Michigan Goose Management Unit, where the January 5-February 3 special season is for Canada geese only.

(6) In the Lower St. Francis River Area of Arkansas and Missouri, the Arkansas regulations apply.

(7) In the Pymatuning Area of Ohio, the black duck season is closed October 15-October 20 and the restrictions of the duck bag limit for the Atlantic Flyway apply.

(8) In Ohio, in the Counties of Ashtabula, Trumbull, Ottawa, Sandusky, and that portion of Lucas County east of the Maumee River, the Canada goose limits are 1 daily and 2 in possession.

(9) In Tennessee, the Canada goose season will be November 23-January 31 on portions of Old Hickory and Percy Priest Wildlife Management Areas and on the Tims Ford Unit, except that no goose hunting is permitted on Tims Ford Reservoir upstream from the Red Mill Bridge on Boiling Fork Creek. See State regulations for details.

(10) In Wisconsin, The seasons for white-fronted geese, light geese, and brant are concurrent with seasons for ducks or Canada geese, in each zone and subzone, except as follows: Seasons in the Brown County and Rock Prairie Subzones end November 30, and seasons in the Horicon Zone for white-fronted geese and brant end December 9.

CENTRAL FLYWAY

Definitions

The Central Flyway consists of Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Geese include all species of geese and brant.

Dark Geese include Canada geese, white-fronted geese, and brant.

Light Geese include lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted--Check State regulations. States that further restrict shooting hours (in specified seasons, dates, or locations) include, but are not limited to: Colorado, North Dakota, and Wyoming.

Duck Limits: The daily bag limit may include no more than 2 mallards (no more than 1 of which may be a female), 1 mottled duck, 1 pintail, 1 redhead, and 2 wood ducks. The possession limit is twice the daily bag limit.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Mergansers: The merganser limit includes no more than 1 hooded merganser daily and 2 in possession.

Point System--Ducks and Mergansers: The daily bag limit is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during that day reaches or exceeds 100 points. The possession limit is the maximum number of birds of species and sex which could have legally been taken in 2 days.

The point values assigned to the species and sexes are as follows:

100 points	50 points	35 points
Female mallard Mottled duck Pintail Redhead Hooded merganser	Male mallard Wood duck	All other permitted species of ducks and mergansers

The Central Flyway States selecting the point system bag limits on designated species are listed in the table below.

Zones: Boundaries are described in the September 21, 1990, Federal Register (55 FR 38898) and in the appropriate State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits Bag	Limits Possession
Colorado			
Ducks	Oct. 6-Oct. 14 & Nov. 3-Nov. 25 & Dec. 15-Jan. 2	Point system	
Coots	Same as for ducks	15	30
Geese (1):		5	10
North-Central Unit:			
West of I-25	Sept. 29-Oct. 7 &	5	10
	Oct. 22-Jan. 6	5	10
Remainder of North-Central Unit	Oct. 22-Jan. 20	5	10
South Park Unit	Sept. 29-Oct. 7 &	2	4
	Oct. 27-Jan. 1	2	4
San Luis Valley Unit	Oct. 27-Jan. 1	2	4
North Park Unit	Sept. 29-Oct. 7	2	4
Arkansas Valley Unit	Nov. 14-Jan. 20	5	10
Remainder of State in Central Flyway	Oct. 27-Jan. 20	5	10
Kansas			
Ducks:		Point system	
High Plains Area	Oct. 6-Oct. 28 & Nov. 10-Nov. 25 & Dec. 22-Jan. 2		
Low Plains Area	Oct. 20-Oct. 28 & Nov. 14-Dec. 4 & Dec. 22-Dec. 30		
Coots	Same as for ducks	15	30
Dark Geese (2):		2	4
Canada	Nov. 10-Nov. 25 &	2	4
	Nov. 26-Jan. 20	1	2
White-fronted	Nov. 10-Jan. 20	1	2
Light Geese:			
Unit 1	Nov. 10-Feb. 17	5	10
Unit 2	Oct. 27-Feb. 3	5	10
Montana			
Ducks:		Point system	
Zone 1	Oct. 6-Nov. 13 & Dec. 8-Dec. 19		
Zone 2	Oct. 6-Oct. 14 & Nov. 8-Dec. 19		
Coots	Same as for ducks	15	30
Montana (cont.)			
Geese:			
Sheridan County:			
Dark Geese	Sept. 29-Jan. 6	2	4
Light Geese	Sept. 29-Jan. 6	4	8
Remainder of State in Central Flyway:			
Dark Geese	Sept. 29-Jan. 6	4	8
Light Geese	Sept. 29-Jan. 6	4	8
Nebraska			
Ducks:		Point system	
High Plains Area	Oct. 13-Nov. 20 & Dec. 22-Jan. 2		
Low Plains Area:			
Zones 1 and 2	Oct. 27-Oct. 28 & Nov. 3-Dec. 9		
Zones 3 and 4	Oct. 6-Oct. 21 & Nov. 3-Nov. 25		
Coots	Same as for ducks	15	30
Dark Geese:			
North Unit		2	4
Canada	Nov. 3-Nov. 16 &	1	2
	Nov. 17-Jan. 20	2	4
White-fronted	Nov. 3-Jan. 20	1	2
East Unit		2	4
Canada	Oct. 13-Nov. 18 &	2	4
	Nov. 19-Dec. 23	1	2
White-fronted	Oct. 13-Dec. 23	1	2
West Unit		2	4
Canada	Nov. 3-Nov. 18 &	2	4
	Nov. 19-Jan. 13	1	2
White-fronted	Nov. 3-Jan. 13	1	2
Light Geese	Sept. 29-Dec. 23	7	14
New Mexico			
Ducks:		Point system	
Zone 1	Oct. 22-Nov. 11 & Dec. 8-Jan. 6		
Zone 2	Nov. 17-Jan. 6		
Coots	Same as for ducks	15	30
Common Moorhens	Same as for ducks	2	4
Dark Geese	Oct. 20-Jan. 20	2	4
Light Geese:			
Rio Grande Valley Unit	Nov. 1-Feb. 15	5	10
Remainder of State in Central Flyway	Nov. 1-Feb. 8	5	10
North Dakota			
Ducks:			
Statewide	Oct. 6-Nov. 11 &	3	6
	Nov. 17-Nov. 18	3	6

	Season Dates	Limits Bag	Possession
North Dakota (cont.)			
High Plains Area Only (male mallards)	Dec. 8-Dec. 19	2	4
Coots	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Dark Geese:		2	4
Statewide:			
Canada	Sept. 29-Oct. 26 &	1	2
	Oct. 27-Nov. 11	2	4
White-fronted	Sept. 29-Nov. 11	2	4
Missouri River Zone only	Nov. 12-Nov. 25	1	2
Light Geese	Sept. 29-Nov. 25	7	14
Oklahoma			
Ducks:			
High Plains Area	Oct. 20-Nov. 27 &	3	6
	Dec. 15-Dec. 26	3	6
Low Plains:			
Zone 1	Oct. 27-Nov. 18 &	3	6
	Dec. 15-Dec. 30	3	6
Zone 2	Nov. 10-Nov. 25 &	3	6
	Dec. 15-Jan. 6	3	6
Coots	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Dark Geese:		2	4
Canada	Nov. 10-Jan. 20	2	4
White-fronted	Nov. 10-Jan. 20	1	2
Light Geese	Nov. 10-Feb. 17	5	10
South Dakota			
Ducks and Mergansers:			
High Plains Area	Oct. 6-Nov. 13 &	3	6
	Dec. 8-Dec. 19	3	6
Low Plains Area:			
North Zone	Oct. 6-Nov. 13	3	6
South Zone	Oct. 27-Dec. 4	3	6
Coots	Same as for ducks	15	30
Dark Geese:		2	4
Missouri River Unit:			
Canada	Oct. 6-Nov. 16 &	1	2
	Nov. 17-Dec. 23	2	4
White-fronted	Oct. 6-Dec. 23	1	2
Remainder of State:			
Canada	Oct. 6-Dec. 16	1	2
White-fronted	Oct. 6-Dec. 16	1	2
Light Geese	Oct. 6-Dec. 30	7	14
Texas			
Ducks:			
High Plains Area	Nov. 17-Jan. 6	3	6
Remainder of State	Nov. 17-Nov. 25 &	3	6
	Dec. 8-Jan. 6	3	6

	Season Dates	Limits Bag	Possession
Texas (cont.)			
Coots	Same as for ducks	15	30
Mergansers	Same as for ducks	5	10
Geese:			
East of U.S. Highway 81:			
Dark Geese:			
Canada	Nov. 10-Jan. 20	1	2
White-fronted	Nov. 10-Jan. 20	1	2
Light Geese	Nov. 10-Feb. 17	5	10
West of U.S. Highway 81:		5	10
Dark Geese	Oct. 13-Jan. 20	3	6
Light Geese	Oct. 13-Jan. 20	5	10
Wyoming			
Ducks and Mergansers	Oct. 6-Oct. 22 &	3	6
	Nov. 10-Nov. 26 &	3	6
	Dec. 15-Dec. 31	3	6
Coots	Same as for ducks	15	30
Geese:		2	4
Canada and Light Geese:			
In the Counties of Campbell, Sheridan, Johnson, Niobrara, Crook, Weston, Platte, Laramie, Albany and Carbon east of the Continental Divide	Oct. 6-Dec. 30	2	4
In the Counties of Natrona and Converse	Oct. 27-Dec. 30	2	4
In the Counties of Bighorn, Park, Washakie, Hot Springs, and Fremont	Nov. 1-Dec. 31	2	4
In Goshen County	Nov. 17-Nov. 30 &	2	4
	Dec. 1-Dec. 31 &	3	6
	Jan. 1-Jan. 13	2	4
Canada Geese only:			
In the Counties of Bighorn, Park, Washakie, Hot Springs, and Fremont	Oct. 6-Oct. 31	2	4

(1) In Colorado, the bag and possession limits for geese may include no more than 3 and 6 dark geese, respectively.

(2) In Kansas, exceptions to the dark goose season are as follows: (a) Marais des Cygne Valley Unit and South Flint Hills Unit - Season dates: December 22, 1990 through January 13, 1991 - Dark goose permits issued by the Kansas Department of Wildlife and Parks required. Leg tagging of geese required in these areas; and (b) Central Flint Hills Unit and Strip Pits Unit - Dark geese may not be hunted.

PACIFIC FLYWAY

Definitions

The Pacific Flyway includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

White geese include lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark geese include Canada geese, white-fronted geese, emperor geese, and brant.

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily, except as otherwise noted--Check State regulations for further restrictions. States that further restrict shooting hours (in specified seasons, dates, or locations) include, but are not limited to: Nevada, Oregon, Idaho, Utah, and Washington.

Duck and Merganser Limits: Daily bag limits for ducks (including mergansers) may include no more than 3 mallards but only 1 female (hen) mallard, 1 pintail, and either 2 redheads or 2 canvasbacks, or 1 of each. The possession limit is twice the daily limit.

Goose Limits:

Aleutian Canada Geese: The season is closed on Aleutian Canada geese throughout the Flyway.

Cackling Canada Geese: The season is closed in California, Oregon, and Washington.

White Geese and Dark Geese: Unless otherwise noted, seasons and limits for white geese are either singly or in the aggregate; and seasons and limits for dark geese are either singly or in the aggregate, except in Washington, Oregon, and California where there are separate seasons and limits on brant.

Zones: Boundaries are described in the September 21, 1990, Federal Register (55 FR 38898) and in the appropriate State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATION OF GEOGRAPHICAL AREAS OR ZONES WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits	
		Bag	Possession
Arizona			
Ducks (1)	Oct. 12-Nov. 16 &	4	8
	Dec. 15-Jan. 6	4	8
Coots and common moorhens (singly or in the aggregate)	Same as for ducks	25	25
Geese:		5	5
White-fronted	Closed	-	-
Canada:			
GMU 22 & 23	Nov. 15-Jan. 20	2	2
Remainder of State	Oct. 25-Jan. 20	2	2
White:			
GMU 22 & 23	Nov. 15-Jan. 20	3	3
Remainder of State	Oct. 25-Jan. 20	3	3
California	Season selections are pending		
Colorado			
Ducks	Oct. 6-Oct. 13 &	4	8
	Nov. 17-Jan. 6	4	8
Coots	Same as for ducks	25	25
Geese:			
Brown's Park, Moffat County	Oct. 27-Dec. 9	1	2
Delta and Montrose Counties	Nov. 10-Jan. 13	2	4
Gunnison County, and Saguache County west of the Continental Divide	Oct. 27-Jan. 13	State permit only	
Dolores, LaPlata and Montezuma Counties	Closed	-	-
Remainder of State in Pacific Flyway	Sept. 29-Oct. 12 &	2	4
	Oct. 27-Jan. 13	2	4
Idaho			
Ducks:			
Zone 1	Oct. 20-Dec. 17	4	8
Zone 2	Oct. 20-Nov. 25 &	4	8
	Dec. 15-Jan. 5	4	8
Coots	Same as for ducks	25	25
Geese:		3	6
Area 1	Oct. 6-Jan. 6	3	6
Area 2 (2)			
Dark	Oct. 6-Jan. 6	2	4
White	Oct. 6-Jan. 6	3	6
Area 3			
Dark	Oct. 6-Nov. 11 &	1	1
	Nov. 12-Dec. 16 &	2	4
	Dec. 17-Jan. 6	1	1
White	Oct. 6-Jan. 6	3	6
Area 4			
Dark	Oct. 6-Nov. 11 &	1	1
	Nov. 12-Jan. 6	2	4
White	Oct. 6-Jan. 6	3	6
Area 5			
Dark	Oct. 13-Jan. 13	2	4
White	Oct. 13-Jan. 13	3	6
Montana			
Ducks	Oct. 6-Nov. 17 &	4	8
	Dec. 15-Dec. 30	4	8
Coots	Same as for ducks	25	25
Geese: (3)			
East of the Continental Divide		6	6
Dark	Sept. 29-Dec. 30	3	6
White	Sept. 29-Dec. 30	3	6
West of the Continental Divide		5	6
Dark	Sept. 29-Dec. 30	2	4
White	Sept. 29-Dec. 30	3	6

	Season Dates	Limits Bag	Possession
Nevada			
Ducks:			
Clark County	Nov. 10-Jan. 6	4	8
Remainder of State	Oct. 20-Dec. 17	4	8
Coots and common moorhens (singly or in the aggregate)	Same as for ducks	25	25
Dark geese:			
Clark County	Nov. 24-Jan. 20	2	2
Remainder of State	Oct. 20-Jan. 20	2	4
White geese:			
Clark County	Nov. 24-Jan. 20	3	3
Remainder of State (4)	Oct. 20-Jan. 20	3	3
New Mexico			
Ducks	Oct. 6-Oct. 21 &	4	8
	Nov. 24-Jan. 5	4	8
Coots	Same as for ducks	15	30
Common Moorhens	Same as for ducks	2	4
Geese:			
North of Interstate 40			
Dark	Jan. 5-Jan. 20	2	4
White	Jan. 5-Jan. 20	1	2
South of Interstate 40			
Dark	Oct. 20-Jan. 13	2	4
White	Oct. 20-Jan. 13	1	2
Oregon			
Ducks:			
Columbia Basin	Oct. 20-Nov. 8 &	4	8
	Nov. 22-Jan. 6	4	8
Remainder of State	Oct. 20-Nov. 8 &	4	8
	Nov. 22-Dec. 30	4	8
Coots	Same as for ducks	25	25
Geese (5)		6	6
Western Oregon (6)	Oct. 20-Jan. 20	2	4
Eastern Oregon:			
Columbia Basin:			
Dark Geese	Oct. 20-Jan. 20	3	6
White Geese	Oct. 20-Jan. 20	3	6
Lake and Klamath (7):			
Dark Geese	Oct. 20-Jan. 20	3	6
White Geese	Oct. 20-Jan. 20	3	6
Baker and Malheur	Oct. 20-Jan. 6	2	4
Remainder of Eastern Oregon:			
Dark Geese	Oct. 20-Jan. 20	3	6
White Geese	Oct. 20-Jan. 20	3	6
Brant	Jan. 5-Jan. 20	State permit only	
Utah			
Ducks	Oct. 6-Dec. 3	4	8
Coots	Same as for ducks	25	25
Utah (cont.)			
Geese:		5	6
White	Oct. 6-Jan. 6	3	6
Dark:			
Washington County (8)	Oct. 13-Jan. 13	2	2
Cache County	Oct. 6-Jan. 2	2	4
Remainder of the State (9)	Oct. 6-Jan. 6	2	4
Washington			
Ducks:			
Eastern Washington	Oct. 13-Oct. 21 &	4	8
	Nov. 4-Dec. 30	4	8
Western Washington	Oct. 13-Oct. 21 &	4	8
	Nov. 11-Dec. 30	4	8
Coots	Same as for ducks	25	25
Geese (5):			
Eastern Washington:			
Columbia Basin (10)	Oct. 13-Jan. 13	3	6
Remainder of Eastern Washington	Oct. 13-Jan. 13	3	6
Western Washington:			
Lower Columbia River Zone (11)	Nov. 24-Jan. 12	3	6
Skagit Zone	Oct. 13-Dec. 30	3	6
Remainder of Western Washington	Oct. 13-Jan. 13	3	6
Brant (12)	Dec. 8-Dec. 23	2	4
Wyoming			
Ducks	Oct. 6-Dec. 3	4	8
Coots	Same as for ducks	25	25
Canada Geese	Sept. 29-Dec. 27	3	6

(1) In Arizona, the daily limit may include no more than 1 canvasback and no more than either 1 female (hen) mallard or 1 Mexican-like duck, but not both; and not more than 2 female (hen) mallards, 2 Mexican-like ducks, or 1 of each, may be in possession.

(2) In Idaho, the season on white geese is closed in Fremont and Teton Counties.

(3) In Montana, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.

(4) In Nevada, there is no open season on white geese in Ruby Valley within Elko and White Pine Counties, White River Valley of Nye County, and Pahranagat Valley of Lincoln County.

(5) In Oregon and Washington, the season is closed on cackling and Aleutian Canada geese.

(6) In Oregon, the Northwest Area is closed to all goose hunting, except for the special permit goose season on designated portions of the special permit goose area from November 17 to January 20. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.

(7) In Oregon, in Klamath and Lake Counties, the white-fronted goose season does not open until November 1.

(8) In Utah, the Washington County season is for Canada geese only.

(9) In Utah, in Daggett County east of U.S. Highway 191 the October 27-December 9 season is only for Canada geese, with bag and possession limits of 1 and 2, respectively. At Desert Lake WMA the October 27-January 6 season is for all geese, with bag and possession limits the same as for the balance of the State.

(10) In Washington, geese may be hunted only on Saturdays, Sundays, Wednesdays, and November 12, 22, 23, and December 25, 1990, and January 1, 1991, in the Columbia Basin Goose Area. Geese may be hunted every day during January 15-21 in Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima Counties.
(11) In Washington, bag limits are 3 geese per day and 6 in possession, including no more than 1 dusky Canada goose per season. See State regulations for specific conditions of permit hunts and closures for Canada geese. In designated Canada goose areas the season is open on Saturdays in Pacific County and on November 25, and December 1, 9, 15, 23, and 29, 1990, and January 5 and 12, 1991, in Clark, Cowlitz, and Wahkiakum counties.
(12) In Washington, brant may be hunted in Skagit, Pacific, and Whatcom Counties only; and only on December 8, 9, 11, 12, 13, 15, 16, 19, 20, 22 and 23.

5. Section 20.106 is amended as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

The following seasons are in addition to the seasons published previously in the August 28, 1990, Federal Register.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes (unless otherwise noted), and with shooting hours from one-half hour before sunrise until sunset (unless otherwise noted) in the following areas for the dates indicated:

* * * * *

(c) In Oklahoma (that portion west of I-35) the inclusive dates are October 20, 1990 through January 20, 1991.

(d) In Texas in Zone A the inclusive dates are November 10, 1990, through February 10, 1991. In Zone B the inclusive dates are December 1, 1990, through February 10, 1991. In Zone C the inclusive dates are January 5, 1991, through February 10, 1991. In the remainder of the State the season is closed. See State regulations for description of zones.

* * * * *

Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

Pacific Flyway

(a) In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season dates are November 2 through November 4, November 6 through November 8, and November 10 through November 12, 1990. Season limits are 2 sandhill cranes per season.

* * * * *

6. Section 20.107 is revised to read as follows:

§20.107 Seasons, limits, and shooting hours for tundra (whistling) swans.

Tundra swans may be taken only by State-issued permit. Permittees may take only one tundra swan per season. Successful permittees must immediately validate their harvest by that method required in State regulations. Shooting hours are from one-half hour before sunrise to sunset daily except as otherwise restricted--Check State hunting regulations. Seasons are:

Atlantic Flyway: (a) In North Carolina, tundra swans may be hunted from November 3, 1990, through January 31, 1991; and (b) in Virginia, tundra swans may be hunted from November 3, 1990, through January 31, 1991.

Central Flyway: (a) In Montana, tundra swans may be hunted from September 29 through December 30, 1990; and (b) in North Dakota, tundra swans may be hunted from October 6 through November 18, 1990.

