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Presidential Documents

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The President

Proclamation 6200 of October 11, 1990

White Cane Safety Day, 1990

By the President of the United States of America

A Proclamation

The white cane is a simple yet effective tool that enables many of America's citizens with visual impairments to enjoy greater independence and freedom of movement. This familiar device helps visually impaired individuals to navigate through their environment safely, avoiding physical barriers and hazards.

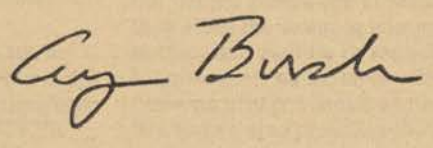
For millions of Americans, both those with visual disabilities and those without, the white cane is also a symbol of dignity and determination. It is a tangible reminder that those Americans who have impaired eyesight possess not only the desire but also the ability to lead full, independent, and productive lives.

Each year, during the observance of White Cane Safety Day, we renew our commitment to eliminating physical and attitudinal barriers that continue to hinder the full participation of blind persons in our society. On this White Cane Safety Day we also celebrate the Americans with Disabilities Act of 1990, which I signed into law on July 26, 1990. A declaration of equality for persons with disabilities, this historic legislation guarantees these citizens protection against discrimination as well as greater opportunities to participate in the mainstream of American life.

In recognition of the white cane and all that it symbolizes, the Congress, by Joint Resolution approved October 6, 1964, has authorized the President to designate October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 15, 1990, as White Cane Safety Day. I urge all Americans to show respect for those who carry the white cane and to honor, through appropriate ceremonies and activities, their many achievements.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, 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.



[FR Doc. 90-24339
Filed 10-11-90; 2:02 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-90-127FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Rename Pink Grapefruit as Red Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the name for certain grapefruit covered under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida. All grapefruit currently classified as pink are reclassified red as the result of this action. The Citrus Administrative Committee (CAC) unanimously recommended this change to make the marketing order name conform with the name used by the Florida Citrus Commission (FCC) and to maintain standardized terminology within the Florida citrus industry.

EFFECTIVE DATE: October 15, 1990.

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. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This 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.

The 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.

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 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. In addition, there are about 13,000 producers of these citrus fruits in Florida. There are also about 25 importers of grapefruit. 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. A minority of these handlers and a majority of the producers and a majority of importers may be classified as small entities.

A proposed rule concerning this action was published in the **Federal Register** (55 FR 30922, July 30, 1990), with a 30-day comment period ending on August 29, 1990. No comments were received.

This action adds a new § 905.105 to the rules and regulations under the order to change the name of certain grapefruit from pink to red. Section 905.5 (7 CFR 905.5) of the marketing order defines fruit regulated under the marketing order and authorizes the addition of other fruit specified in § 905.4 (7 CFR 905.4), as recommended by the CAC and approved by the Secretary. This action merely changes the name of certain grapefruit.

This action also amends § 905.306 (7 CFR 905.306) of the rules and regulations, which specifies for both domestic and export markets minimum grade and size requirements for grapefruit grown in Florida. The entries for grapefruit in paragraph (a), Table I, and in paragraph (b), Table II, of § 905.306, are revised to change the term "pink" to "red" to bring these provisions of this section into conformity with the new name.

While the proposed rule indicated that certain grapefruit varieties were being redefined, the intent of the proposal was merely to change the name of certain classifications of grapefruit from pink to red, not redefine the varieties. Therefore, appropriate terminology changes have been made in this final rule to recognize this fact.

The CAC recommended this action following the Florida Citrus Commission's (FCC) action which changed the name of pink grapefruit to red grapefruit in that organization's citrus shipping manifests. The FCC made this change in light of production shifts to redder grapefruit varieties in Florida. This action is intended to make the marketing order grapefruit name the same as the FCC's name, thereby standardizing terminology and helping prevent industry and market confusion when grapefruit is referred to in marketing, cultural, and statistical materials. The marketing order has traditionally used the same terminology as that developed by the FCC to define the various classifications and groupings of Florida citrus, and this action maintains that practice.

Section 8e of the Act (7 U.S.C. 608e-1) provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply the regulations for that area to the imported commodity.

Grapefruit import requirements are specified in § 944.106 (7 CFR part 944), and are effective under section 8e of the Act. That section requires that grapefruit imported into the United States must meet the same minimum grade and size requirements as those specified for each grapefruit variety listed in Table I of paragraph (a) in § 905.306. Since this action renames pink grapefruit as red grapefruit under the marketing order, the name changes also apply to the grapefruit import regulation. However, no change to the provisions of the import regulation is needed to implement this name change.

This action reflects the CAC's and the Department's appraisal of the need to make the name change for grapefruit, as hereinafter set forth. The Department's view is that this action will have a beneficial impact on producers and handlers since it maintains standardized terminology for grapefruit within the Florida citrus industry and should lessen the chances of market and industry confusion.

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

After consideration of all relevant matter presented, the information and recommendations submitted by the CAC, 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: (1) Shipment of the 1990–91 season Florida grapefruit crop has begun and Florida grapefruit handlers should start using the new names as soon as possible; (2) Florida grapefruit handlers are aware of these terminology changes which were recommended by the CAC at a public meeting and they will need no additional time to make the changes; (3) this action should be implemented as soon as possible, so that standardized terms are used within the Florida grapefruit industry; (4) the proposed rule provided a 30-day comment period, and no comments were received; and (5) no useful purpose will be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended to read as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

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

2. New § 905.105 is added to subpart—Rules and Regulations to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 905.105 Grapefruit classifications.

Pursuant to § 905.5(m), the following classifications of grapefruit are renamed as follows:

(a) Marsh and other seedless grapefruit, excluding pink grapefruit, are renamed as Marsh and other seedless grapefruit, excluding red grapefruit;

(b) Duncan and other seeded grapefruit, excluding pink grapefruit, are renamed as Duncan and other seeded grapefruit, excluding red grapefruit;

(c) Pink seedless grapefruit, is renamed as Red seedless grapefruit;

(d) Pink seeded grapefruit, is renamed as Red seeded grapefruit.

3. Section 905.306 is amended by revising the entries for grapefruit in paragraph (a), Table I, and in paragraph (b), Table II, to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	
GRAPEFRUIT			
Seeded, except red	On and after 12/07/81	U.S. No. 1	3 13/16
Seeded, red	On and after 12/07/81	U.S. No. 1	3 13/16
Seedless, except red	03/05/90–08/19/90	U.S. No. 2 (External), U.S. No. 2 (Internal)	3 5/16
	On and after 08/20/90	Improved No. 2 (External), U.S. No. 1 (Internal)	3 5/16
Seedless, red	01/22/90–08/19/90	U.S. No. 2 (External), U.S. No. 2 (Internal)	3 5/16
	08/20/90–10/21/90	Improved No. 2 (External), U.S. No. 1 (Internal)	3 5/16
	On and after 10/22/90	Improved No. 2 (External), U.S. No. 1 (Internal)	3 5/16
* * *	* * *	* * *	

(b) * * *

TABLE II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * *	* * *	* * *	
GRAPEFRUIT			
Seeded, except red	On and after 12/07/81	U.S. No. 1	3 5/16
Seeded, red	On and after 12/07/81	U.S. No. 1	3 5/16
Seedless, except red	01/22/90–08/19/90	U.S. No. 2 (External), U.S. No. 1 (Internal)	3 5/16
	On and after 08/20/90	Improved No. 2 (External), U.S. No 1 (Internal)	3 5/16

TABLE II—Continued

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Seedless, red	03/05/90–08/19/90	U.S. No. 2 (External), U.S. No