Pacific Flyway: (a) In Montana, tundra swans may be hunted only in Cascade, Hill, Liberty, Pondera, Toole and Teton Counties from September 29 through December 30, 1990; (b) In Nevada, tundra swans may be hunted only in Churchill, Lyon and Pershing Counties from October 20, 1990, through January 20, 1991; (c) In Utah, tundra swans may be hunted from October 6, 1990, through January 6, 1991.

7. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit	3 singly or in the aggregate.
Possession limit	6 singly or in the aggregate.

These limits apply during both regular hunting seasons and extended falconry seasons--unless further restricted by State Regulations. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Hawking hours: One-half hour before sunrise until sunset daily--unless otherwise restricted.

Only extended falconry seasons are shown below. Most States also permit falconry during the gun seasons. Please consult State regulations for details.

Zones: Boundaries are described in the September 21, 1990, Federal Register (55 FR 38898) and in the appropriate State regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS.

Atlantic Flyway	
Florida:	
Mourning doves and white-winged doves	Oct. 29-Nov. 9 & Nov. 26-Dec. 7 & Jan. 7-Jan. 20
Common moorhens and rails	Nov. 10-Dec. 16

Woodcock	Nov. 24-Dec. 7 & Jan. 22-Mar. 10
Ducks and coots	Nov. 1-Nov. 19 & Dec. 1-Dec. 12 & Jan. 19-Feb. 28

Georgia:

Sea ducks	Nov. 14-Nov. 21 & Jan. 7-Feb. 28
Ducks, mergansers, gallinules, and coots	Nov. 14-Nov. 21 & Nov. 26-Dec. 11 & Jan. 7-Feb. 28

Maine

Ducks, mergansers, and coots:

North Zone	Oct. 5-Oct. 6 & Oct. 29-Nov. 7 & Nov. 19-Jan. 15
South Zone	Oct. 5-Oct. 6 & Oct. 22-Nov. 21 & Dec. 10-Jan. 15

Maryland:

Mourning doves	Oct. 21 only & Nov. 4-Nov. 16 & Nov. 24-Dec. 16
Rails	Nov. 10-Dec. 16
Woodcock	Oct. 5-Oct. 18 & Nov. 24-Dec. 2 & Dec. 12-Jan. 19
Ducks	Nov. 29-Dec. 9 & Jan. 6-Mar. 10
Canada geese	Jan. 15-Mar. 10
Brant	Jan. 20-Mar. 10

Massachusetts

Ducks and coots:

Berkshire Zone	Oct. 5-Oct. 11 & Nov. 11-Jan. 19
Central Zone	Oct. 5-Oct. 15 & Oct. 28-Nov. 20 & Dec. 9-Jan. 19
Coastal Zone	Oct. 5-Oct. 17 & Oct. 28-Dec. 12 & Jan. 2-Jan. 19

New Hampshire

Ducks, mergansers, and coots:

Inland Zone	Oct. 29-Nov. 20 & Dec. 2-Jan. 24
Coastal Zone	Oct. 15-Nov. 20 & Dec. 17-Jan. 25

New Jersey

Woodcock:

North Zone	Oct. 1-Oct. 12 & Nov. 17-Jan. 5 & Mar. 1-Mar. 9
South Zone	Oct. 1-Nov. 9 & Dec. 2-Dec. 14 & Dec. 28-Jan. 5 & Mar. 1-Mar. 9

Ducks:

North Zone	Oct. 1-Oct. 15 & Oct. 28-Nov. 20 & Dec. 9-Jan. 5 & Mar. 1-Mar. 9
South Zone	Oct. 1-Oct. 19 & Oct. 28-Nov. 21 & Dec. 14-Jan. 5 & Mar. 1-Mar. 9
Coastal Zone	Oct. 1-Nov. 2 & Nov. 11-Dec. 14 & Mar. 1-Mar. 9

New York

Ducks and coots:

Long Island Zone	Nov. 2-Nov. 5
Northeastern Zone	Oct. 1-Oct. 5 & Oct. 14-Oct. 22
Southeastern Zone	Oct. 1-Oct. 5 & Oct. 15-Oct. 23
Western Zone	Oct. 1-Oct. 5 & Oct. 14-Oct. 22

Geese:

Long Island Zone (1)	Nov. 2 only
Northeastern Zone	Oct. 1-Oct. 5
Southeastern Zone	Oct. 1-Oct. 5
Western Zone	Oct. 1-Oct. 5 & Oct. 14-Oct. 15

Pennsylvania:

Mourning doves	Oct. 14-Oct. 26 & Nov. 18-Dec. 15

Ducks:

North Zone	Oct. 8-Oct. 16 & Nov. 16-Jan. 19
South Zone	Oct. 8-Oct. 21 & Oct. 28-Nov. 18 & Dec. 13-Jan. 19
Northwest Zone	Oct. 8-Oct. 14 & Oct. 21-Nov. 11 & Dec. 6-Jan. 19
Lake Erie Zone	Oct. 8-Nov. 4 & Nov. 25-Dec. 12 & Dec. 23-Jan. 19

Canada and white geese:

North Zone	Dec. 16-Jan. 19
South Zone	Oct. 8-Oct. 15 & Dec. 25-Jan. 19
Northwest Zone	Dec. 16-Jan. 19
Lake Erie Zone	Nov. 27-Jan. 19
Southeast Zone	Oct. 8-Oct. 15 & Jan. 13-Jan. 19
Brant	Oct. 8-Oct. 15 & Dec. 5-Jan. 19

South Carolina

Duck, mergansers, and coots	Oct. 6-Nov. 20 & Nov. 25-Dec. 10

Virginia:

Doves	Nov. 4-Nov. 30 & Dec. 22-Dec. 23 & Dec. 30-Jan. 6
Rails	Nov. 10-Nov. 30 & Dec. 22-Jan. 6
Woodcock	Oct. 17-Nov. 4 & Dec. 2-Dec. 18 & Jan. 6-Jan. 31
Ducks, mergansers, coots, moorhens and gallinules	Oct. 6-Oct. 9 & Nov. 20-Nov. 21 & Nov. 24-Dec. 1 & Jan. 6-Mar. 9

Mississippi Flyway

Illinois:

Mourning doves	Oct. 31-Dec. 16
Rails	Nov. 10-Dec. 16
Woodcock	Sept. 1-Sept. 30 & Dec. 5-Dec. 16

Ducks, mergansers, and coots:

North Zone	Oct. 1-Oct. 19 & Nov. 19-Dec. 16 & Feb. 9-Mar. 10
Central Zone	Sept. 1-Oct. 9 & Feb. 1-Mar. 10
South Zone	Sept. 15-Oct. 23 & Feb. 1-Mar. 10

Indiana:

Mourning doves	Oct. 17-Nov. 8 & Jan. 1-Jan. 24
Woodcock	Sept. 1-Sept. 14 & Sept. 22-Sept. 28

Ducks, mergansers, and coots:

North Zone	Sept. 22-Oct. 19 & Oct. 24-Nov. 6 & Dec. 3-Jan. 6

South Zone	Sept. 22-Oct. 26 & Oct. 31-Nov. 30 & Dec. 27-Jan. 6
Ohio River Zone	Sept. 22-Nov. 21 & Nov. 26-Dec. 7 & Jan. 3-Jan. 6

Iowa:

Ducks:

North Zone	Sept. 1-Oct. 5 & Oct. 8-Oct. 19 & Nov. 17-Dec. 16
South Zone	Sept. 1-Oct. 19 & Oct. 27-Nov. 2 Nov. 26-Dec. 16

Dark geese:

Southwest Zone	Sept. 16-Oct. 12 & Dec. 22-Dec. 31
Remainder of State	Sept. 2-Sept. 28 & Dec. 8-Dec. 16

Light geese:

Southwest Zone	Sept. 16-Oct. 12
Remainder of State	Sept. 2-Sept. 28

Kentucky

Ducks, mergansers, and coots	Oct. 22-Nov. 21 & Nov. 26-Dec. 11 & Jan. 7-Jan. 31
Geese (2)	Oct. 22-Nov. 21 & Nov. 26-Nov. 30

Michigan:

Snipe, rails, and woodcock	Sept. 7-Sept. 14 & Nov. 15-Dec. 22

Ducks, coots, and moorhens:

North and Middle Zones	Sept. 7-Oct. 5 & Nov. 5-Dec. 22
South Zone	Sept. 7-Oct. 12 & Nov. 9-Nov. 22 & Nov. 26-Dec. 22

Minnesota:

Ducks, coots, and moorhens	Sept. 1-Oct. 5 & Nov. 5-Dec. 16
Rails, woodcock, and snipe	Nov. 5-Dec. 16

Canada and white-fronted geese:

West-Central Zone	Nov. 8-Dec. 16
Southeast Zone (3)	Dec. 8-Dec. 16
Remainder of State	Nov. 18-Dec. 16

Mississippi:

Mourning doves	Nov. 15-Nov. 30 & Feb. 1-Mar. 3
Ducks, mergansers, and coots	Nov. 1-Nov. 30 & Jan. 23-Mar. 10

Missouri (4):

Mourning doves	Nov. 10-Dec. 16

Ducks, mergansers, and coots:

North Zone	Sept. 29-Nov. 2 & Dec. 3-Jan. 13
South Zone	Sept. 29-Nov. 16 & Dec. 5-Dec. 25 & Jan. 7-Jan. 13

Ohio

Ducks, mergansers, and coots:

North Zone	Oct. 29-Nov. 5 & Nov. 25-Jan. 31
South Zone and Ohio River Zone	Oct. 29-Dec. 18 & Jan. 7-Jan. 31

Wisconsin:

Woodcock	Sept. 1-Sept. 14 & Nov. 19-Dec. 16

Rails, snipe, moorhens, and gallinules:

North Zone	Sept. 1-Oct. 5 & Nov. 5-Dec. 16

South Zone	Sept. 1-Oct. 5 & Oct. 10-Oct. 16 & Nov. 12-Dec. 16
Ducks, mergansers, and coots:	
North Zone	Nov. 5-Jan. 20
South Zone	Oct. 10-Oct. 16 & Nov. 12-Jan. 20

Central Flyway

Colorado:

Ducks, mergansers and coots	Sept. 1-Oct. 5 & Oct. 15-Nov. 2

Montana: (5)

Ducks and coots:	
Zone 1	Sept. 15-Oct. 5 & Nov. 14-Dec. 7 & Dec. 20-Dec. 30
Zone 2	Sept. 15-Oct. 5 & Oct. 15-Nov. 7 & Dec. 20-Dec. 30
Geese	Sept. 22-Sept. 28

New Mexico:

Doves	Oct. 1-Nov. 4 & Nov. 21-Nov. 30 & Dec. 31-Jan. 1
Band-tailed pigeons	Sept. 21-Sept. 30 & Oct. 21-Dec. 16
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties	Oct. 14-Oct. 19 & Jan. 21-Jan. 28
Ducks, coots, moorhens and snipe:	
North Zone	Sept. 22-Oct. 21 & Nov. 12-Dec. 7
South Zone	Oct. 20-Nov. 16 & Jan. 7-Feb. 3
Dark geese	Jan. 21-Feb. 3

North Dakota:

Cranes	Sept. 1-Sept. 7
Ducks, geese, mergansers, coots, and snipe	Sept. 1-Sept. 29

Oklahoma

Ducks, mergansers, and coots:	
High Plains	Oct. 6-Oct. 19 & Nov. 28-Dec. 14 & Dec. 27-Jan. 20
Low Plains:	
Zone 1	Oct. 6-Oct. 26 & Nov. 19-Dec. 14 & Dec. 31-Jan. 20
Zone 2	Oct. 6-Nov. 9 & Nov. 26-Dec. 14 & Jan. 7-Jan. 20

South Dakota

Ducks, mergansers, and coots:	
High Plains	Sept. 4-Oct. 5 & Nov. 14-Dec. 7
Low Plains:	
North	Sept. 4-Oct. 5 & Nov. 14-Dec. 19
South	Sept. 4-Oct. 26 & Dec. 5-Dec. 19

Texas:

Rails and gallinules	Nov. 10-Nov. 20 & Jan. 1-Jan. 26
Mourning and white-winged doves	
North Zone	Nov. 10-Nov. 20 & Jan. 1-Jan. 26
Central Zone	Oct. 25-Nov. 20 & Jan. 1-Jan. 4 & Jan. 21-Jan. 26

South Zone (excluding the Special White-winged Dove Area)	Sept. 1-Sept. 19 & Nov. 13-Nov. 20 & Jan. 1-Jan. 4 & Jan. 21-Jan. 26
Special White-winged Dove Area	Sept. 3-Sept.19 & Nov. 11-Nov. 20 & Jan. 1-Jan. 4 & Jan. 21-Jan. 26
Ducks, mergansers, and coots:	
High Plains	Oct. 27-Nov. 16 & Jan. 7-Feb. 10
Remainder	Oct. 27-Nov. 16 & Nov. 26-Dec. 7 & Jan. 7-Feb. 10
Geese:	
East of U.S. 81:	
Dark	Jan. 21-Feb. 24
Light	Feb. 18-Feb. 24
West of U.S. 81	Jan. 21-Jan. 27
Sandhill cranes:	
Zone A	Oct. 27-Nov. 9
Zone B	Oct. 27-Nov. 30
Zone C	Oct. 27-Jan. 4
Woodcock	Oct. 27-Nov. 23 & Jan. 28-Feb. 10
Wyoming:	
Rails (6)	Sept. 1-Sept. 14
Ducks, mergansers, and coots (6)	Sept. 1-Oct. 5 & Oct. 23-Nov. 9
Pacific Flyway	
Colorado:	
Ducks, mergansers, and coots	Sept. 22-Oct. 5 & Oct. 14-Nov. 16
Idaho:	
Mourning Doves	Oct. 1-Dec. 3 & Feb. 26-Mar. 10
Geese	Sept. 1-Sept. 14
Ducks, coots, and mergansers	Sept. 1-Oct. 5 & Feb. 26-Mar. 10
Montana: (5)	
Ducks and coots	Sept. 15-Oct. 5 & Nov. 18-Dec. 14
Geese	Sept. 22-Sept. 28
Nevada: (7)	
Ducks, mergansers, coots, moorhens, and snipe	Jan. 12-Feb. 28
New Mexico:	
Doves	Oct. 1-Nov. 4 & Nov. 21-Nov. 30 & Dec. 31-Jan. 1
Band-tailed pigeons	Sept. 21-Sept. 30 & Oct. 21-Dec. 16
Ducks, coots, moorhens and snipe:	
North Zone	Sept. 22-Oct. 5 & Oct. 22-Nov. 23 & Jan. 6 only
South Zone	Oct. 22-Nov. 23 & Jan. 6-Jan. 20
Geese:	
North Zone	Oct. 20-Jan. 4 & Jan. 21-Feb. 3
South Zone	Jan. 14-Feb. 3
Oregon: (8)	
Band-tailed pigeons	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Mourning doves	Oct. 1-Dec. 16

Ducks and coots:	
Columbia Basin	Oct. 1-Oct. 19 & Nov. 9-Nov. 21 & Jan. 7-Jan. 15
Remainder	Oct. 1-Oct. 19 & Nov. 9-Nov. 21 & Dec. 31-Jan. 15
Snipe	Oct. 6-Oct. 19
Utah:	
Doves and pigeons	Oct. 1-Dec. 16
Ducks, mergansers, and coots	Dec. 4-Jan. 20
White geese	Jan. 7-Jan. 20
Dark geese:	
Washington County	Oct. 6-Oct. 12 & Jan. 14-Jan. 20
Cache County	Jan. 3-Jan. 16
Remainder	Jan. 7-Jan. 20
Washington:	
Ducks, mergansers, coots, and snipe	Jan. 29-Mar. 10
Geese	Jan. 21-Jan. 27
Wyoming:	
Ducks, mergansers, and coots (6)	Sept. 1-Oct. 5
Rails and snipe (6)	Sept. 1-Sept. 14

(1) In New York, in the Long Island Zone, the extended falconry season for brant is November 2-November 5, 1990.
(2) In Kentucky, the extended falconry season for Canada geese in the Fulton County Zone does not begin until October 26, 1990.
(3) In Minnesota, in the Twin Cities Metro Goose Zone and Olmsted County, the extended falconry season for Canada geese is December 8-December 14, 1990.
(4) In Missouri, in the Lower St. Francis River Area, the Arkansas regulations apply.
(5) In Montana, the bag limit is 2 and the possession limit is 6.
(6) In Wyoming, the daily bag and possession limit may include no more than 2 of the following species: rails, snipe, ducks, mergansers, and coots.
(7) In Nevada, the bag limit is 2 and the possession limit is 4.
(8) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. 90-22917 Filed 9-27-90; 8:45 am]
BILLING CODE 4310-55-C

federal register

Friday
September 28, 1990

Part VI

Department of Justice

Bureau of Prisons

28 CFR Part 552

Control, Custody, Care, Treatment and Instruction of Inmates; Hostage Situations; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 552

Control, Custody, Care, Treatment and Instruction of Inmates; Hostage Situations

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is revising its regulations on hostage situations. This action is being taken upon consideration of the Bureau's experiences from the 1987 Atlanta/Oakdale disturbances. This revision makes three major changes to the existing regulations. It provides for the assumption of command by the Regional Director in large scale hostage situations where the coordination of resources from other Bureau facilities and law enforcement agencies is involved; it provides for the use of a team of individuals trained in hostage negotiation techniques; and it specifies services to be provided to the families of hostages. This action is intended to protect the life and safety of both staff and inmates.

EFFECTIVE DATE: September 28, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 741, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its regulations on hostage situations. A final rule on this subject was published in the **Federal Register** on May 20, 1980 (45 FR 33941). The Bureau is making this revision upon consideration of the 1987 Atlanta/Oakdale disturbances. A discussion of the specific changes in this revision follows.

In § 552.30, the sentence providing the Warden authority to resolve hostage situations is removed. This authority is now covered in new § 552.31. Old § 552.31 is revised as new § 552.32. New § 552.31, entitled "Command," provides that ordinarily the Warden of each institution has authority to resolve a hostage situation; however, in large scale hostage situations where the coordination of resources from other Bureau facilities and law enforcement agencies is involved, this authority will be assumed by the appropriate Regional Director. New § 552.32 is entitled "Negotiations." The introductory text of new § 552.32 provides that the Warden is ordinarily not involved directly in the negotiation process; instead this responsibility is ordinarily assigned to a team of individuals who are specifically trained in hostage negotiation techniques. Paragraph (a) of old § 552.31 had specified that the negotiation responsibility was generally assigned by the Warden to another individual. Paragraph (b) of old § 552.31 is revised as paragraph (a) of new § 552.32 with minor change in wording; the intent, however, is unchanged. Paragraph (c) of old § 552.31 is removed. This provision for the negotiator to keep communications open at all times with the captors remains part of the internal implementing guidelines. Consequently, there is no change in the Bureau's policy on this point. Paragraph (b) of new § 552.32 provides that the following items are non-negotiable: Release of captors from custody, providing of weapons, exchange of hostages, and immunity from prosecution. Two of these items, release of captors from custody and immunity from prosecution, had been specified as being non-negotiable in old § 552.33. Old § 552.32 is redesignated as new § 552.33 and the section heading is revised to read "Hostages." Old § 552.33 is incorporated into new § 552.32(b). Paragraph (a) of old § 552.34 is redesignated as new § 552.35, "Media." The heading of new § 552.34 is revised to read "Hostage Family Services." Paragraph (b) of old § 552.34 is redesignated and revised as paragraph (a) of new § 552.34, and now provides for either the Warden or Regional Director to arrange for the notification of family members of hostages. Paragraph (b) of new § 552.34 provides for the establishment of a Family Services Center in a prolonged situation; paragraph (c) of new § 552.34 specifies the mission of the Family Services Center.

Because these regulations provide for the life and safety of staff and inmates, and pose no additional burden on the public, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 552

Prisoners.

J. Michael Quinlan,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter C of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTION MANAGEMENT

PART 552—CUSTODY

1. The authority citation for part 552 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In 28 CFR part 552, subpart D, consisting of §§ 552.30 through 552.34, is revised to consist of §§ 552.30 through 552.35 as follows:

Subpart D—Hostage Situations

Sec.
552.30 Purpose and scope.
552.31 Command.
552.32 Negotiations.
552.33 Hostages.
552.34 Hostage family services.
552.35 Media.

Subpart D—Hostage Situations

§ 552.30 Purpose and scope.

The Bureau of Prison's primary objectives in all hostage situations are to safely free the hostage(s) and to regain control of the institution.

§ 552.31 Command.

Ordinarily, the Warden of each institution has the authority to resolve a hostage situation. However, in large scale hostage situations where the coordination of resources from other Bureau facilities and law enforcement agencies is involved, this authority will be assumed by the appropriate Regional Director.

§ 552.32 Negotiations.

The Warden is not ordinarily involved directly in the negotiation process. Instead, this responsibility is ordinarily assigned to a team of individuals specifically trained in hostage negotiation techniques.

(a) Negotiators have no decision-making authority in hostage situations,

but rather serve as intermediaries between hostage takers and command center staff.

(b) During the negotiation process, the following items are non-negotiable: release of captors from custody, providing of weapons, exchange of hostages, and immunity from prosecution.

§ 552.33 Hostages.

Captive staff have no authority and their directives shall be disregarded.

§ 552.34 Hostage family services.

(a) The Warden or Regional Director shall arrange to have the family members of the hostages notified as soon as practical after the incident occurs.

(b) In a prolonged situation, the Warden or Regional Director will call the Assistant Director, Correctional Programs, to arrange for trained Victims' Assistance Team members to establish a Family Services Center.

(c) The Center will provide opportunities for family members to gather together, to gain emotional support, to receive accurate information, to receive professional advice and support, and to avoid unwanted media contact.

§ 552.35 Media.

The Warden shall assign staff to handle all news releases and news media inquiries in accordance with the rule on Contact with News Media (see 28 CFR 540.65).

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federal register

Friday
September 28, 1990

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 25

Federal Acquisition Regulation (FAR); Solicitation Provision and Contract Clause, Buy American Act; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

RIN 9000-AE16

Federal Acquisition Regulation (FAR); Solicitation Provision and Contract Clause, Buy American Act

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 25.109 (a) and (d) to eliminate the unnecessary use of the provision at FAR 52.225–1, Buy American Certificate, and the clause at 52.225–3, Buy American Act—Supplies. These proposed changes are intended to streamline the FAR by requiring the use of the Buy American Certificate and the clause at 52.225–3, Buy American Act-Supplies, only under applicable circumstances.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before November 27, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 90–45 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (202) 501–4082. Please cite FAR Case 90–45.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the proposed revisions merely implement in the FAR the procedures currently being followed by individual agencies. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities concerning the affected FAR section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–45) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: September 20, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 25 be amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 25.109 is amended by revising paragraphs (a) and (d) to read as follows:

25.109 Solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 52.225–1, Buy American Certification, in solicitations where the clause at 52.225–3 is used.

* * * * *

(d) The contracting officer shall insert the clause at 52.225–3, Buy American Act—Supplies, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States, unless—

(1) The solicitation applies to items restricted to domestic end products under the authority of 6.302–3; or

(2) The acquisition is made under the Trade Agreements Act (see subpart 25.4); or

(3) Another exception applies (e.g., nonavailability, public interest exception to competition).

[FR Doc. 90–22859 Filed 9–27–90; 8:45 am]

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federal register

Friday
September 28, 1990

Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Six Foreign Birds, Barneby Ridge-cress, Lyrate Bladder-pod, and Inflated Heelsplitter Mussel; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Endangered Status for Six Foreign Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for six foreign birds: the northern bald ibis, white-winged guan, cheer pheasant, red-tailed parrot, Norfolk Island parakeet, and Madagascar red owl. All occupy restricted ranges and are adversely affected by human habitat disruption and/or direct killing. This rule will implement the protection of the Endangered Species Act of 1973 for these six birds.

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, Mail Stop: Arlington Square, Room 725, U.S. Fish and Wildlife Service, Washington, DC 20240. (703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION:

Background

In a petition of November 24, 1980, the International Council for Bird Preservation requested the addition of 79 kinds of birds to the U.S. List of Endangered and Threatened Wildlife. Two of these birds actually were already on the List, and so the petition technically applied to 77 species. In the Federal Register of May 12, 1981 (46 FR 26464–26469), the Service anounced its finding that the petition had presented substantial information in support of listing, and also announced a status review of the 77 species. Of these species, 19 were native to the United States or its territories. Of these 19, 4 subsequently were added to the List, and the rest were placed in various categories in the Service's Animal Notice of Review in the Federal Register of January 6, 1989 (54 FR 554–579). Of the 58 foreign kinds of birds covered by the petition, the 6 named and described below were already on appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

The northern bald ibis, also known as the hermit ibis or waldrapp (*Geronticus eremita*), measures about 30 inches (75 centimeters) from tip of beak to tail. The head is completely naked, the legs and curved beak are red, and the plumage is generally dark. The species originally occurred across much of southern Europe, southwestern Asia, and northern Africa.

The white-winged guan (*Penelope albipennis*) is a member of the curassow family (Crucidae). It is about 28 inches (70 centimeters) long and is generally brown in color, but is distinguished by having the eight outer primary feathers white. It is endemic to a small part of northwestern Peru.

The cheer pheasant (*Catreus wallichii*) has about the same size and proportions as the common ring-necked pheasant, but lacks the pronounced markings of the latter. It is generally light brown in color and has a large crest of feathers on the back of the head. It originally was found in the Himalayan foothills of Pakistan, India, and Nepal.

The red-tailed parrot (*Amazona brasiliensis*) is about 15 inches (37 centimeters) long. The plumage is mainly green, the top of the head is red, the throat and upper breast are blue, and the lateral tail feathers are yellow. The species occurs only in the forests of southeastern Brazil.

The Norfolk Island parakeet (*Cyanoramphus novaezelandiae cookii*) is about 11 inches (28 centimeters) long. The plumage is mainly green, the top and sides of the head are red, and the outer webs of the tail feathers are violet-blue. It is endemic to Norfolk Island, an Australian possession between New Zealand and New Caledonia in the southwestern Pacific.

The Madagascar red owl (*Tyto soumagnei*) is related to the barn owl of North America, but is much smaller, measuring only 9 inches (23 centimeters) long. It is mostly reddish in color. It is found in the eastern forests of Madagascar.

Partly in conjunction with an effort to establish closer alignment between the Convention appendices and the U.S. Lists of Endangered and Threatened Wildlife and Plants, the Service proposed to determine endangered status for these six birds in the Federal Register of January 16, 1990 (55 FR 1488–1491). In the proposal and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Ten responses were received, all supportive, and pertinent information has been added to the following discussion.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the six birds named above should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the six birds named above are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The northern bald ibis now breeds in only tiny fragments of its once vast range that stretched from France and Spain to Iraq, Ethiopia, and Mauritania. Its decline has been caused by a variety of problems, including natural dessication of its range in Egypt, climatic cooling in Europe, human disturbance of its nesting sites on cliffs, agricultural development of other habitat, drainage of marshes where it searched for food, and the widespread application of toxic pesticides throughout its range. Breeding ceased in Europe in the 17th century. There still were thousands of birds in Turkey and Syria in the early 1900's, but now only a single breeding colony remains in Asia—at Birecek, Turkey—and it has been reported to consist of only about 30 birds. There were about a thousand pairs in Morocco in the 1930's, but only 93 in 1982, which occupied about 12 declining colonies. The only other possible remaining breeding site is in Algeria (Collar and Andrew 1988; Collar and Stuart 1985; King 1981). In its response to the proposal, the government of Turkey expressed concern that the Birecek colony may now have disappeared completely. In another response, the deputy director of Morocco's National Zoo, who has studied the bald ibis for 10 years, stated that the species is decreasing dramatically and that only about 180 individuals remain in the wild.

In contrast to the great original distribution of the ibis, the white-winged guan has always been known only from extreme northwestern Peru, where it occupied a variety of forest habitat. Unfortunately, this habitat is rapidly being destroyed through burning of the forests to produce charcoal. The guan

was said to be locally common in the mid-19th century, but its numbers fell to several hundred by the 1970's (Collar and Andrew 1988; King 1981). In his response to the proposal, Enrique G. Ortiz of Princeton University, an authority on the guan, estimated current numbers at about 300 individuals.

The cheer pheasant still occurs across its original range in the western Himalayas, but only in small, fragmented populations. Its decline has resulted in part from agricultural activity and other human modifications of the forests and meadows on which it depends (Collar and Andrew 1988; King 1981). In its response to the proposal, the Wildlife Institute of India noted that most populations appear dangerously small (fewer than 10 pairs in any one population).

The red-tailed parrot is restricted to the primary coastal forests of southeastern Brazil, which have been largely destroyed in recent decades by human development. Its total population is now no more than 4,000 individuals (Collar and Andrew 1988; King 1981).

The Norfolk Island parakeet once was very common on the 14 square mile (35 square kilometer) island, to which it is confined. It now is among the world's most critically endangered birds. Its decline was brought about by a number of factors, including human destruction of its forest habitat, competition with introduced bird species, and persecution as an agricultural pest (King 1981; Moors 1985). In its response to the proposed rule, the Australian National Parks and Wildlife Service reported that there are only 30 individuals in the wild and 10 in captivity.

The Madagascar red owl inhabits the humid rainforest of eastern Madagascar. This area is being cleared for agriculture and is subject to other human disturbance. Only a few specimens have been collected, the most recent in 1934. An individual also was reported in 1973 (Collar and Stuart 1985).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Most of the birds covered by this rule have been subject to excessive taking by people. Hunting for use as food has been a major factor in the decline of the northern bald ibis in Africa and Asia. The white-winged guan also is threatened for this reason. The cheer pheasant has been relentlessly persecuted by hunters, and its sedentary habits make it especially vulnerable to such pressure. Specimen and egg collectors are considered a serious problem to remaining colonies of the northern bald ibis. The red-tailed parrot is threatened by the pet trade (Collar and Andrew 1988; Collar and Stuart 1985; King 1981).

C. *Disease or predation.* The northern bald ibis suffers from nest predation by ravens. Disease and breeding failure may have contributed to the decline of the cheer pheasant. The status of the Norfolk Island parakeet has deteriorated in part because of avian disease and predation by introduced cats and rats (Collar and Andrew 1988; Collar and Stuart 1985; Moors 1985).

D. *The inadequacy of existing regulatory mechanisms.* The northern bald ibis is legally protected in those places where it is still known to breed, but this factor has not prevented severe declines and is not controlling disturbance, poaching, and other immediate problems. The remote habitat of the white-winged guan would make enforcement of hunting laws difficult. The cheer pheasant is legally protected, but poaching is a major problem. The red-tailed parrot and Norfolk Island parakeet also are legally protected. The Madagascar red owl receives no domestic legal protection (Collar and Andrew 1988; Collar and Stuart 1985; King 1981; Moors 1985). Although these six species are listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the provisions of the Convention do not prevent loss of habitat, which is the main problem.

E. *Other natural or manmade factors affecting its continued existence.* The northern bald ibis is extremely susceptible to pesticides. This factor is known to be responsible for a drastic reduction in the Asian population, and is considered the single greatest threat to the species throughout its remaining range (Collar and Stuart 1985). The Norfolk Island parakeet has declined in part through displacement by an introduced relative, the crimson rosella (*Platycercus elegans*), with which it competes for nest sites (Moors 1985).

The decision to determine endangered status for the northern bald ibis, white-winged guan, cheer pheasant, red-tailed parrot, Norfolk Island parakeet, and Madagascar red owl was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. All six of these birds have experienced significant declines in population numbers and/or suitable habitat in recent years, and are vulnerable to human exploitation and disturbance. If conservation measures are not implemented, further declines are likely to occur, increasing the danger of extinction for these avian species. Critical habitat is not being determined, as such designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). On August 10, 1990, the Eighth Circuit Court of Appeals ruled that the section 7 consultation requirement applies to Federal agency actions in foreign countries. The United States Government petitioned for a rehearing of that ruling on September 24, 1990. 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 a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such actions are currently known with respect to the species covered by this proposal.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign

commerce any endangered wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. All such permits must also be consistent with the purposes and policy of the Act, as required by section 10(d), thereof.

International trade in these six species is expected to be minimal. The Service will review these species to determine whether any of them should be placed on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether they should be considered for other appropriate international agreements.

National Environmental Policy Act

The 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, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register of October 25, 1983 (48 FR 49244).

Literature Cited

Collar, N.J., and P. Andrew. 1988. Birds to watch. The ICBP world checklist of threatened birds. International Council for Bird Preservation Tech. Publ., No. 8, xvi + 303 pp.

Collar, N.J., and S.N. Stuart. 1985. Threatened birds of Africa and related islands. The ICBP/IUCN red data book, part 1. International Council for Bird Preservation, Cambridge, England, xxxiv + 761 pp.

King, W.B. 1981. Endangered birds of the world. The ICBP bird red data book. Smithsonian Institution Press, Washington, DC.

Moors, P.J. 1985. Conservation of island birds. International Council for Bird Preservation Tech. Publ., No. 3, × +271 pp.

Author

The primary author of this rule is Dr. Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 921–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation, and Wildlife.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
*	*	*	*	*	*		
Guan, white-winged	*Penelope albipennis*	Peru	Entire	E	401	NA	NA
*	*	*	*	*	*		
Ibis, northern bald	*Geronticus eremita*	Southern Europe, southwestern Asia, northern Africa.	Entire	E	401	NA	NA
*	*	*	*	*	*		
Owl, Madagascar red	*Tyto soumagnei*	Madagascar	Entire	E	401	NA	NA
*	*	*	*	*	*		
Parakeet, Norfolk Island	*Cyanoramphus novaezelandiae cookii.*	Australia (Norfolk Island)	Entire	E	401	NA	NA
*	*	*	*	*	*		
Parrot, red-tailed	*Amazona brasiliensis*	Brazil	Entire	E	401	NA	NA
*	*	*	*	*	*		
Pheasant, cheer	*Catreus wallichii*	India, Nepal, Pakistan	Entire	E	401	NA	NA
*	*	*	*	*	*		

Dated: September 24, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–23041 Filed 9–27–90; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB38

Endangered and Threatened Wildlife and Plants; Endangered Status for the Plant Lepidium barnebyanum (Barneby Ridge-cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines a plant, *Lepidium barnebyanum* (Barneby ridge-cress), to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). This species is known from one small limited population in Duchesne County,

Utah. Continued uncontrolled off-road vehicle use and development of oil and gas resources in the habitat of *L. barnebyanum* have the potential to cause the species to become extinct if adequate protective measures are not taken. This rule implements Federal protection provided by the Act for *Lepidium barnebyanum.*

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Salt Lake City Field Office, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

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

SUPPLEMENTARY INFORMATION:

Background

In June 1947, a unique mustard was discovered by Rupert Barneby in the lower portions of Indian Creek Canyon in Utah's Uinta Basin. This plant was described first in the scientific literature as *Lepidium montanum* ssp. *demissum* (Hitchcock 1950). James Reveal reviewed the type specimen of *L. m. demissum* and obtained additional specimens of that taxon from the type locality. As a consequence of his evaluation of this taxon, Reveal described the mustard as *Lepidum barnebyanum* (Reveal 1987).

The common name used for *L. barnebyanum* in the Review of Plant Taxa for Listing as Endangered or Threatened Species published in the Federal Register on September 27, 1985 (50 FR 39526), was "Barneby pepper cress." Stanley Welsh gave this species the common name of "ridgecress" in *A Utah Flora* (Welsh et al. 1987). The Service has adopted Welsh's common name because it is a cress (mustard) endemic to ridges and has retained the specific epithet to honor the species' discoverer, thus the common name "Barneby ridge-cress." This common name was used in the Review of Plant Taxa for Listing as Endangered or Threatened Species published in the Federal Register on February 21, 1990 (55 FR 6184).

Lepidium barnebyanum is a perennial, herbaceous plant in the mustard family (Brassicaceae). It is approximately 5 to 15 centimeters (cm) (2 to 6 in.) tall and usually forms raised clumps or cushions (pulvinate growth form) up to 20 cm (8 in.) wide. The species arises from a deep woody taproot; its stems are smooth and hairless with narrow leaves clustering at the base of the plant. The species' cream-colored flowers are about 5 to 7 millimeters (mm) (0.25 in.) across and alternate along a stem rising 2.5 to 6 cm (1 to 2.5 in.) above the base of the plant. The flowers begin to bloom in early May. *L. barnebyanum* seeds are quite small, about 1 mm (0.04 in.) across, and are borne in elliptical seed pods called silicles, which are about 4 to 5 mm (0.2 in.) long. The seeds are shed beginning in June and continuing into July.

The habitat of *L. barnebyanum* is a discontinuous series of marly shale barrens on three ridgelines on either side of Indian Creek on the northeast margin of Indian Creek Canyon about 5 kilometers (km) (3 miles) south of Starvation Reservoir and the town of Duchesne, Utah. The species' habitat occurs at an elevation of 1,890 to 1,980 meters (6,200 to 6,500 feet) on poorly developed soils derived from marly shales in a zone of interbedding geologic strata from the Uinta and Green River Formations (Reveal 1967, Welsh and Reveal 1977, Welsh 1978, Welsh et al. 1987, U.S. Fish and Wildlife Service 1989).

The vegetation of the shale barrens, on which *L. barnebyanum* occurs, is dominated by plant species with pulvinate growth forms, including: *Hymenoxys acaulis, Arenaria hookeri, Townsendia mensana, Parthenium ligulatum,* and *L. barnebyanum* itself. Other associated plant species include: *Eriogonum batemanii, Astragalus spatulatus,* and *Castilleja scabrida.* The shale barren pulvinate plant community of *L. barnebyanum* is a small inclusion within the broader pinyon-juniper woodland community, dominated by pinyon pine (*Pinus edulis*) and Utah juniper (*Juniperous osteosperma*), which characterize the general area (Welsh 1978, U.S. Fish and Wildlife Service 1989).

Lepidium barnebyanum is known from one population with four distinct stands with a total range that is about 8 km (5 miles) across on the Uintah and Ouray Reservation of the Ute Indian Tribe. The total population of *L. barnebyanum* is estimated to be about 5,000 individuals with an occupied habitat of less than 200 hectares (500 acres) Kung 1989, U.S. Fish and Wildlife Service 1989). The entire population of *L. barnebyanum* is experiencing or is vulnerable to off-road vehicle damage and is within a recently established oil and gas field. Continued unrestricted off-road vehicle use and future development of oil and gas wells and ancillary facilities is likely to endanger the continued existence of this species unless specific measures are taken to protect the occupied habitat of *L. barnebyanum.*

Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report as a petition to list those taxa named therein under section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act), and its intention to review the status of those plants. *L. barnebyanum* was included in the July 1, 1975, notice on list "A" as endangered.

Lepidium barnebyanum was proposed by the Service for listing as endangered along with approximately 1,700 other vascular plant taxa on June 16, 1976 (41 FR 24523). General comments received on the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909). The 1978 amendments to the Act required that all proposals more than 2 years old be withdrawn, though proposals published before the date of enactment of the 1978 amendments could not be withdrawn before the end of a 1-year grace period beginning on the date of enactment. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final (44 FR 70796), including *L. barnebyanum.*

The July 1975 notice was updated by notices in the Federal Register on December 15, 1980 (45 FR 82480), and again on September 27, 1985 (50 FR 39526). Both of the later notices included *L. barnebyanum* as a category 1 species. Category 1 comprises taxa for which the Service presently has significant biological information to support their being proposed to be listed as endangered or threatened species.

Section 4(b)(3)(B) of the 1982 amendments to the Act requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the Act's amendments of 1982 further requires that all petitions pending as of October 13, 1982, be treated as having

been newly submitted on that date. Since the 1975 Smithsonian report was accepted as a petition, all the taxa contained in this notice, including *L. barnebyanum*, were treated as being newly petitioned on October 13, 1982. The deadline for a finding on such petitions, including that for *L. barnebyanum*, was October 13, 1983. Beginning on October 13, 1983, the Service has made successive 1-year findings that the petition to list *L. barnebyanum* was warranted, but precluded by other listing actions of higher priority. On November 27, 1989, the Service published in the Federal Register (54 FR 48781) a proposed rule to list *L. barnebyanum* as an endangered species. Publication of the aforementioned proposed rule constituted the final finding for this species.

Summary of Comments and Recommendations

In the November 27, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Uintah Basin Standard* on December 27, 1989, and in the *Deseret News* and *The Salt Lake Tribune* on December 25, 1989, which invited general public comment.

Eleven commenters responded. Six commenters supported listing, while five were neutral. Three commenters provided additional or clarifying information that has been incorporated into this final rulemaking. Three commenters explicitly confirmed that the plant was rare or in danger of extinction. One commenter agreed that oil and gas drilling and off-road vehicle use was a threat. Commenters raising issues were as follows:

The Ute Indian Tribe was concerned about possible restrictions to oil and gas development in the habitat of *L. barnebyanum*, which could affect the future economic well-being of the Tribe. However, their letter also noted that "in the interest of protecting a rare plant species which is a natural feature of the land, the Ute Tribe is not opposed to proposed listing as endangered." The Tribe also stated that uncontrolled off-road vehicle use is prohibited on the Reservation, and that it is the policy of the Tribe to remove violators if apprehended.

In response to the Ute Indian Tribe's concern about economic impacts from oil and gas development restrictions, Section 7 consultation will serve as the mechanism for identifying and resolving any conflicts which may arise between the conservation of *L. barnebyanum* and the development of oil and gas resources. The Service will work with the Ute Tribe, affected Federal and State agencies, and private energy developers to deal with such conflicts.

With regard to threats from off-road vehicles, Section 9 of the Act prohibits malicious damage or destruction of endangered plants on areas under Federal jurisdiction, and damage or destruction on any other area in knowing violation of State law or regulation, including State criminal trespass law. This statutory authority could be used by the Tribe to prevent and reduce off-road vehicle trespass on Reservation lands.

The State of Utah, though noting that the plant was "very scarce," also urged the Service to consider the economic impacts of the listing before making a decision on the status of *L. barneybyanum*. Under the Act, the Service is required to base listing decisions upon biological factors only. As noted above, the Service will work with affected parties if there is a conflict between species conservation and oil and gas development.

The Bureau of Land Management clarified their responsibility in regard to leasing oil and gas reserves and reviewing and authorizing oil and gas development on Indian lands. The Service has modified this rulemaking to reflect the Bureau of Land Management's actual responsibilities.

Two commenters supported restrictions on off-road vehicle use. As noted earlier, the Tribe already prohibits uncontrolled off-road vehicle use, and the listing of this species as endangered will provide statutory protection. Following listing, a recovery plan will be developed that will recommend appropriate means to deal with threats from off-road vehicles.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Lepidium barneybyanum* should be classified as an endangered species. Procedures found at section 4(a) (1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lepidium barnebyanum* Reveal (Barneby ridge-cress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The total population of *L. barneybyanum* is estimated to be about 5,000 individuals on marly shale barrens on three ridgelines in the northeast portion of Indian Creek Canyon in Duchesne County, Utah (U.S. Fish and Wildlife Service 1989). The past distribution of *L. barneybyanum* is unknown (Welsh 1978). The species is evidently a narrow soil endemic, restricted to a white marly shale lens near the contact of Green River and Uinta geologic formations (Reveal 1967, Welsh and Reveal 1977, Welsh 1978, Welsh et al. 1987, U.S. Fish and Wildlife Service 1989). Similar shale barren habitat, occupied by many of the same species sympatric with *L. barneybyanum* (see "Background" section above), has been searched for additional populations of *L. barneybyanum* in the Uinta Basin of northeast Utah and adjacent Colorado. No other populations of the plant are known except for the one noted above (Reveal 1967, Welsh 1978, Kung 1989, U.S. Fish and Wildlife Service 1989).

The occupied habitat of *L. barneyanum* is being impacted by trampling from off-road vehicles. Motorcycles and four-wheeled all-terrain vehicles concentrate on the sparsely vegetated ridgelines which are *L. barneybyanum*'s only habitat (U.S. Fish and Wildlife Service 1989). In addition, the habitat of *L. barnebyanum* is within a proposed oil and gas field with several wells projected for development within or adjacent to the species' occupied habitat. The location of *L. barneybyanum* habitat on the top of relatively level ridgelines in an area of very steep general topographic relief exposes populations to an increased likelihood of habitat destruction from off-road vehicle trail riding and road and well site construction in connection with oil and gas development (Welsh 1978, Kung 1989, U.S. Fish and Wildlife Service 1989). With such a small total population and limited occupied habitat, any destruction, modification, or curtailment of habitat would have a highly detrimental effect on the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threats to *L. barnebyanum* from overutilization for commercial, recreational, scientific, or educational purposes are currently known.

C. *Disease or predation.* No significant threats to *L. barneybyanum*

from disease or predation are currently known.

D. *The inadequacy of existing regulatory mechanisms.* Prior to this rule, no Federal or State law or regulation protected *L. barnebyanum.* The Bureau of Indian Affairs and the Bureau of Land Management were aware of the precarious status of this species and as a matter of policy attempted to direct activities that may threaten the species away from its habitat on the Uintah and Ouray Reservation of the Ute Indian Tribe. This rule listing *L. barnebyanum* will significantly assist these Federal agencies by providing statutory authority for the protection of this species and its habitat and will encourage active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* Compared to closely related taxa in the same genus, recent studies have shown *L. barnebyanum* to have a reduced seed/ovule ratio (i.e., a smaller percentage of embryonic seeds becoming mature seeds) (C. Davern, University of Utah, pers. comm., 1988). This would tend to lower reproductive success and reduce population viability. In addition, the restricted range and population of *L. barnebyanum* increases the possibility that inadvertent disturbance, either natural or human caused, could destroy a significant portion of the species' population and habitat. Finally, concern was expressed that sheep trailing or bedding along these ridgelines could negatively affect *L. barnebyanum*, though such negative effects have not been documented.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Lepidium barnebyanum* as endangered. The species is threatened by surface disturbance from off-road vehicles that will probably intensify in the near future and by future energy development within its habitat. These factors could cause the species to become extinct within the foreseeable future throughout all or a significant portion of its range. Given the species' highly restricted distribution and the likelihood of future habitat destruction, the designation of endangered is considered by the Service to be a more appropriate designation than threatened for *L. barnebyanum.* For the reasons given below, it is not considered prudent to designate critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *L. barnebyanum* because possible adverse consequences from vandalism would likely outweigh the minimal benefits accruing from critical habitat designation.

As noted under Factor "A," *L. barnebyanum* occupies limited habitat on the top of three relatively level ridgelines. Designation of critical habitat would entail publication of a detailed description and map of this habitat in the Federal Register, exposing the species to the threat of vandalism. Lacking mobility, plants are more vulnerable to vandalism than animals. One person could easily vandalize the entire *L. barnebyanum* population with an off-road vehicle.

Moreover, few additional benefits would be provided to the species by the critical habitat designation that would not already be provided by listing the species as endangered. Any Federal action (such as approving oil and gas leases or actions) that would impact the plant's habitat would affect the plants as rooted organisms and, consequently, would be addressed through section 7 consultation. In addition, section 9(a)(2)(B) of the Act makes it unlawful to remove and reduce to possession any endangered species of plant from areas under Federal jurisdiction or to maliciously damage or destroy such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of State criminal trespass law. The Ute Tribe, Bureau of Indian Affairs, and the Bureau of Land Management are all aware of the occurrence of *L. barnebyanum* on Tribal lands and of their obligations under the Act. In addition, the Ute Tribe has expressed a desire to eliminate unauthorized trespass in the habitat of *L. barnebyanum.* Protection of species' habitat also will be accomplished through the recovery process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, Indian, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. 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 Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The entire known population of *L. barnebyanum* is on the Uintah and Ouray Reservation of the Ute Indian Tribe. The Bureau of Indian Affairs is responsible for assisting the Tribe in the resource management of Reservation lands, including the leasing of oil and gas resources, and as such would be responsible for the conservation of the plant on Tribal lands under authority of the Act. The Bureau of Land Management is responsible for reviewing and authorizing proposed operations on a leasehold within the Reservation, regardless of whether the lease is Indian or Federal. Both of these Federal agencies would be responsible for insuring that land actions in general, and those associated with mineral leasing and development specifically, are not likely to jeopardize the continued existence of *L. barnebyanum.*

The Service is willing to work with the Tribe to evaluate whether there are feasible means to reduce the threat posed by off-road vehicles.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These statutory and regulatory 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 this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including 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 species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued for *L. barnebyanum* since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358–2093, FTS 921–2093).

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).

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Author

The primary author of this final rule is John L. England, botanist (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Brassicaceae, 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					
*	*	*	*	*	*	
Brassicaceae—Mustard family:						
*	*	*	*	*	*	
Lepidium barnebyanum	Barneby ridge-cress (= pepper cress).	U.S.A. (UT)	E	402	NA	NA
*	*	*	*	*	*	

Dated: September 24, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–23042 Filed 9–27–90; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB38

Endangered and Threatened Wildlife and Plants; Threatened Status for Lesquerella lyrate (Lyrate bladder-pod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Lesquerella lyrata* (lyrate bladder-pod), to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. This species is currently known from only two populations in cedar glade areas of northwest Alabama (Colbert and Franklin Counties). It is extremely vulnerable due to its limited range, the loss of much suitable habitat from urbanization and agricultural practices and the apparent need for active management to sustain current populations. This action will extend the Act's protection to *Lesquerella lyrata*.

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jackson, Mississippi, Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Cary Norquist, at the above address (601/965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

Lesquerella lyrata, a member of the mustard family (Brassicaceae), is an annual that ranges from 1 to 3 decimeters (4 to 12 inches) in height. Plants are shortly pubescent and usually branched near the base. The stem leaves are alternate, ovate to elliptic in shape, smooth or toothed on the margins, with prominent ear-like projections at the

bases. The flowers are ascending, on stalks 10 to 15 millimeters (mm) (0.4 to 0.6 inches) long, with yellow petals 5 to 7 mm (0.2 to 0.3 inch) in length. The fruits are silques, globose in shape, 2.5 to 3.5 mm (0.1 inch) long and 3 to 4 mm wide (0.1 to 0.2 inch) (Rollins and Shaw 1973, McDaniel 1987). This species is dormant in the summer, surviving as seeds; germinates in the fall; and overwinters as a rosette (J. Baskin, University of Kentucky, pers. comm. 1989). Plants flower from March to April, fruit and disperse seeds in late April and May.

Lesquerella lyrata is most closely related to *L. densipila*, which occurs disjunctly in Alabama (Rollins 1955). The morphologically similar *L. densipila* has fruits and styles which are pubescent as opposed to those of *L. lyrata* which are glabrous (Rollins 1955, Rollins and Shaw 1973, McDaniel 1987). Although no one questions the distinctiveness of *L. lyrata*, some suggest that a more appropriate separation of these two taxa would be at the varietal level (McDaniel 1987).

Lesquerella lyrata was discovered and described by R.C. Rollins (1955) from specimens he collected at three sites in Franklin County, Alabama. This species was thought to be extinct until it was rediscovered near the type locality in 1984 (Webb and Kral 1986). Extensive field surveys have been conducted for this species repeatedly (Webb pers. comm. 1989, Webb and Kral 1986, McDaniel 1987). However, only one additional population has been located, which is in Colbert County, Alabama (Webb and Kral 1986). In addition, no plants have been located at two of the original localities in Franklin County cited by Rollins (1955), despite repeated attempts (Webb and Kral 1986, McDaniel 1987). Currently, only two populations of *L. lyrata* are known to exist, with one each in Franklin and Colbert Counties, Alabama.

Lesquerella lyrata is a component of glade flora and occurs in association with limestone outcroppings. The terms "glade" and "cedar glade" refer to these shallow-soiled, open areas that are sometimes surrounded by cedar (*Juniperus virginiana*) woods. *Lesquerella lyrata* often occurs essentially without associates; however, at times it may occur with *Leavenworthia alabamica, Arenaria patula, Sedum puchellum* and weedy species such as *Ceratium glomeratum* and *Krigia oppositifolia*. Most of the cedar glade endemics exhibit such weedy tendencies; however, none appear to spread far from their original glade habitat (Baskin and Baskin 1986, Webb and Kral 1986). Current populations are located primarily on glade-like areas that exhibit various degrees of disturbance, including unimproved pastures, cultivated/plowed fields and roadside rights-of-way. Each population consists of several sites located within a 0.4 to 0.8 kilometer (0.25 to 0.5 mile) radius of one another. Population size varies, as with all annuals; however, at times, sites are reported to support hundreds to thousands of individuals (Webb and Kral 1986, McDaniel 1987).

Both populations are located on privately-owned lands. No sites are protected and current populations have been declining over the last few years due to succession from the lack of regular management that is needed to maintain populations of this species (Webb pers. comm. 1989, McDaniel 1987).

Federal actions involving *Lesquerella lyrata* began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2), now section 4(b)(3)(a), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Lesquerella lyrata* was included in the Smithsonian petition and the 1976 proposal. General comments recieved in relation to the 1976 proposal were summarized in an April 26, 1978 publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In December 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal (44 FR 70796), along with four other proposals that had expired. *Lesquerella lyrata* was included as a category 1* species in a revised list of plants under review for threatened or endangered classification published December 15, 1980 (45 FR 82480). Category 1* comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species, but they may have already become extinct. On November 28, 1983, the Service published a supplement to the Notice of Review for Native Plants (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). *Lesquerella lyrata* was included as a category 2 species in the 1983 supplement and the 1985 revised notice. Category 2 species are those for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule. Data obtained over the last few years supported the plant's reelevation to category 1 and listing as threatened. The data demonstrate a limited distribution and continuing threats to the species.

Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982 be treated as having been newly submitted on that date. This was the case for *Lesquerella lyrata* because of the acceptance of the 1975 Smithsonian report as a petition. In October of 1983, and each succeeding year, the Service found that the petitioned listing of *Lesquerella lyrata* was warranted, but that listing this species was precluded due to other higher priority listing actions and that additional data were being gathered. On April 25, 1990, the Service published a proposal (55 FR 17552) to list *Lesquerella lyrata* as a threatened species, constituting the final petition finding required by the Act.

Summary of Comments and Recommendations

In the April 25, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting public comment, were published in the *Colbert County Times*, Tuscumbia, Alabama, on May 10, 1990, and the *Franklin County Times*, Russellville, Alabama, on May 13, 1990.

One comment was received from a private conservation organization. The commentor was supportive of the listing but recommended this *Lesquerella* be listed as endangered rather than

threatened. The Service's rationale for threatened status is addressed in the following section (see last paragraph).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Lesquerella lyrata* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lesquerella lyrata* Rollins (lyrate bladder-pod) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Lesquerella lyrata* is endemic to cedar glade areas in northwestern Alabama. It is thought that this species evolved in glade systems that are now highly disturbed and exist as isolated pockets surrounded by agricultural lands (Webb and Kral 1986). Some cedar glade systems continue to be adversely modified as they are utilized for agricultural purposes, while others have been destroyed by housing development or garbage dumping (Kral 1983). Baskin and Baskin (1985) state that few glades in the Southeast have been left completely undisturbed.

As noted previously in this document, *L. Lyrata* now occurs primarily in disturbed glade areas including cultivated fields and unimproved pastures. Thus, agricultural use and the survival of this species are not necessarily incompatible (Webb and Kral 1986). Periodic disturbance, such as by plowing in row crop farming, is needed to arrest succession and maintain populations of *Lesquerella lyrata* in this type of habitat. While the plant may survive under these conditions, populations may be impacted if plowing or herbicide treatment occurs in the spring prior to seed set and dispersal (mid-May). Populations located in pastures are enhanced by disturbance created from light grazing; however, if sites are heavily grazed, this could negatively impact plants by excessive soil compaction. Improvement of pastures with the introduction of forage grasses would eventually decimate populations due to competition (Kral 1983). Mowing along the roadside rights-of-way aids the species in seed dispersal; however, mowing and herbicide application prior to seed set pose a threat (Webb and Lyons 1984).

No site where *Lesquerella lyrata* occurs is protected. Thus, individual sites could be destroyed for developmental purposes as has been the case with other glade areas.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* This species is collected for scientific purposes; however, such does not pose a significant threat to this species at this time.

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms. Lesquerella lyrata* is unofficially considered endangered in the State of Alabama, although such designation does not afford this species any legal protection.

E. *Other natural or manmade factors affecting its continued existence.* The greatest threat to this species is its extreme vulnerability due to its limited range and small number of populations. Disturbance (natural or artificial) appears to be a key factor in the maintenance of *L. lyrata* (McDaniel 1987). Active management of sites will be required to perpetuate this species. Under natural conditions, *Lesquerella lyrata* is an early successional species that colonizes shallow cedar glade soils and then slowly disappears as the soil layer becomes further developed (E. Lyons, Amherst College, pers. comm. 1989). This species is a poor competitor and is eliminated by shade and competition from the invading perennials (Kral 1983, McDaniel 1987). Due to the continuing loss of cedar glades, presently available habitat for *L. lyrata* is limited primarily to areas modified by human activity. Current populations have declined in recent years due to succession from a lack of management/disturbance (Webb, pers. comm. 1989, McDaniel 1987). Periodic disturbance of habitat arrests succession and brings seeds to the surface which facilitates germination (Baskin, pers. comm. 1989, Webb and Lyons 1984). As with all annuals, this species' long-term survival is dependent upon its ability to reproduce and reseed an area every year. Thus, populations decline and move toward extinction if conditions remain unsuitable for reproduction for many years.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Lesquerella lyrata* as a threatened species. This species is not in imminent danger of extinction as current land use practices at the sites have perpetuated populations and no proposed activities are known which would suddenly change this situation. However, this species is extremely vulnerable due to its restricted range and protective measures are needed to assure this species' continued existence. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Publication of critical habitat maps will increase public interest and possibly lead to additional threats for this species from collecting and vandalism. This species occurs at a limited number of sites and all are easily accessible. Publication of critical habitat descriptions and maps would make *Lesquerella lyrata* more vulnerable and increase enforcement problems. All involved State agencies and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Lesquerella lyrata.*

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. 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 Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its

critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(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.

All known populations are under private ownership. The Environmental Protection Agency will consider this species relative to pesticide use.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, 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 this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection will apply to *Lesquerella lyrata* once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, VA 22201 (703/358-2104).

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 on October 25, 1983 (48 FR 49244).

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Webb D., and E. Lyons. 1984. Site survey summary on *Lesquerella lyrata.* Unpublished. 7 pp.

Webb D.H., and R. Kral. 1986. Recent collections and status of *Lesquerella lyrata* Rollins (Cruciferae). Sida 11:347-351.

Author

The primary author of this final rule is Cary Norquist (see **ADDRESSES** Section) 601/965-4900 or FTS 490-4900.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361-1407; 16 U.S.C 1531-1544; 16 U.S.C 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Brassicaceae, 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					
*	*	*	*	*	*	*
Brassicaceae—Mustard family:						
*	*	*	*	*	*	*
Lesquerella lyrata	Lyrate bladder-pod	U.S.A. (AL)	T	403	NA	NA
*	*	*	*	*	*	*

Dated: September 14, 1990.
Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 90-23043 Filed 9-27-90; 8:45 am]
BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Inflated Heelsplitter, Potamilus inflatus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the inflated heelsplitter mussel (*Potamilus inflatus*), to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This freshwater mussel is currently known from only the Amite River, Louisiana, and the Tombigbee and Black Warrior Rivers, Alabama. Habitat modification by gravel dredging and for flood control and navigation represent major threats to this species. This rule will implement the protection of the Endangered Species Act of 1973 for the inflated heelsplitter.

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: James H. Stewart at the above address, (telephone 601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The inflated heelsplitter was first described as *Symphynota inflata* by Lea in 1831. While the taxonomic status of this species has not been questioned in the literature, there has been considerable discussion of the genus. It has been placed in *Unio*, *Lampsilis*, *Metaptera*, *Margarita*, *Margaron*, and *Proptera*, in addition to the other names discussed here (Simpson 1914, Clarke 1986, Hartfield 1988). *Potamilus* is accepted as the correct generic name by numerous authors (Morrison 1969, Valentine and Stansbery 1971, Clarke 1986, Turgeon *et al.* 1988). The common name in general usage for this species has been the Alabama heelsplitter. This rule follows the common names as used in Turgeon *et al.* (1988) in support of the effort to standardize nomenclature of mussels.

The inflated heelsplitter was known historically from the Amite and Tangipahoa Rivers, Louisiana; the Pearl River, Mississippi; and the Tombigbee, Black Warrior, Alabama, and Coosa Rivers, Alabama (Hurd 1974, Stern 1976, Hartfield 1988). The presently known distribution is limited to the Amite River, Louisiana, and the Tombigbee and Black Warrior Rivers, Alabama (Stern 1976, Hartfield 1988). The collection of this species from the Pearl River by Hinckley was reported by Frierson (1911) and a single valve collected by Parker is curated in the U.S. National Museum (Dr. James Williams, U.S. Fish and Wildlife Service, pers. comm. 1988). There are no other reported collections from the Pearl River (Hartfield 1988). A single specimen was collected from the Tangipahoa River, Louisiana, in 1964 by Stein and Stansbery (Dr. David Stansbery, Ohio State University, pers. comm. 1985). Hartfield (1988) did not find the species in the Tangipahoa River during his survey. Hurd (1974) doubted the occurrence of this species in the Coosa River based upon the single lot available in museums. The species has not been reported from the Coosa or Alabama Rivers in over 20 years (Hurd 1974, Hartfield 1988).

The inflated heelsplitter has an oval, compressed to moderately inflated, thin shell. The valves may gape anteriorly, the umbos are low, and there is a prominent posterior wing that may extend anterior to the beaks in young individuals. The shell is brown to black and may have green rays in young individuals. The umbonal cavity is very shallow and the nacre is pink to purple. Shell length reaches 140 millimeters (5½ inches) in adults (Stern 1976). It is most similar to the pink papershell (*Potamilus ohioensis*), yet is easily distinguished by shell morphology (Hartfield 1988). The shell and teeth of the inflated heelsplitter are more delicate, and the shell is darker and has a pointed posterior, whereas the pink papershell has a rounded posterior. The inflated heelsplitter appears more inflated due to a more developed and rounded posterior ridge. The posterior wing of the inflated heelsplitter is more pronounced and abruptly rounded over the dorsum. The pink papershell may lack much of a wing, and when pronounced, it may be only slightly rounded and extend scarcely above the dorsum (Hartfield 1988). Lending further taxonomic strength to this species' distinction is the occurrence of the pink papershell in lakes and sloughs, while the inflated heelsplitter has not been found in this habitat.

The preferred habitat of this species is soft, stable substrates in slow to moderate currents (Stern 1976). It has been found in sand, mud, silt and sandy-gravel, but not in large gravel or armored gravel (Hartfield 1988). It is usually collected on the protected side of bars and may occur in depths over 20 feet. The occurrence of this species in silt may not indicate that the life cycle can be successful in that substrate (Hartfield 1988). Adult mussels may survive limited amounts of silt where juveniles would suffocate. The occurrence of this species in silt may be because it was established prior to deposition of the silt.

The inflated heelsplitter was listed as a category 2 candidate (a taxon for which data in the Service's possession indicate listing is possibly appropriate) in the notice of review published in the **Federal Register** on May 22, 1984 (49 FR 21664) and January 6, 1989 (54 FR 554). The proposal to list this species was published on October 27, 1989 (54 FR 43835), and a public hearing (held on March 14, 1989) and reopening of the comment period were announced on February 21, 1990 (55 FR 6020).

Summary of Comments and Recommendations

In the October 27, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period was reopened and extended until March 25, 1990, to accommodate the public hearing. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Montgomery Advertiser*, Montgomery, Alabama, on November 24, 1989; the *Baton Rouge Advocate*, Baton Rouge, Louisiana; the *Tuscaloosa News*, Tuscaloosa, Alabama; the *Mobile Press Register*, Mobile, Alabama; and the *Birmingham News*, Birmingham, Alabama, on November 25, 1989. The newspaper notice of the public hearing and reopening of the comment period was published in the *Baton Rouge Advocate*, *Mobile Press Register*, and the *Times Picayune*, New Orleans, Louisiana, on February 24, 1990, and in the *Tuscaloosa News* on February 25, 1990. Five comments were received and are discussed below. A public hearing was requested by the Warrior-Tombigbee Development Association. The hearing

was held at the Mississippi Natural Science Museum, Jackson, Mississippi, on March 14, 1990, with seven people attending. Comments were received from three individuals following a statement by the Service.

The Louisiana Department of Wildlife and Fisheries provided a letter in support of the proposal. One Federal agency provided information on hydropower plants without expressing a position on the proposal. A private company commented without stating a position. Two U.S. Army Corps of Engineers' offices commented by copy of memoranda sent to their Washington office. The Mobile District Corps of Engineers' office expressed support for protection of the species, while raising some concerns that are discussed below. The Lower Mississippi Valley Division, Corps of Engineers, did not express a position on the proposal while acknowledging that projects on the Amite River, Louisiana, will require coordination with the Service.

Written comments and oral statements presented at the public hearing and received during the comment periods are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues and the Service's response to each are discussed below.

Issue 1: Is the data adequate to support the listing and should listing be deferred while more data is acquired?

Response: The listing is based upon literature records, a Service contracted survey, and surveys by Service biologists of mussels in all the major river systems of Alabama, Louisiana, and Mississippi. The Service does not believe that additional populations will be found outside the river systems from which the species is currently known. To defer the listing will only defer protection of the species.

Issue 2: One commenter questioned if the data supported the Service's contention that habitat modification is a result of gravel dredging, flood control and major navigation projects and that these factors represent major threats to the existence of the inflated heelsplitter.

Response: The removal of substrate by gravel dredging, flood control and maintenance for navigation permanently alters the habitat and frequently renders it unsuitable for mussels. Numerous studies have demonstrated that riverine mussels cannot survive in impoundments, many of which are for flood control and navigation. The deposition of spoil from channel maintenance for navigation will suffocate mussels (U.S. Army Corps of Engineers 1987). The entire Amite River is subject to gravel dredging and impacts from flood control projects (Hartfield 1989). The lower Tombigbee River is almost continually dredged for channel maintenance with much of the spoil disposal occurring within the river banks. This results in mussels being covered with sediment and suffocated (U.S. Army Corps of Engineers 1987). The construction of numerous impoundments on the Alabama, Tombigbee, Black Warrior, and Coosa Rivers has resulted in a decline in many species of riverine mussels as evidenced by numerous surveys.

Issue 3: The Service should sample to determine if effluents below Tombigbee River Mile 74 are the reason mussels are not present.

Response: The proposed and final rules state that mussels were not found downstream of this site and this was possibly due to effluent discharge. The absence of mussels is supported by field survey results. The cause for this lack of mussels is presented as an observation and possibility rather than a fact supported by data. The Service agrees that sampling to determine why mussels no longer occur in that area would be desirable.

Issue 4: The Service should defer listing while additional information is gathered or consider some reasonable and prudent alternatives to listing.

Response: The Service has reviewed available scientific and commercial data relevant to this species and considers it sufficient to make a determination. The Service could not find an alternative to listing that would protect this species, nor has anyone else proposed such an alternative.

Issue 5: Has the proposed rule been reviewed by individuals outside the Service to ensure the determination will be unbiased?

Response: A notice of intent to propose this species for listing, dated June 6, 1989, was provided to Federal and State agencies that could have projects that may affect this species. After publication, the Service provided a copy of the proposed rule to more than 100 agencies, organizations, and individuals and published a legal notice in several local newspapers to notify the public. All resulting comments were fully considered.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the inflated heelsplitter should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the inflated heelsplitter are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The inflated heelsplitter historically occurred in the Amite and Tangipahoa Rivers, Louisiana; the Pearl River, Mississippi; and the Tombigbee, Black Warrior, Alabama, and Coosa Rivers, Alabama (Hurd 1974, Stern 1976, Hartfield 1988, 1989). It is currently known from only the Amite, Tombigbee and Black Warrior Rivers. Only one specimen has been collected from the Tangipahoa River, and in a recent survey by Hartfield (1988) no additional specimens were found. Hartfield found the upper Tangipahoa River to be much smaller than areas where this species occurs in other rivers. The stretch of the Tangipahoa River where the one specimen was collected has been severely eroded in recent years, pesumably by gravel mining (Hartfield 1988).

The inflated heelsplitter has been reported from two areas on the Pearl River, Mississippi. One site was in the lower Pearl downstream of Bogalusa, Louisiana (Williams, pers. comm. 1988) and the other site was near Jackson, Mississippi (Frierson 1911). The exact collecting site is unkown for both of these records. The Pearl River near Jackson has been impacted by pollution, channelization, flood control levees, and by an impoundment for recreation and a municipal water supply. The lower Pearl River near Bogalusa has been impacted by channel erosion, habitat modification for navigation, and industrial and urban pollution (Hartfield 1988). Based upon the scarcity of records from the Coosa River, Hurd (1974) doubted the historic occurrence of this species in that system. It has not been reported from that system since the construction of impoundments for flood control and hydropower.

The type specimen was reported from the Alabama Rvier by Lea (1831) and the species has been reported from this same river by others (Conrad 1834, Simpson 1914). However, it has not been collected from the Alabama River in many years, presumably due to the impoundment of that system for navigation, flood control, and hydropower (Hartfield 1989).

The only known site for this species in the Black Warrior River is below Selden (=Warrior) Dam near Eutaw, Alabama. A single sepcimen was collected by Grace in the mid-1970's (Williams, pers. comm. 1985). A survey by Service divers in 1989 found two fresh dead shells but no live individuals. The species undoubtedly continues to survive in the Black Warrior River below Selden Dam. The remainder of the Black Warrior River has been impacted by impoundment for navigation and sedimentation from surface mining.

The species continues to survive in the Tombigbee River in at least two localities, Gainesville Bendway and downstream of Coffeeville (=Jackson) Dam. Most of the Tombigbee River was modified by construction of the Tennessee-Tombigbee Waterway. This resulted in the loss of riverine habitat by impoundment, channelization, and flow diversion. Habitat that was originally believed would continue to support mussel populations has been destroyed by heavy accumulations of sediment. The only known population of the inflated heelsplitter in the Waterway is below Gainesville Spillway where the normal river flow, with the exception of navigation lockages, is released from this impoundment (Paul Hartfield, Mississippi Department of Wildlife Conservation, pers. comm. 1989). This has maintained a relatively clean and stable habitat suitable to this species.

The only other known population in the Tombigbee River occurs downstream of Coffeeville Dam. In this stretch, the species has been collected by Service and Mississippi Department of Wildlife Conservation biologists at four sites over a 12 river mile area. Below the lowermost of these collecting sites, no mussels were found by surveys in 1985 and 1986 by Service and Department biologists, possibly due to impacts from industrial effluents. The entire Tombigbee River has been modified for navigation by impoundment and channelization, and frequent dredging is required to maintain the navigation channel. Navigation dredging threatens this population by the deposition of spoil on bars along the sides of the river channel (Hartfield 1988). This material washes onto mussel habitat below the bars and may suffocate mussels and make conditions unfavorable for recruitment.

The inflated heelsplitter continues to exist in the Amite River with major threats being gravel mining and proposed channel modification for flood control. Hartfied (1989) concluded that 30 percent of the range of this species in the Amite River had been lost since 1976, primarily due to gravel mining. Without protection, this loss is expected to continue with the intensive gravel mining and resulting headcutting that is ongoing. The Corps of Engineers and Louisiana Department of Transportation and Development are studying methods of flood control on the Amite River. The proposed Darlington Reservoir would be constructed upstream of existing inflated heelsplitter habitat and the actual impoundment of the stream may not impact this population of the species. The impact of this reservoir will likely be determined by the type and method of water releases. A deep water release would result in colder water temperatures, which may interrupt the life cycle of this mussel. The control of water flows, especially during low water levels, could strand mussels on dry bars and may reduce the capacity of the river to flush sediments from mussel habitat. An alternative flood control measure under consideration is the widening and channelization of the Amite River. This potential action would likely eliminate the inflated heelsplitter from the Amite River, leaving the only population in the Tombigbee and Black Warrior system.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The species is not of commercial value at this time and any collecting is likely to be for scientific purposes. Over collection is not considered a threat

C. *Disease or predation.* Diseases are not known for mussels, although unexplained dieoffs, have occurred. Predation may exist to a limited extent when muskrats and raccoons prey on mussels. This would have a minimal effect since this species seems to prefer deeper water.

D. *The inadequacy of existing regulatory mechanisms.* Existing laws are inadequate to protect this species. It is not recognized by Alabama or Louisiana as needing any special protection. Both States have regulations that protect mussels that are federally listed. The species is not given any special consideration under other environmental laws when project impacts are reviewed.

E. *Other natural or manmade factors affecting its continued existence.* The known populations are isolated from each other and apparently are limited in extent. This could result in low genetic variation and make these populations more susceptible to environmental disturbance due to loss of adaptability.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the inflated heelsplitter as threatened. Threatened status was chosen because the species still exists in three rivers, and the range within two of these rivers consists of reproducing populations that are widely distributed.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time due to the lack of benefit from such designation. All Federal and State agencies likely to be involved have been notified of the location and importance of protecting this species' habitat. No additional benefits would accrue from a critical habitat designation that would not accrue from the listing. Precise locality data are available to appropriate agencies through the Service office described in the **ADDRESSES** section. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it is not prudent to declare critical habitat for the inflated heelsplitter.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

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

402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement is expected to include the Environmental Protection Agency in consideration of the Clean Water Act's provisions for pesticide registration, and waste management actions. The Corps of Engineers will include this species in project planning and operation and during the permit review process. The Federal Highway Administration will consider impacts of bridge and road construction at points where known habitat is crossed. Continuing urban development within the drainage basins may involve the Farmers Home Administration and their loan programs.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

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).

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Author

The primary author of this rule is James H. Stewart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "CLAMS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
*	*	*	*	*	*	*	
Heelsplitter, inflated	*Potamilus inflatus*	U.S.A. (AL, LA, MS)	NA	T	404	NA	NA
*	*	*	*	*	*	*	

Dated: September 24, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-23044 Filed 9-27-90; 8:45 am]

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Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-90-2059; FR-2697-N-04]

Lead-Based Paint; Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On April 18, 1990, the Department published in the Federal Register (55 FR 14556) "Lead Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing" (Interim Guidelines), providing information regarding the identification and abatement of lead-based paint in the Public and Indian Housing programs of the Department of Housing and Urban Development. Today's Notice publishes a revised chapter 8, "Worker Protection", intended to replace chapter 8 of the Interim Guidelines.

EFFECTIVE DATE: September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Director, Project Management Division, Office of Public and Indian Housing, room 4136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (202) 708-1800. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: A history of recent departmental regulatory actions and publications associated with Lead-Based Paint Poisoning Prevention was included in the initial issuance of the Interim Guidelines, published on April 18, 1990 (15 FR 14556).

Today's document is limited to publication of a revised chapter 8 of the Interim Guidelines, together with information concerning the Department's plans to distribute copies of the revised Interim Guidelines to all Public Housing Agencies and Indian Housing Authorities, and to HUD Regional and Field Offices.

In the Interim Guidelines, the original chapter 8 prescribed two standards for the monitoring of worker blood lead levels and for the medical removal of workers:

	OSHA standard	HUD working group standard
8.3.3 Monitoring Worker Blood Lead Levels.	*40 μg/dl	25 μg/dl
8.3.4 Medical Removal of Workers.	50 μg/dl	30 μg/dl

*μg/dl—micrograms of lead per deciliter of whole blood.

The original publication of the Interim Guidelines erroneously attributed the above-noted "HUD Working Group" standards to the National Institute of Occupational Safety and Health (NIOSH) rather than to the working group in the field of lead based paint and lead poisoning that was actually responsible for the standard.

Provision of alternative standards, however, creates an ambiguity in the Interim Guidelines where explicit direction would better serve the purpose of the document. Following extensive discussions between representatives of the original HUD Working Group and the Occupational Safety and Health Administration (OSHA), it was agreed that revisions to chapter 8, setting out a single standard and new guidance concerning the use of full worker protection, including respirators, were appropriate.

In addition to the republications, with changes, of chapter 8 as described above, the Department has made minor technical and typographical changes to the Interim Guidelines and plans to distribute the document to all Public Housing Agencies, Indian Housing Authorities, and HUD Regional and Field Offices during October, 1990.

After October 31, 1990, other members of the public may obtain a copy of the revised Interim Guidelines by writing to: HUD USER, P.O. Box 6091, Rockville, MD 20850. or by telephoning (301) 251-5154, or the toll-free number, 1-800-245-2691.

A supplement to the Finding of No Significant Impact with respect to the environment related to the Interim Guidelines has been made following an environmental assessment in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. This supplement and the original Finding of No Significant Impact is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Dated: September 25, 1990.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

Chapter 8: Worker Protection

8.0 Introduction

The potential for exposure to lead exists during all lead-based paint abatement projects. Employees can also be exposed to potential hazards from many other chemicals and physical agents. This chapter focuses on providing recommendations that will assist the contractor in establishing programs to protect employees from the hazards of lead. The guidelines in this chapter are intended to provide, at a minimum, the level of protection afforded by the Occupational Safety and Health Administration's (OSHA) general industry lead standards, 29 CFR 1910.1025, although this standard does not apply to construction (abatement) workers. This does not restrict employers from implementing additional controls or measures that would provide increased protection for their employees. Because of the unique circumstances of the abatement industry, the recommendations which follow differ somewhat from the lead standard. Most importantly, these Guidelines recommend that workers potentially exposed to lead must use respiratory protection and follow safe work practices. Employees are always potentially exposed whenever they are engaged in lead abatement work including operations associated with the clean-up, removal or disposal of lead dust. (See § 8.3.2 for additional guidance)

The most effective way to protect workers is to minimize exposure through the use of engineering controls and good work practices. Respirators should not be relied upon as the sole method of protection. Airborne lead exposure levels during lead-based paint removal operations have not been well documented in scientific literature. Lead poisoning in workers performing lead-based paint abatement procedures has been well documented. Most cases are the result of improper abatement methods and poor work practices.

The employer of abatement workers is responsible for the development and implementation of worker protection programs. These programs are essential in minimizing worker risk of lead exposure. Lead-based abatement projects vary in their scope and potential for exposing workers to lead and other hazards. Many projects may involve limited abatement, such as the

removal of a few interior doors. Others may involve the removal, or stripping off, of substantial quantities of lead-based paints in large housing developments. The PHA should consult a qualified consultant to develop and implement an appropriate worker protection program.

At least two States, Maryland and Massachusetts, have modified OSHA's general industry lead standard specifically for workers in the construction trades. Employers will need to ensure that their programs meet the requirements for those States having specific standards covering lead in the construction industry.

In general, the following elements should be included in the employer's written employee protection plan. These elements can be found, as *major provisions*, in the OSHA general industry lead standard.

Note: Employers can refer directly to the OSHA lead standard, 29 CFR 1910.1025 for complete requirements.

- Engineering controls and good work practices;
- Medical surveillance and provisions for medical removal;
- Protective clothing and equipment;
- Respiratory protection program;
- Exposure monitoring;
- Recordkeeping;
- Hygiene facilities and practices; and
- Training (See section 5.7)

8.1 Engineering and Work Practice Controls

Engineering controls, where feasible, and good work practices must be used to minimize employee exposure to lead. Engineering controls and good work practices help protect the environment and occupants of adjacent units, and they make cleanup an easier task. (See chapter 10)

Some examples of good engineering and work practice controls are:

- Following the personal hygiene practices described in section 5.7.2;
- Prohibiting unacceptable methods of abatement such as open flame burning and machine sanding without attached HEPA filtration;
- Providing on-site washing facilities and segregated areas free from active abatement of lead for changing clothes;
- Shutting down of forced-air systems and sealing of all intake and exhaust points in the work area and providing alternate sources of heat, if necessary;
- Daily cleanup procedures; and
- Spray misting of dry debris before cleanup and prohibition of dry sweeping.

8.2 Respiratory Program Requirements

Respirators must be worn by all workers potentially exposed to lead. (Any worker present on an abatement site at any time prior to completion of post-abatement cleanup is potentially exposed to lead.) This practice should supplement the continued use of engineering controls and good work practices. Employers must assure that the respirator issued to the employee exhibits minimum face piece leakage and that the respirator is fitted properly. Respirators must be supplied by the employer at no cost to employees. Employers must perform qualitative or quantitative face fit tests at the time of the initial fitting and at least semiannually thereafter for employees wearing negative pressure respirators.

8.2.1 Respirator Program Requirements

The OSHA respiratory protection standard 29 CFR 1910.134 outlines the requirements for a minimally acceptable program of respiratory protection. When respirators are provided, the employer must establish a respiratory protection program in accordance with the OSHA standard 29 CFR 1910.134 (b), (d), (e) and (f) and the OSHA lead standard 29 CFR 1910.1025.

OSHA's respiratory protection standard requires a minimally acceptable respiratory protection program to include the following elements:

- Written standard operating procedures governing the selection and use of respirators must be established;
- Respirators must be selected on the basis of hazards to which the worker is exposed;
- The user must be instructed and trained in the proper use of respirators and their limitations including fit testing;
- Respirators must be regularly cleaned and disinfected;
- Respirators used routinely must be stored in a convenient, clean, and sanitary location;
- Respirators used routinely must be inpected during cleaning for worn and deteriorated parts;
- Respirators should be assigned to workers for their exclusive use;
- Appropriate surveillance of work area conditions and degree of worker exposure or stress must be maintained;
- There must be regular inspection and evaluation to determine the continued effectiveness of the program;
- Employees should not be assigned tasks requiring the use of respirators unless it has been determined that they are physically able to perform the work and use the equipment. A physician must determine through a medical examination the respirator user's medical status and review it annually.
- NIOSH/MSHA approved respirators must be used when they are available. The respirator furnished must provide adequate respiratory protection against lead or other hazards for which it is designed.

8.2.2 Respiratory Selection

In the absence of hazardous contaminants other than lead, the half-mask, air-purifying respirator with HEPA filters should be adequate for most abatement situations to maintain low blood lead levels. (A HEPA filter is one that is at least 99.97% efficient against monodispersed particles that are 0.3 micron in diameter or larger.) There may be certain operations or conditions, however, where air monitoring results indicate that a more protective respirator is needed. Employers should refer to Table II of the general industry lead standard for the proper selection of respirators. Powered air-purifying respirators can be substituted if the employee chooses to use this type of respirator.

In addition, if exposure monitoring indicates airborne exposure to other contaminants, such as solvents, re-evaluation of the respirator type is warranted. Re-evaluation of the respirator program and type is also indicated when a worker demonstrates a continued increase in blood lead levels.

The employer must permit each employee who uses a filter respirator to change the filter element whenever an increase in breathing resistance is detected and must maintain an adequate supply of filter elements. Employers must also permit every employee who wears a respirator to wash their face and respirator face piece whenever necessary to prevent skin irritation associated with respirator use.

If for any reason, a worker's breathing becomes difficult while wearing a respirator, that employee should leave the work site to change respirator cartridge(s). Respirator cartridge(s) should be changed whenever the wearer has difficulty breathing or when there is chemical vapor breakthrough.

8.3 Protective Clothing and Equipment

Good industrial hygiene practice requires the employer to provide and assure that employees use protective clothing and equipment. Use of protective clothing and equipment helps to reduce employee exposure to lead dust and prevents the transfer of such dust from the abatement work area to

other work areas or environments (e.g., homes and vehicles).

Protective clothing and equipment must be used whenever the potential for lead exposure occurs. The pilot abatement program will determine whether or not additional specialized protective items will be required during the remainder of the abatement process to protect against lead poisoning. Protection against the adverse effects of solvents and caustics may also be required. The employer is responsible for:

- Providing and assuring use of appropriate protective clothing and equipment;
- Providing a clean changing area (this is an area segregated from the work area by a physical barrier and which prevents additional employee lead exposure);
- Providing water for washing hands and face and providing shower facilities if possible;
- Enforcing the removal of protective clothing at the end of each work day and before eating, drinking, or smoking;
- Provide for the cleaning, laundering or disposal of protective clothing and equipment; and
- Informing the worker about proper use and maintenance of clothing and equipment.

8.3.1 Types of Protective Clothing and Equipment

The following protective work clothing and equipment may be required during abatement, cleanup, and disposal:

- Protective coveralls;
- Disposable shoe covers;
- Gloves;
- Vented goggles and face shields;
- Respirators and cartridges;
- Hats or other hair protection.

Protective coverall and shoe covers constitute basic worker protection gear and should be worn at all times. Disposable coveralls and separate shoe covers are preferred to avoid the need for laundering. Separate shoe covers allow the worker to leave and re-enter a work area and merely replace his/her shoe covers rather than the coveralls as well. Thus coveralls need to be replaced daily rather than each time the worker leaves and re-enters a work area.

Disposable items can be either breathable or non-breathable. Non-breathable coveralls should not be used when the possibility of heat stress exists. The possibility of heat stress and its signs and symptoms should be discussed with all workers.

Glove material should be appropriate for the specific chemical exposure (e.g., solvents and caustics). Cotton gloves provide some protection against the contamination of hands and cuticles with lead dust. Paper suits and shoe covers are not appropriate for wet abatement processes.

8.3.2 How to Use Protective Clothing and Equipment

Workers should follow these procedures before work begins:

- Change into work clothing and shoe covers in the clean section of the designated changing areas;
- Use work garments of appropriate size, and use duct tape to reinforce their seams (e.g., underarm, crotch, and back);
- Select and wear appropriate protective gear, including respirators and hard hats, before entering the work area;
- Store any clothing not worn under protective clothing in the designated changing area; and
- Wear clothing that is appropriate for existing weather and temperature conditions under the protective clothing.

Workers should follow these procedures upon leaving the work area:

- HEPA vacuum heavily contaminated protective work clothing while it is still being worn;
- Remove shoe covers and leave them in the work area;
- Remove protective clothing and gear in the dirty area of the designated changing area. Remove protective coveralls by carefully rolling down the garment to reduce exposure to dust;
- Remove respirators last; and
- Wash hands and face.

Workers should follow these procedures upon finishing work for the day (in addition to procedures described above):

- Place disposable coveralls and shoe covers with the abatement waste;
- Place clothes for laundering in a closed container;
- Clean protective gear, including respirators, according to standard procedures;
- Wash hands and face again;
- If showers are available, take a shower and wash hair; and
- If shower facilities are not available at the work site, shower immediately at home and wash hair.

8.4 Hygiene Facilities and Practices

For employees who work in areas where their skin or clothing comes into contact with fume, dust, mist or liquids containing lead, the precautions below must be rigidly followed.

- The employer must provide clean change areas with separate storage facilities for protective work clothing and equipment and for street clothes. If possible, employers should ensure that all employees shower at the end of each shift and do not wear work clothing away from the workplace.
- The employer must ensure that employees who work with lead remove their protective clothing and wash their hands and face prior to eating, drinking, smoking or applying cosmetics and that these personal practices are never permitted while in the work area.
- The employer must ensure that contaminated protective work clothing or equipment is cleaned of surface dust by HEPA vacuuming, down draft booth, or other cleaning method before employees leave the work area.

8.5 Medical Surveillance

- Medical surveillance, which consists of biological monitoring of worker blood lead levels and medical examinations, must be implemented for all employees who are potentially exposed to lead. One purpose of biological monitoring is to establish baseline blood lead levels in workers and to detect early increases in worker blood lead levels. Medical examinations, including collection of blood samples, must be performed by, or under the supervision of, a licensed physician. The specific content of the exam must be determined by the examining physican.

The employer must notify employees in writing of their blood lead levels. If the employees' blood lead levels exceed the numerical criterion for medical removal, they are qualified for temporary medical removal with protection benefits.

Medical surveillance must be provided to employees at no cost and at a reasonable time and place. The following subsections describe the current practices for medical surveillance for lead.

8.5.1 Preplacement Medical Examination

Before abatement work and before respirator fit testing, workers must be referred to a physician for a medical examination.

8.5.2 Periodic Medical Examination

A periodic medical examination must be provided at least annually to all employees for whom a blood sampling test conducted any time during the preceding 12 months indicated a blood lead level at or above 40 μg of lead per deciliter of whole blood (often referred to as 40 μg/dl). The following conditions necessitate more frequent medical examinations:

• As soon as possible after a worker notifies the employer that he or she has signs or symptoms associated with lead toxicity;

• Whenever the worker desires medical advice concerning the effects of current or past exposure to lead;

• Whenever workers seek medical advice concerning the effects lead exposure can have on the ability to procreate a healthy child;

• Whenever workers show difficulty in breathing during a respirator fit test or during respirator use;

• As medically appropriate for workers who were removed due to lead exposure; and

• Immediately upon notification that a worker is pregnant.

8.5.2.1 Other Blood Lead Trigger Levels

The 40 μg/dl medical removal level contained in these Guidelines was taken from the OSHA's general industry standard for lead, which was promulgated in 1978. Although not recommended by these Guidelines, some authorities believe that medical removal should take place at lower levels. The City of Baltimore requires the removal of workers whenever three blood sampling tests average more than 25 μg/dl or a single test exceeds 30 μg/dl. The National Institute of Building Sciences project task force on lead paint abatement recommended adoption of the Baltimore medical removal standards. In a related development, the Association of State and Territorial Epidemiologists has recently recommended that occupational lead levels above 25 μg/dl be considered a reportable disease. PHAs therefore should be aware that recommendations regarding medical removal may change in the future.

8.5.3 Physical Examinations

Medical examinations must include the following:

• A detailed work and medical history that pays particular attention to past lead exposure and past gastrointestinal, hematologic, renal, cardiovascular, reproductive, and neurological problems as well as personal habits such as smoking and hygiene;

• A thorough physical examination that pays particular attention to teeth, gums, and hematologic, gastrointestinal, renal, cardiovascular, and neurological systems;

• Evaluation of pulmonary status to determine whether the worker is capable of wearing a respirator;

• A blood pressure measurement;

• A blood sample and analysis that determines blood lead levels, hemoglobin and hematocrit, red cell indices, peripheral smear morphology, blood urea nitrogen, serum creatinine, and zinc protoporphyrin;

• A routine urinalysis with microscopic examination;

• Pregnancy testing, or labortory evaluation of male fertility, if requested by a worker.

• Any laboratory or other test which is recommended by the examining physician.

8.5.4 Special Provisions for Blood Lead Monitoring

Blood lead and zinc protoporphyrin must be monitored when the following conditions occur:

• At least every 2 months during the first 6 months, and every 6 months thereafter;

• At least every 2 months for each worker whose last blood sampling and analysis indicated a lead level at or greater than 40 μg/dl. Continue testing at least every 2 months until two consecutive tests indicate blood lead levels less than 40 μg/dl.

• At least monthly when the worker has been medically removed.

When the results of the above sampling indicate that the employee's blood lead level exceeds the criterion for medical removal, a second follow-up blood sampling test must be administered within 2 weeks after the employer receives the results of the first test.

Analysis of blood samples must be conducted by a laboratory approved by OSHA. Employers should contact their local OSHA area office for a current list of approved labs.

8.5.5 Written Medical Opinion

Employees must receive a copy of a written medical opinion from each physician consulted containing the following information:

• Whether the employee has any detected medical condition which would place his/her health at increased risk from lead exposure;

• Any special protective measures or limitations on worker's exposure to lead;

• Any limitation on respirator use, including whether a powered air purifying respirator can be worn if a physician determined that a negative respirator could not be worn; and

• Results of blood lead determinations. The employer must implement and act consistent with these recommendations.

Findings of lab results or diagnoses unrelated to the workers exposure to lead should not be communicated to employers or included in a written opinion.

Employees should be advised by each physician of any medical condition, occupational or non-occupational, which necessitates further medical exam or treatment.

8.5.6 Information Provided to Examining Physician

The following information must be provided to the examining physician:

• Copy of the standard (29 CFR 1910.1025) and appendices;

• Description of worker's duties as it relates to his/her exposure;

• Exposure level or anticipated exposure level to lead;

• Personal protective equipment used or expected to be used;

• Prior blood lead determinations; and

• Any written medical opinions that the employer has or is in his control concerning a worker.

8.5.7 Chelation

No employees must be subjected to prophylactic chelation at any time. If therapeutic or diagnostic chelation is to be performed, the employer must assure that it be done under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring and that each employer is notified in writing prior to its occurrence.

8.6 Medical Removal Protection

Medical removal is designed to give employees time to reduce blood lead levels. With good engineering, work practices, personal hygiene, and respiratory protection practices in place, very few employees should reach removal trigger levels. There are different types of removals. While employees are removed, they must be placed in jobs that will not result in additional exposure to lead. Removal from lead exposed occupations is triggered by results of employee blood testing or a physician's orders (see sections 8.6.3 through 8.6.5).

The PHA should refer to OSHA's general industry standard for lead, reference 29 CFR 1910.1025(k), for complete guidance on this subject.

8.7 Exposure Monitoring

Lead presents an insidious exposure hazard to workers. Airborne levels capable of causing permanent harm may not be visible to the eye. An initial determination must be made by the employer. The initial determination is an evaluation to determine whether employees are potentially exposed to lead. The goal is to establish the level of exposure expected. PHA's may rely on information collected during "Pilot

Abatement Projects" described in section 6.3.2. Indications of possible overexposure to lead, such as employee health complaints, prior abatement experience, and prolonged or intense lead-based paint removal, should lead to an initial monitoring of the workplace. If exposure monitoring is conducted as part of the initial determination, it may be limited to a representative sample of exposed employees who the employer reasonably believes are exposed to the greatest airborne concentrations of lead in the workplace. Written records of these monitoring results should include exposure levels, sampling data, location within the worksite, and the name and social security number of each employee monitored.

If the initial monitoring reveals employee exposure to be at or below 30 μg of lead per cubic meter of air, the measurements need not be repeated unless a production, process, control or work practice change occurs. But if the initial determination or subsequent monitoring reveals employee exposure at or above 30 μg but below 50 μg of lead per cubic meter of air, the employer must repeat monitoring at least every six months. On the other hand, if this initial monitoring indicates lead levels above the 50 $\mu g/m^3$ level, this monitoring should be repeated quarterly.

Exposure monitoring results are to be used by employers for selecting the appropriate respiratory device and in determining the need for engineering controls. Exposure monitoring can also assist employers in identifying sources of exposure and the need for modifying abatement practices, including the need for additional engineering controls to reduce exposure. Since respirator protection is necessary for all workers potentially exposed to lead, an increase in blood lead levels could indicate improper use or selection of respirators or poor work practices (e.g., ingestion and/or inhalation of lead from contaminated clothes or hands).

Qualified safety and health consultants should review the exposure monitoring results and recommend an appropriate course of action. Within five working days after the receipt of monitoring results, the employer must notify each employee, in writing, of the results which represent that employee's exposure and a description of any corrective actions to be implemented.

Exposure to lead in the air can be monitored by measuring the concentration of lead in the breathing zones of workers (this is known as personal sampling). Full shift (for at least 7 continuous hours) personal samples should be taken.

Technical Note: The employer must use a method of monitoring and analysis which has an accuracy (to a confidence level of 95%) of not less than plus or minus 20% for airborne concentrations of lead equal to or greater than 30 μg per cubic meter of air.

8.8. Employee Information and Training

The employer of abatement workers must institute a training program for and assure participation of the workers who are subject to exposure to lead or for whom the possibility of skin or eye irritation exists.

The employer must assure that each employee is informed of the following:

- The content of the OSHA lead standard 29 CFR 1910.1025 and its appendices.
- The purpose, proper selection, fitting, use, and limitations of respirators.
- The purpose and a description of the medical removal protection program, including information concerning the adverse health effects associated with excessive exposure to lead with particular attention to the adverse reproductive effects on both males and females.
- The hazards to the fetus and additional precautions for employees who are pregnant.
- Engineering controls and work practices associated with the employee's job assignment.
- The content of any compliance plan in effect.
- Instructions to employees that chelating agents should not routinely be used to remove lead from their bodies, and should not be used at all except under the direction of a licensed physician.

8.9 Recordkeeping

The purpose of recordkeeping is to comply with any applicable local, State, and Federal regulations, and to document ongoing exposure and medical monitoring of workers. The abatement contractor or PHA, if force account labor is used, is responsible for maintaining written records of exposure monitoring, medical surveillance, and medical removal.

8.9.1 Exposure Monitoring

Exposure monitoring records should contain the following information:

- Dates, number, duration, location, and results of each sample taken;
- A description of the sampling procedures used to determine representative employee exposures;
- A description of the sampling and analytical methods used and evidence of their accuracy;
- The type of respirator worn;
- The worker's name, social security number, and job classification of employee monitored, and of all other employees whose exposure the measurement is intended to represent; and
- Environmental variables that could affect measurement of the worker's exposure (e.g., temperature and humidity).

Exposure monitoring records should be maintained by the employer for 40 years or for the duration of employment plus 20 years, whichever is longer.

8.9.2 Medical Surveillance Records

Medical surveillance records must include:

- The worker's name, social security number, and a description of duties;
- A copy of the physician's written opinions;
- Results of any airborne exposure monitoring done for that worker and the representative exposure concentrations supplied to the physician;
- Medical complaints related to lead exposure;
- A copy of the medical exam results, including medical and work history and a description of laboratory procedures;
- A copy of standards or guidelines used to interpret the test results; and
- A copy of the results of any biological monitoring.

Medical surveillance records should be maintained for 40 years or for the duration of employment plus 20 years, whichever is longer.

8.9.3 Medical Removal Records

Medical removal records should include the following information:

- The name and social security number of the worker;
- The date of each occasion that the worker was removed from current exposure to lead;
- The date on which the worker was returned to his or her former job status;
- A brief explanation of how each removal was or is being accomplished; and
- A statement indicating whether or not the reason for the removal was an elevated blood lead level.

These records should be maintained for at least the duration of any worker's employment.

8.9.4 Availability

All records must be made available upon request to the Assistant Secretary of Labor for OSHA and the Director of NIOSH for examination and copying.

Additionally the employer must do the following upon request:

• Make environmental monitoring, biological monitoring, and medical removal records available to affected employees, former employees, or authorized employees for examination and copying; and

• Making employee's medical records available to affected employee or authorized employee or to a physician or other person designated by such affected employee or authorized employee for examination and copying.

8.9.5 Transfer of Records

Whenever the employer ceases to do business, the successor employer must receive and retain all records required to be maintained. When the employer ceases to do business and there is no successor employer to receive and retain the records, these records must be transmitted to the Director of NIOSH.

At the expiration of the retention period for the records required to be maintained, the employer must notify the Director of NIOSH at least 3 months prior to the disposal of such records and must transmit those records to the Director of NIOSH if requested within the period.

Other Employer Requirements

In addition to the lead standard, there are many standards that abatement employers must comply with. These standards are enforced by OSHA. They are:

• 29 CFR 1926.20—General safety and health provisions;

• 29 CFR 1926.21—Safety training and education;

• 29 CFR 1925.25—Housekeeping;

• 29 CFR 1926.28—Personal Protective Equipment

• 29 CFR 1926.51(f)—Washing facilities;

• 29 CFR 1926.55—Gases, vapors, fumes, dusts, and mists;

• 29 CFR 1926.57—Ventilation;

• 29 CFR 1926.59—Hazardous Communication Standard;

• 29 CFR 1926.103—Respiratory protection; and

• 29 CFR 1926.353(c)—Ventilation: Welding, cutting, or heating of metals of toxic significance.

Copies of these standards are available from OSHA.

One very important standard that all employers are required to meet is OSHA's Hazard Communication Standard, 29 CFR 1926.59. The standard states that workers have the right to know what hazards they will be exposed to, what precautions to take, and what sources of information are available to them. The standard also requires employers to have a written hazard communication program for their workplaces. An example of a PHA hazard communication program is provided in appendix 10.

All worker education programs must discuss and make available the Hazard Communication Standard. It is also recommended that workers be provided with a copy of chapter 8 of these Guidelines (Worker Protection). Employers should also check local requirements, as some States have adopted their own right-to-know regulations.

OSHA standard, 29 CFR 1910.20, Access to Employee Exposure and Medical Records, requires that workers be given access to their medical and exposure records and to results from any studies conducted by the employer. The worker can also request an explantion of what his or her medical records mean. In addition, the standard gives workers the right to examine industrial hygiene sampling information, results of biological monitoring, exposure records, and material safety data sheets.

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Part X

Environmental Protection Agency

40 CFR Part 721

Proposed Significant New Uses of Certain Chemical Substances

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50584; FRL-3768-8]
RIN 2070-AB27

Proposed Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs), and are subject to TSCA section 5(e) consent orders issued by EPA. This proposal would require certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be submitted to EPA by October 29, 1990.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room E-105, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for each of the new chemical substances covered in this SNUR is OPTS-50584, followed by the last four digits of the number of the proposed CFR section covering that chemical substance. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit VIII. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first SNURs issued under the Expedited Follow-Up Rule and published at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(d)(1) and 5(b), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

III. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for the following chemical substances under § 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), the effective date of the 5(e) order, toxicity of concern, any recommended tests identified in the section 5(e) order, and the CFR citation assigned in the regulatory text section of this rule. In addition, the basis for each section 5(e) order is a finding under section 5(e)(1)(A)(i) and (ii)(I) of TSCA that these substances may present an unreasonable risk of injury to human health and the environment. To determine what would constitute significant new uses of these substances, EPA considered relevant information about the toxicity of the substances, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA.

The specific uses which are proposed to be designated as significant new uses are cited in the regulatory text section of this rule. The requirements specified by these citations will be found in 40 CFR 721.50 through 91, subpart B of part 721. Subpart B was published in the Federal Register of July 27, 1989 (54 FR 31298).

EPA previously proposed a SNUR for the chemical substance submitted as P-83-237 (49 FR 4390 on February 6, 1984) but is reproposing here because EPA and the submitter of the PMN have modified the terms of the consent order. EPA and the submitter of P-83-1162, P-83-1163, P-84-1219, P-85-36, P-85-236, P-85-706, P-85-1164, and P-88-338, have also modified the terms of the respective consent orders. Comments regarding the proposed SNURs or in the case of P-83-237, a reproposed SNUR, should reflect the modified terms of the consent orders.

PMN Number P-83-237

Chemical Name: (generic) Halogenated alkyl pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: April 4, 1984.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney

effects, if modified to include a functional and histopathology evaluation of the nervous system, would also characterize possible central nervous system effects. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1858.

PMN Number P-83-1162

Chemical Name: (generic) Halogenated alkyl pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: August 7, 1984.
Toxicity concern: Similar substances have been shown to cause cancer and liver effects in test animals and toxicity to aquatic organisms.
Recommended testing: A 2-year rodent oncogenicity study as described in 40 CFR 798.3300 to characterize possible carcinogenicity. A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver effects. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1858.

PMN Number P-83-1163

Chemical Name: (generic) Halogenated pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: August 7, 1984.
Toxicity concern: Similar substances have been shown to cause liver toxicity and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver toxicity. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1835.

PMN Number P-84-1219

Chemical Name: (generic) Substituted pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: April 19, 1986.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity testing on the PMN substance has shown it to cause toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. To evaluate possible environmental risk, a chronic toxicity data set as described in 40 CFR 797.1050, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1845.

PMN Number P-85-36

Chemical Name: (generic) Substituted pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: January 24, 1986.
Toxicity concern: Similar substances have been shown to cause cancer, liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 2-year rodent oncogenicity study as described in 40 CFR 798.3300 to characterize possible carcinogenicity. A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1845.

PMN Number P-85-216

Chemical Name: (generic) Halogenated pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: The PMN substance and similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete chronic toxicity data set as described in 40 CFR 797.1050, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1835.

PMN Number P-85-236

Chemical Name: (generic) Substituted pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: The PMN substance and similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1845.

PMN Number P-85-535

Chemical Name: (generic) Halogenated pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1835.

PMN Number P-85-536

Chemical Name: (generic) Halogenated pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.

Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1835.

PMN Number P-85-706

Chemical Name: (generic) Substituted pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: January 24, 1986.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1845.

PMN Number P-85-1184

Chemical Name: (generic) Substituted pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: October 16, 1986.
Toxicity concern: Similar substances have been shown to cause cancer, liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 2-year rodent oncogenicity study as described in 40 CFR 798.3300 to characterize possible carcinogenicity. A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. To evaluate the environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1845.

PMN Number P-86-838

Chemical Name: (generic) Halogenated substituted pyridine.
CAS Number: Not available.
Effective date of 5(e) Consent Order: January 4, 1987.
Toxicity concern: Similar substances have been shown to cause cancer, liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 2-year rodent oncogenicity study as described in 40 CFR 798.3300 to characterize possible carcinogenicity. A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. To evaluate the environmental risk, a chronic toxicity data set as described in 40 CFR 797.1050, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1840.

PMN Number P-88-1271

Chemical Name: (generic) Substituted halogenated pyridinol, alkali salt.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1886.

PMN Number P-88-1272

Chemical Name: (generic) Substituted halogenated pyridinol, alkali salt.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1886.

PMN Number P-88-1273

Chemical Name: (generic) Substituted halogenated pyridinol.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects, if modified to include a functional and histopathology evaluation of the nervous system, would characterize possible central nervous system effects. The potential for liver, kidney, and nervous system effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as

described in 40 CFR 797.1050, 797.1300, 797.1350, 797.1400, and 797.1600.
CFR Citation: 40 CFR 721.1883.

PMN Number P-88-1274

Chemical Name: (generic) Disubstituted halogenated pyridinol.
CAS Number: Not available.
Effective date of 5(e) Consent Order: June 20, 1990.
Toxicity concern: Similar substances have been shown to cause liver and kidney effects, central nervous system effects in test animals, and toxicity to aquatic organisms.
Recommended testing: A 90-day subchronic inhalation study as described in 40 CFR 798.2450 to characterize possible liver and kidney effects. The potential for liver and kidney effects risk could be determined using available data in conjunction with a study monitoring airborne concentrations of the substance at the manufacturing, processing, and use sites. To evaluate possible environmental risk, a complete acute and chronic toxicity data set as described in 40 CFR 797.1400 and 797.1600.
CFR Citation: 40 CFR 721.1880.

IV. Objectives and Rationale of the Proposed Rule

During review of the PMNs submitted for the chemical substances that would be subject to this proposed SNUR, EPA concluded that for certain of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, a section 5(e) consent order requiring the use of appropriate controls was negotiated with the PMN submitter, and the SNUR proposed for such substance is consistent with the provisions of the section 5(e) order.

EPA is proposing this SNUR for 16 specific chemical substances which have undergone premanufacture review to ensure the following objectives: (1) EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; (2) EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; (3) when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and (4) all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

EPA is reproposing the SNUR for one substances, P-83-237, in order to group it together with similarly regulated chemicals. Public comments were received concerning the previously proposed SNUR. However, since the time of the initial proposals, regulatory requirements in section 5(e) orders and SNURs have significantly changed. EPA has concluded that reproposing of and addressing new public comments, if any, for SNURs for this substance is the best method of public notification and comment.

V. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require persons to develop any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a 5(e) order recommends certain testing, Unit III. of this preamble lists those recommended tests. The studies specified in the section 5(e) order may not be the only means of addressing the potential risks of the substance. SNUR notice submitters should be aware that the Agency will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VI. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

For a use to be a significant "new" use, EPA must determine that the use is not ongoing. When the PMN submitter begins manufacture or import of the substances, the submitter must send EPA a Notice of Commencement of Manufacture/Import and the substances will be added to the Inventory. In those cases where a section 5(e) order has been issued, the notice submitters are prohibited by the section 5(e) orders from undertaking activities which the Agency is designating as a significant new use. In addition, because most of these substances have CBI chemical identities and only a very few *bona fide* inquiries have been received for substances that have undergone PMN review, there is little chance that others are undertaking activities which the Agency is designating as a significant new use. Therefore, at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the promulgation of the SNUR, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rules. If uses which had commenced between the date of proposal and the effective date were considered ongoing, rather than new, any person could defeat the SNURs by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VII. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use

notice requirements for potential manufacturers, importers, and processors of the chemical substances contained in this proposed rule. The Agency's complete economic analysis is available in the public record for this proposed rule (OPTS–50584).

VIII. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50584). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A publicversion of the record, without any confidential business information, is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice.

EPA believes that, because of the nature of the rule and the substances involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 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 St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 25, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721 - [AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607

2. By adding new § 721.1835 to subpart E to read as follows:

§ 721.1835 Halogenated pyridine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated pyridine (PMN P–83–1163) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 0.2 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where

UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(2) The chemical substances identified generically as halogenated pyridines (PMNs P–85–216, P–85–535, and P–85–536) are subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.85 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 0.2 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(b) [Reserved].

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

3. By adding new § 721.1840 to subpart E to read as follows:

§ 721.1840 Halogenated substituted pyridine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated substituted pyridine (PMN P–86–838) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 1 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

4. By adding new § 721.1845 to subpart E to read as follows:

§ 721.1845 Substituted pyridine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted pyridine (PMN P–84–1219) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts ofthe chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 10 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day

per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(2) The chemical substances identified generically as substituted pyridines (PMNs P–85–236 and P–85–706) are subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 0.2 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) The chemical substance identified generically as substituted pyridine (PMN P–85–36) is subject to reporting under this section for the significant new uses described in paragraph (a)(3)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 10 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(4) The chemical substance identified generically as substituted pyridine (PMN P–85–1184) is subject to reporting under this section for the significant new uses described in paragraph (a)(4)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 1.3 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(b) [Reserved].

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

5. By adding new § 721.1858 to subpart E to read as follows:

§ 721.1858 Halogenated alkyl pyridine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated alkyl pyridine (PMN P–83–237) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 10 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(2) The chemical substance identified generically as halogenated alkyl pyridine (PMN P–83–1162) is subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 0.2 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(b) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

6. By adding new § 721.1880 to subpart E to read as follows:

§ 721.1880 Disubstituted halogenated pyridinol (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as disubstituted halogenated pyridinol (PMN P–88–1274) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 44 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

7. By adding new § 721.1883 to subpart E to read as follows:

§ 721.1883 Substituted halogenated pyridinol.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted

halogenated pyridine (PMN P–88–1273) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 44 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

8. By adding new § 721.1886 to subpart E to read as follows:

§ 721.1886 Substituted halogenated pyridinol, alkali salt.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as substituted halogenated pyridinols, alkali salts (PMNs P–88–1271 and P–88–1272) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that paragraph (a)(2)(ii) is not retained for reactor sampling operations where enclosed vented sample boxes are used. In addition paragraph (a)(2)(iv) is required for processing of any by-product generated during manufacturing, processing, or use of the chemical substance containing residual amounts of the chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Carbon adsorption and chemical destruction.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(2)(iv), (a)(2)(v), (a)(4), (b)(2)(iv), (b)(2)(v), (b)(4), (c)(2)(iv), (c)(2)(v), and (c)(4) (concentration set at 44 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

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Part XI

Environmental Protection Agency

40 CFR Part 721
Significant New Uses of Chemical Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50585; FRL-3771-5]
RIN 2070-AB27

Significant New Uses of Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs), and are subject to TSCA section 5(e) consent orders issued by EPA. This action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this rule as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and, if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this rule using direct final procedures.

DATES: This rule is effective November 27, 1990. If EPA receives notice before October 29, 1990, that someone wishes to submit adverse or critical comments on EPA's action in establishing SNUR requirements for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR requirements for the chemical for which the notice of intent to comment is received, and will issue in the Federal Register a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPTS-50585 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-105, 401 M St., SW., Washington, DC 20460. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. The Supplementary Information section of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs published in the Federal Register of April 24, 1990, at 55 FR 17376. Consult that preamble for further information on the objectives, rationale, and procedures for the rule and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28 and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the importation certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if applicable), basis for the action taken by EPA in the section 5(e) consent order for the substance (including the statutory citation and specific finding), and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

The rule covers certain PMN substances (P-89-708, P-89-844 and P-89-1062) which are subject to a section 5(e) order based solely on a finding under TSCA section 5(e)(1)(A)(ii)(II) of substantial production volume and

significant or substantial human exposure. In each of these cases, there was limited or no toxicity data available for the PMN substance, potentially substantial production volume, and potentially significant or substantial human exposure. In such cases, EPA regulates new chemical substances under section 5(e) by requiring certain toxicity tests. Substances with potentially substantial human exposures would be subject to health effects testing such as mutagenicity, acute effects, and subchronic effects.

Some of the earlier section 5(e) orders contain provisions that required wording changes to be converted into a SNUR. In some instances, the SNUR text is merely more detailed (e.g., the provision for a written hazard communication program in § 721.72(a) is more detailed than the hazard communication provisions in some earlier orders or the provision for dermal protection in § 721.63(a)(1) and (a)(3) is worded differently from dermal protection provisions in some earlier orders. In such cases, EPA considers the SNUR and section 5(e) provisions to be generally equivalent. Moreover, the companies which entered into the more limited hazard communication provisions of the earlier section 5(e) orders, as well as those companies covered by the SNUR, are generally subject to the requirements of the Occupational Safety and Health Administration's hazard communication standard at 29 CFR 1910.1200. Therefore, EPA believes it equitable and minimally burdensome to include in the SNUR those requirements of the hazard communication standard that are generally considered to be acceptable in informing workers of potential chemical hazards.

In some instances, however, a particular requirement may be so differently worded from the corresponding SNUR provision that the basis of the SNUR provision is not evident. Where this occurs, the preamble below explains why the SNUR provision was chosen.

As presented in the regulatory text that follows, all 26 of these substances except P-89-708, P-89-844, and P-89-1062 are exempt from § 721.63 and/or § 721.72 provisions if present at low levels and are not expected to be reconcentrated in mixtures. The exemptions are provided in § 721.63(b) and § 721.72(e) and their application will make the requirements for the substances consistent with SNURs based on more recent section 5(e) consent orders. If a substance was determined to pose a cancer concern by structural-activity analysis or actual data (as described in the preamble that follows), it is exempt only if the level is 0.1 percent or less. All other substances must not exceed a 1.0 percent level in a mixture to qualify for the exemption. EPA's decision to allow exemptions at these levels was based on the Occupational Safety and Health Administration's hazard communication standard exemption of MSDS requirements in § 1910.1200(g)(2)(i)(C)(1) and (2) when substances are present at such low levels in mixtures.

Each of the substances discussed below involves information which has been claimed as CBI. When a generic chemical name appears in this unit, the specific name is claimed as CBI. In addition, some of the substances identified in this unit involve a production limit as a significant new use. Because the production volume limit is contained in the section 5(e) order and has been claimed as CBI, the regulatory text incorporates the production volume by reference to the section 5(e) order. The procedures for determining whether a specific substance and/or a specific significant new use which are CBI are covered by the SNUR are described in Unit VII.

PMN Number: P-84-358

Chemical name: (generic) Unsaturated organic compound.
CAS number: Not available.
Effective date of section 5(e) consent order: January 11, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic.
Recommended testing: Data from a 2-year rodent bioassay could provide information that would lead to a reasoned evaluation of the suspected carcinogenic effects of this substance.
CFR citation: 40 CFR 721.1489.

PMN Number: P-84-938

Chemical name: (generic) Polymer of hydroxyethyl acrylate and polyisocyanate.
CAS number: Not available.
Effective date of section 5(e) consent order: July 23, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic. Based on test results from a potential metabolite this substance may cause neurotoxicity.
Recommended testing: Data from a 2-year rodent bioassay could provide information that would lead to a reasoned evaluation of both suspected carcinogenic and neurotoxic effects from this substance.
CFR citation: 40 CFR 721.1641.

PMN Number: P-84-1167

Chemical name: (generic) Epoxy resin.
CAS number: Not available.
Effective date of section 5(e) consent order: February 15, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on test data from bioassays of structurally similar substances, this substance may cause carcinogenic effects.
Recommended testing: Data from a 2-year bioassay in rodents would be necessary further evaluate the potential carcinogenic risk of this substance.
CFR citation: 40 CFR 721.1887.

PMN Number: P-85-118

Chemical name: (generic) Polyurethane.
CAS number: Not available.
Effective date of section 5(e) consent order: March 20, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Data on structurally similar substances show that this substance may be carcinogenic.
Recommended testing: A 2-year bioassay in rodents would be necessary further evaluate the potential carcinogenic risk of this substance.
CFR citation: 40 CFR 721.1790.

PMN Number: P-85-415

Chemical name: (generic) Monoacrylate.
CAS number: Not available.
Effective date of section 5(e) consent order: July 11, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic. Based on test results from another structural analogue, this substance also may cause neurotoxicity.
Recommended testing: Data to evaluate these potential risks could be developed from a 2–year rodent bioassay for carcinogenicity, and acute and subchronic assays using both a functional observational battery and neuropathology for neurotoxicity.
CFR citation: 40 CFR 721.1454.

PMN Number: P–85–527

Chemical name: (generic) Vinyl epoxy ester.
CAS number: Not available.
Effective date of section 5(e) consent order: August 8, 1985.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic. Based on subchronic test data, a potential metabolite of this substance may cause neurotoxicity.
Recommended testing: Data to evaluate these potential risks could be developed from a 2–year rodent bioassay for carcinogenicity, and acute and subchronic assays using both a functional observational battery and neuropathology for neurotoxicity.
CFR citation: 40 CFR 721.1005.

PMN Number: P–85–544

Chemical name: 2-Propenoic acid, 2-methyl-, 7,7,9-trimethyl-4,13-dioxo-3,14-dioxo-5,12-diazahexadecane, 1,16-diyl ester.
CAS number: Not available.
Effective date of section 5(e) consent order: May 22, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Structural analogues have been shown to cause carcinogenicity in test animals. This substance also may cause cancer.
Recommended testing: Data to evaluate this potential risk could be developed from a 2–year rodent bioassay for carcinogenicity.
CFR citation: 40 CFR 721.1828.

PMN Number: P–85–545

Chemical name: 2-Propenoic acid, 3-(dimethylamino)-2,2-dimethylpropyl ester.
CAS number: Not available.
Effective date of section 5(e) consent order: May 22, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic. Based on neurotoxicity test data, an analogue and actual hydrolysis product of this substance may cause neurotoxicity.
Recommended testing: Data to evaluate this potential risk could be developed from a 2–year rodent bioassay for carcinogenicity. The potential risk of neurotoxicity from exposure to this substance can be developed in a repeated oral exposure study with a functional observational battery and neuropathology.
CFR citation: 40 CFR 721.1805.

PMN Number: P–85–546

Chemical name: 2-Propenoic acid, 2-methyl-, 3,3,5-trimethyl cyclohexyl ester.
CAS number: Not available.
Effective date of section 5(e) consent order: May 22, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Structural analogues have been shown to cause carcinogenicity in test animals. This substance also may cause cancer.
Recommended testing: Data to evaluate this potential risk could be developed from a 2–year rodent bioassay for carcinogenicity.
CFR citation: 40 CFR 721.1824.

PMN Number: P–85–547

Chemical name: 2-Propenoic acid, 3,3,5-trimethylcyclohexyl ester.
CAS number: Not available.
Effective date of section 5(e) consent order: May 22, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Structural analogues have been shown to cause carcinogenicity in test animals. This substance also may cause cancer.
Recommended testing: Data to evaluate this potential risk could be developed from a 2–year rodent bioassay for carcinogenicity.
CFR citation: 40 CFR 721.1818.

PMN Number: P–85–1034

Chemical name: (generic) Nickel acrylate complex.
CAS number: Not available.
Effective date of section 5(e) consent order: February 13, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on positive results of animal bioassays of analogue substances, it was determined that this substance may cause both carcinogenicity and testicular damage.
Recommended testing: A 2–year dermal rodent bioassay to evaluate the potential carcinogenic effects and a 90–day dermal subchronic study for testicular effects would provide data necessary to further evaluate these potential risks.
CFR citation: 40 CFR 721.1470.

PMN Number: P–86–164

Chemical name: (generic) Polymer.
CAS number: Not available.
Effective date of section 5(e) consent order: March 25, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic. Based on neurotoxicity test data on an analogue, this substance also may be neurotoxic.
Recommended testing: Data to evaluate this potential risk could be developed from a 2–year rodent bioassay for carcinogenicity. The potential risk of neurotoxicity from exposure to this substance can be developed in a repeated oral exposure study with a functional observational battery and neuropathology.
CFR citation: 40 CFR 721.1622.

PMN Number: P–86–334

Chemical name: (generic) Aromatic amine compound.
CAS number: Not available.
Effective date of section 5(e) consent order: December 10, 1986.

Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based data from bioassays of structurally analogous substances, this substance may be carcinogenic. Based on results of subchronic tests of the same analogues, this substance also may be cause chronic liver toxicity.
Recommended testing: Data to evaluate this potential risk of carcinogenicity could be developed from a 2-year rodent bioassay. The potential risk of chronic liver toxicity could be further evaluated with data from a 90-day oral subchronic test.
CFR citation: 40 CFR 721.435.

PMN Number: P-86-335

Chemical name: (generic) Aromatic nitro compound.
CAS number: Not available.
Effective date of section 5(e) consent order: December 10, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based data from bioassays of structurally analogous substances, this substance may be carcinogenic. Based on results of subchronic tests of the same analogues, this substance also may be cause chronic liver toxicity.
Recommended testing: Data to evaluate this potential risk of carcinogenicity could be developed from a 2-year rodent bioassay. The potential risk of chronic liver toxicity could be further evaluated with data from a 90-day oral subchronic test.
CFR citation: 40 CFR 721.440.

PMN Number: P-86-650

Chemical name: (generic) Methacrylic ester.
CAS number: Not available.
Effective date of section 5(e) consent order: September 26, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on toxicity data on several mammalian species for structurally analogous substances, this substance may be carcinogenic. Based on neurotoxicity test data on an analogue, this substance also may be neurotoxic.
Recommended testing: Data to evaluate carcinogenic effects could be developed from a 2-year rodent bioassay. Data on neurotoxic effects could be developed from a repeated oral exposure study with a functional observational battery and neuropathology.
CFR citation: 40 CFR 721.990.

PMN Number: P-86-1739

Chemical name: (generic) Substituted benzenedicarboxylic acid, poly(alkyl acrylate) derivative.
CAS number: Not available.
Effective date of section 5(e) consent order: April 15, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on results from animal bioassays of several structurally analogous substances, this substance may be carcinogenic. Based on neurotoxicity test data on chemical analogues, this substance also may be neurotoxic.
Recommended testing: Data to evaluate carcinogenic effects could be developed from a 2-year rodent bioassay. Data on neurotoxic effects could be developed from a 90-day dermal assay.
CFR citation: 40 CFR 721.564.

PMN Number: P-87-147

Chemical name: 2-(2-Hydroxy-3-*tert*-butyl-5-methylbenzyl)-4-methyl-6-*tert*-butylphenyl methacrylate.
CAS number: Not available.
Effective date of section 5(e) consent order: April 15, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health. In addition, the Order was based on section 5(e)(1)(A)(ii)(II) finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Toxicity concern: Based on results from animal bioassays of several structurally analogous substances, this substance may be carcinogenic. Based on neurotoxicity test data on chemical analogues, this substance also may be neurotoxic.
Recommended testing: Data to evaluate carcinogenic effects could be developed from a 2-year rodent bioassay. Data on neurotoxic effects could be developed in a 90-day dermal assay including a functional observational battery and neuropathology.
CFR citation: 40 CFR 721.1287.

PMN Number: P-87-739

Chemical name: (generic) Polymer of styrene, substituted alkyl methacrylates, 2-ethylhexyl acrylate, methacrylic acid and substituted bisbenzene.
CAS number: Not available.
Effective date of section 5(e) consent order: September 23, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health. In addition, the Order was based on section 5(e)(1)(A)(ii)(II) finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: A 2-year oral bioassay could provide the data necessary to evaluate the potential carcinogenic effects of the substance.
CFR citation: 40 CFR 721.1648.

PMN Number: P-88-1898

Chemical name: 7-Oxabicyclo[4.1.0]heptane, 3-ethenyl, homopolymer, ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol (3:1), epoxidized.
CAS number: Not available.
Effective date of section 5(e) consent order: March 14, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Similar chemicals have been shown to cause cancer, mutagenic effects, and male reproductive effects in test animals, as well as toxicity to aquatic organisms.
Recommended testing: A 90-day oral subchronic study with special attention given to pathology of the reproductive organs (40 CFR 798.2650) to help characterize possible effects to the reproductive system and a 2-year, two-species rodent bioassay (40 CFR 798.3300) to help characterize possible carcinogenic effects are required in the section 5(e) Consent Order before the submitter can exceed a certain production volume. Further testing of an acute algae toxicity test (40 CFR 797.1050) a 48-hour EC50 test in daphnia (40 CFR 797.1300) and a 96-hour LC50 test in fish (40 CFR 797.1400) would be required if the company wishes to address the disposal restrictions. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous

substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.
CFR citation: 40 CFR 721.1490.

PMN Number: P-89-651

Chemical name: Phenol, 4,4'-(oxybis(2,1-ethanediylthio)bis-.
CAS number: 90884-29-0.
Effective date of section 5(e) consent order: March 6, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Because substances belonging to the same class of chemical substances cause developmental effects, neurotoxic effects and adverse effects on internal organs, this chemical substance may cause these same effects.
Recommended testing: A 90-day subchronic study via the oral route in rats (40 CFR 798.2650); a standard developmental toxicity test in two species (the rat and a second nonrodent species) (40 CFR 798.4900); a developmental neurotoxicity test battery (40 CFR 795.250).
CFR citation: 40 CFR 721.1538.

PMN Number: P-89-708

Chemical name: (generic) Sulfurized alkylphenols.
CAS number: Not available.
Effective date of section 5(e) consent order: January 23, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: A 28-day oral assay (OECD Guideline No. 407) including neurotoxicity battery (40 CFR 798.6050) and for highest dose group extending histopathological examination to include testes, ovaries and lungs, plus neuropathology (40 CFR 798.6400); an acute oral test according to 40 CFR 798.1175; an Ames assay (40 CFR 798.5265); and a mouse micronucleus test with substance administered intraperitoneally (40 CFR 798.5395). The PMN submitter has agreed not to exceed the production limit without completing these studies.
CFR citation: 40 CFR 721.1541.

PMN Number: P-89-726

Chemical name: (generic) Polymer of adipic acid, alkanepolyol, alkyldiiso cyanatocarbomonocycle, hydroxyalkyl acrylate ester.
CAS number: Not available.
Effective date of section 5(e) consent order: January 29, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concerns: Because similar substances have been shown to cause cancer in laboratory animals, this substance also may cause cancer.
Recommended testing: A 2-year, two-species rodent bioassay performed as prescribed in 40 CFR 798.3300 could provide the data necessary to evaluate whether this substance may cause cancer.
CFR citation: 40 CFR 721.1624.

PMN Number: P-89-769

Chemical name: (generic) Resorcinol, formaldehyde, substituted carbomonocycle resin.
CAS number: Not available.
Effective date of section 5(e) consent order: April 12, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar chemicals have been shown to be irritating to the eyes, skin, gastrointestinal tract, and lungs. Chemicals similar to the PMN substance have also been shown to cause developmental toxicity, systemic toxicity, neurotoxicity, and blood effects in laboratory animals. Structurally similar chemicals have also shown to cause toxicity to aquatic organisms.
Recommended testing: A developmental toxicity test (40 CFR 798.4900) to characterize possible developmental toxicity and a 90-day subchronic study with special attention to blood (40 CFR 798.2650) to include the functional observational battery (40 CFR 798.6050), the test of motor activity (40 CFR 798.6200) and peripheral and central nervous system morphology (40 CFR 798.6400) to characterize possible systemic, neurotoxic, and adverse blood effects.
CFR citation: 40 CFR 721.1889.

PMN Number: P-89-844

Chemical name: 1,3,5-Triazine-2,4,6-triamine, hydrobromide.
CAS number: 29305-12-2.
Effective date of section 5(e) consent order: March 16, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: An oral developmental toxicity test with one species (rat) (gavage) described in 40 CFR 798.4900 would help characterize possible effects of the substance. The submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.2188.

PMN Number: P-89-1036

Chemical name: (generic) Aliphatic polyglycidyl ether.
CAS number: Not available.
Effective date of section 5(e) consent order: April 17, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Similar epoxides have been shown to cause cancer and reproductive effects in test animals, and toxicity to aquatic organisms.
Recommended testing: 90-day subchronic oral test according to 40 CFR 798.2650; algal acute toxicity test according to 40 CFR 797.1050; 48-hour EC50 test in daphnia according to 40 CFR 797.1300; and 96-hour LC50 test in fish according to 40 CFR 797.1400.
CFR citation: 40 CFR 721.1027.

PMN Number: P-89-1062

Chemical name: (generic) Amide of polyamine and organic acid.
CAS number: Not available.
Effective date of section 5(e) consent order: April 17, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of fish bioconcentration (40 CFR 797.1520), 28-day oral (OECD Guideline No. 407), acute oral (40 CFR 798.1175), Ames assay (40 CFR 798.5265), and mouse micronucleus (40 CFR 798.5395) studies would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.293.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this proposed SNUR, EPA concluded that for certain of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, a section 5(e) consent order requiring the use of appropriate controls was negotiated with the PMN submitter, and the SNUR provisions for such substances are consistent with the provisions of the section 5(e) orders.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

V. Direct Final Procedure

EPA is issuing this rule as a direct final rule, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), these SNURs will be effective November 27, 1990, unless EPA receives a written notice by October 29, 1990 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30-day comment period.

This action establishes SNUR requirements for several chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order recommends certain testing, Unit III. of this preamble lists those recommended tests.

However, EPA has established production limits in the section 5(e) orders for several of the substances regulated under this rule, in view of the lack of data on the potential health risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 16 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. A listing of the tests specified in the section 5(e) orders is included in Unit III. of this preamble. The SNUR for each contains the same production limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests before reaching the production limit.

SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance under the procedure described in § 721.11 would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the

same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.575(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. A section 5(e) order has been issued in all these cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement (NOC) and the substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes that, in cases when chemical substances identified in these SNURs are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 19 of these 28 substances have CBI chemical identities, and since EPA has received no corresponding post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing.

As discussed at 55 FR 17376, EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with these SNURs before the effective date. If persons were to meet the conditions of advance compliance in § 721.45(h) (53 FR 28354, July 17, 1988), those persons will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPTS–50585).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50585). The record includes information considered by EPA in developing this rule. A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 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 St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: September 25, 1990,

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.293 to subpart E to read as follows:

§ 721.293 Amide of polyamine and organic acid.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance amide of polyamine and organic acid (PMN P–89–1062) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (h) and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

3. By adding new § 721.435 to subpart E to read as follows:

§ 721.435 Aromatic amine compound.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance aromatic amine compound (PMN P–86–334) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i) through (g)(2)(iii), and (g)(2)(v). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e) and (f).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

4. By adding new § 721.440 to subpart E to read as follows:

§ 721.440 Aromatic nitro compound.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance aromatic nitro compound (PMN P–86–335) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv) through (a)(5)(vii), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), and (g)(2)(i) through (g)(2)(v). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), and (f).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

5. By adding new § 721.564 to subpart E to read as follows:

§ 721.564 Substituted benzenedicarboxylic acid, poly(alkyl acrylate) derivative.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance substituted benzenedicarboxylic acid, poly(alkyl acrylate) derivative (PMN P–86–1739) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(iii), (g)(2)(v), and

(g)(4)(i). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on a MSDS does not apply when a MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

6. By adding new § 721.990 to subpart E to read as follows:

§ 721.990 Methacrylic ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance methacrylic ester (PMN P–86–650) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(iii), (g)(2)(v), (g)(4)(i), and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

7. By adding new § 721.1005 to subpart E to read as follows:

§ 721.1005 Vinyl epoxy ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance vinyl epoxy ester (PMN P–85–527) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent) and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(iii), (g)(2)(v), (g)(4)(i), and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (as an injection molding coating), and (y).

(iv) *Disposal.* Requirements as specified in 721.85(a)(2), (b)(2), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

8. By adding new § 721.1027 to subpart E to read as follows:

§ 721.1027 Aliphatic polyglycidyl ether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance aliphatic polyglycidyl ether (PMN P–89–1036) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv) through (a)(5) (vii), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(2)(i),(g)(2)(ii), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c) through (i), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

9. By adding new § 721.1287 to subpart E to read as follows:

§ 721.1287 2-(2-Hydroxy-3-tert-butyl-5-methylbenzyl)-4-methyl-6-tert-butylphenyl methacrylate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-(2-hydroxy-3-*tert*-butyl-5-methylbenzyl)-4-methyl-6-*tert*-butylphenyl methacrylate (PMN P-87-147) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv) through (a)(5)(vi), (a)(6)(i) through (a)(6)(iii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), and (g)(4)(i). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on a MSDS does not apply when a MSDS in not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (e) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

10. By adding new § 721.1454 to subpart E to read as follows:

§ 721.1454 Monoacrylate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance acrylic ester (PMN P-85-415) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5)(xiv), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), and (g)(4)(i). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b) and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in 721.85(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (i) and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

11. By adding new § 721.1470 to subpart E to read as follows:

§ 721.1470 Nickel acrylate complex.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance nickel acrylate complex (PMN P-85-1034) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i) through (g)(2)(iii), (g)(2)(v), (g)(4)(i), and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), and (h).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

12. By adding new § 721.1489 to subpart E to read as follows:

§ 721.1489 Unsaturated organic compound.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance unsaturated organic compound (PMN P-84-358) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(iii), (g)(2)(v), (g)(4)(i) and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as

specified in § 721.80(k) (as component in industrial coatings) and (y)(1).

(iv) *Disposal.* Requirements as specified in 721.85(a)(1), (b)(1), and (c)(1) or (recycled to a permit holding commercial solvent recovery operation).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), and (h).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

13. By adding new § 721.1490 to subpart E to read as follows:

§ 721.1490 7-Oxabicyclo[4.1.0]heptane, 3-ethenyl, homopolymer, ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol (3:1), epoxidized.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 7-oxabicyclo[4.1.0] heptane, 3-ethenyl, homopolymer, ether with 2-ethyl-2(hydroxymethyl)-1,3-propanediol (3:1), epoxidized (PMN P–88–1898) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(viii), (a)(5)(ix), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

14. By adding new § 721.1538 to subpart E to read as follows:

§ 721.1538 Phenol, 4,4'-(oxybis(2,1-ethanediylthio)bis-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance phenol, 4,4'-(oxybis(2,1-ethanediylthio)bis- (PMN P–89–651) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(iv), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(ix), (g)(2)(iv), and (g)(2)(v).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(r) (82,000 kg; 141,000 kg; and 272,000 kg with testing required at each interval).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

15. By adding new § 721.1541 to subpart E to read as follows:

§ 721.1541 Sulfurized alkylphenols .

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance sulfurized alkylphenols (PMN P–89–708) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (c), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

16. By adding new § 721.1622 to subpart E to read as follows:

§ 721.1622 Polymer .

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance polymer (PMN P–88–164) is subject to reporting

under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5) (xiv), (a)(6)(ii), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i), and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h) and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

17. By adding new § 721.1624 to subpart E to read as follows:

§ 721.1624 Polymer of adipic acid, alkanepolyol, alkyldiisocyanatocarbomonocycle, hydroxyalkyl acrylate ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance polymer of adipic acid, alkanepolyol, alkyldiisocyanatocarbomonocycle, hydroxyalkyl acrylate ester (PMN P–89–726) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5) (xv), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(iv) (when dust, mist or smoke from spray is likely), (g)(2)(v) and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

18. By adding new § 721.1641 to subpart E to read as follows:

§ 721.1641 Polymer of hydroxyethyl acrylate and polyisocyanate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance polymer of hydroxyethyl acrylate and polyisocyanate (PMN P–84–938) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5)(xiv), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(2), (b)(2) and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (h) and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

19. By adding new § 721.1648 to subpart E to read as follows:

§ 721.1648 Polymer of styrene, substituted alkyl methacrylates, 2-ethylhexyl acrylate, methacrylic acid and substituted bis(benzene).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance polymer of styrene, substituted alkyl methacrylates, 2-ethylhexyl acrylate, methacrylic acid and substituted bis(benzene) (PMN P–87–739) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5) (xiv), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i), and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(v) *Release to water.* Requirements as specified in § 721.90(a)(2)(vi) (on-site only), (b)(2)(vi) (on-site only) and (c)(2)(vi) (on-site only).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

20. By adding new § 721.1790 to subpart E to read as follows:

§ 721.1790 Polyurethane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance polyurethane (PMN P–85–118) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5) (xiv), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(vi) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

21. By adding new § 721.1805 to subpart E to read as follows:

§ 721.1805 2-Propenoic acid, 3-(dimethylamino)-2,2-dimethylpropyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-propenoic acid, 3(dimethylamino)-2,2-dimethylpropyl ester (PMN P–85–545) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(vii) through (xiv), (a)(6)(ii), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

22. By adding new § 721.1816 to subpart E to read as follows:

§ 721.1816 2-Propenoic acid, 3,3,5-trimethylcyclohexyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-propenoic acid, 3,3,5-trimethylcyclohexyl ester (PMN P–85–547) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5)(xiv), (a)(6)(ii), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

23. By adding new § 721.1824 to subpart E to read as follows:

§ 721.1824 2-Propenoic acid, 2-methyl-, 3,3,5-trimethylcyclohexyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-propenoic acid, 2-methyl-, 3,3,5-trimethylcyclohexyl ester (PMN-85-546) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(vii) through (a)(5)(xiv), (6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard

communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

24. By adding new § 721.1828 to subpart E to read as follows:

§ 721.1828 2-Propenoic acid, 2-methyl-, 7,7,9-trimethyl-4,13-dioxo-3,14-dioxo-5,12-diazahexadecane, 1,16-diyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-propenoic acid, 2-methyl-, 7,7,9-trimethyl-4,13-dioxo-3,14-dioxo-5,12-diazahexadecane, 1,16-diyl ester (PMN P–85–544) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5)(xiv), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(4)(i) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(iv) *Disposal.* Requirements as specified in 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c) and (e) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

25. By adding new § 721.1887 to subpart E to read as follows:

§ 721.1887 Epoxy resin .

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance epoxy resin (PMN P–84–1167) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5) (xv), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i) through (g)(2)(v) and (g)(5). The provision of § 721.72(d) requiring that employees to be provided with information on the location and availability of a written hazard communication program does not apply when the written program is not required under § 721.72(a).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

26. By adding new § 721.1889 to subpart E to read as follows:

§ 721.1889 Resorcinol, formaldehyde substituted carbomonocycle resin.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance resorcinol, formaldehyde substituted carbomonocycle resin (PMN P–89–769) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*Requirements as specified in § 721.63(a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i) through (a)(5)(iii), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i) through (g)(1)(iv), blood effects), and eye effects, (g)(1)(ix), (g)(2)(i) (avoid eye contact as well) through (g)(2)(v), (g)(3)(ii), (g)(4)(i), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (use other than as an additive in rubber) and (q).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

27. By adding new § 721.2188 to subpart E to read as follows:

§ 721.2188 1,3,5-Triazine-2,4,6-triamine, hydrobromide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 1,3,5-triazine-2,4,6-triamine, hydrobromide (PMN P–89–844) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (295,000 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (h) and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

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federal register

Friday
September 28, 1990

Part XII

The President

Proclamation 6187—Gold Star Mother's Day, 1990

Legislative Digest

Federal Register
Vol. 55, No. 189
Friday, September 28, 1990

Presidential Documents

Title 3—

The President

Proclamation 6187 of September 26, 1990

Gold Star Mother's Day, 1990

By the President of the United States of America

A Proclamation

Few Americans could have a more profound understanding of the price of freedom than our Nation's Gold Star Mothers. These proud and courageous women are the mothers of U.S. military personnel who have perished in the line of duty.

Anyone who has been blessed with children knows that there is no greater heartache than losing a son or daughter. The mothers of those brave and selfless Americans who have died to defend the lives and liberty of others have suffered greatly, yet they have also inspired us with their unfailing faith and patriotism. These women, known as Gold Star Mothers, merit our lasting respect and gratitude.

In his now-famous letter to Mrs. Lydia Bixby, a Boston widow who was reported to have lost several sons during the Civil War, President Abraham Lincoln wrote:

> I feel how weak and fruitless must be any words of mine which should attempt to beguile you from the grief of a loss so overwhelming, but I cannot refrain from tendering to you the consolation that may be found in the thanks of the Republic that they died to save. I pray that the Heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the altar of freedom.

The American Gold Star Mothers have likewise made an enormous sacrifice for our country, and, on this occasion, we echo President Lincoln's timeless appeal.

Whether they made their final stand for liberty and justice on the beaches of Normandy during World War II, on the harsh terrain of Korea and Vietnam, or, more recently, in places such as Grenada, Lebanon, Panama, and the Persian Gulf region, those heroic Americans who have died while defending the cause of peace and freedom will never be forgotten. To the women who nurtured in them a love of God and country, as well as a sense of duty and concern for others, we offer a heartfelt salute.

The Congress, by Senate Joint Resolution 115 (June 23, 1936), designated the last Sunday in September as "Gold Star Mother's Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 30, 1990, as Gold Star Mother's Day. I call upon all government officials to display the United States flag on government buildings on this day. I also urge the people of the United States to display the flag and to hold appropriate meetings in their homes, churches, synagogues, or other suitable places, as a public expression of the love, sorrow, and reverence that our Nation holds for American Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

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H.R. 7/Pub. L. 101–392

Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990. (Sept. 25, 1990; 104 Stat. 753; 91 pages) Price: $2.50

S.J. Res. 313/Pub. L. 101–393

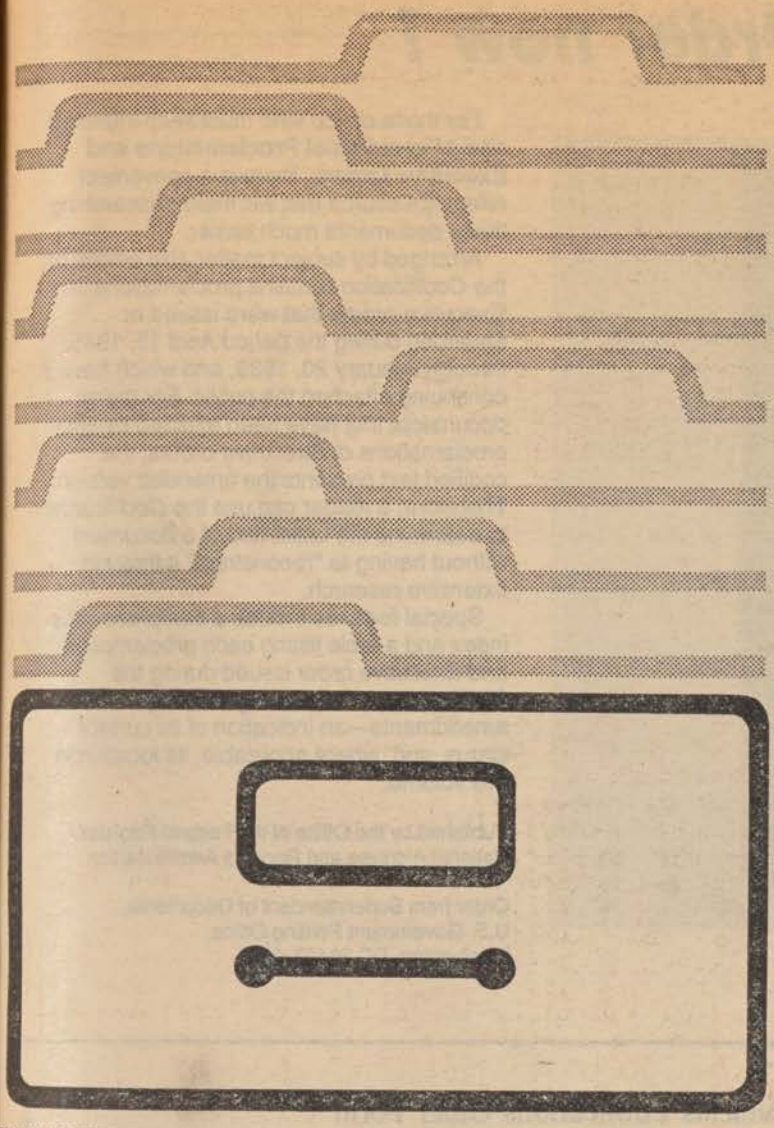
Designating October 3, 1990, as "National Teacher Appreciation Day". (Sept. 25, 1990; 104 Stat. 844; 1 page) Price: $1.00

S.J. Res. 331/Pub. L. 101–394

To designate the week of September 23 through 29, 1990, as "Religious Freedom Week". (Sept. 25, 1990; 104 Stat. 845; 2 pages) Price: $1.00

S.J. Res. 333/Pub. L. 101–395

To designate the week of September 30, 1990, through October 6, 1990, as "National Job Skills Week". (Sept. 25, 1990; 104 Stat. 847; 1 page) Price: $1.00



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in the Code of Federal Regulations (CFR)

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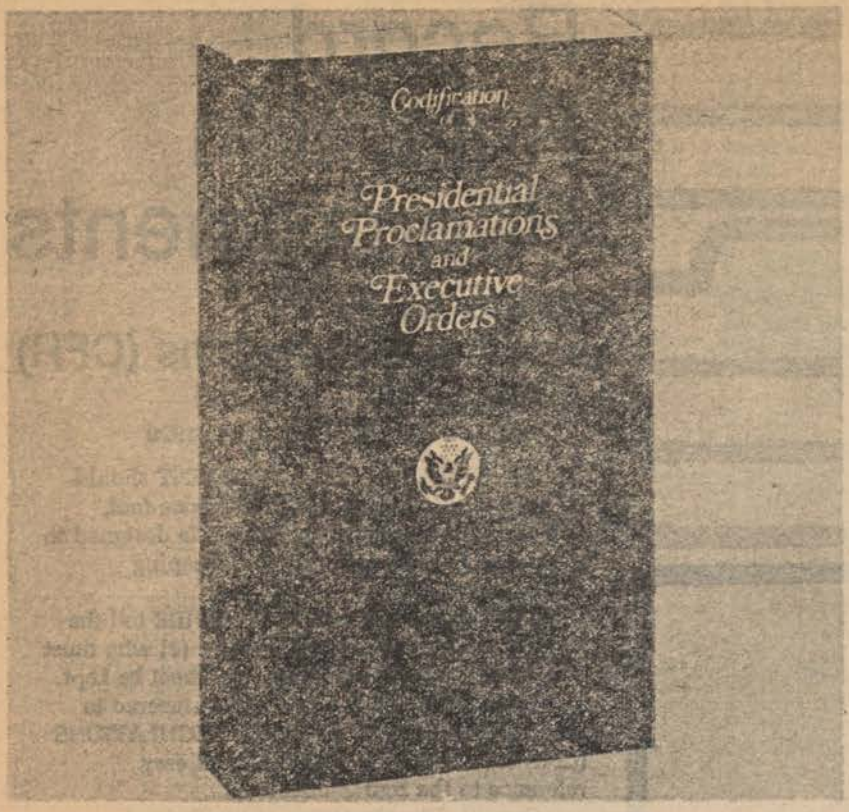

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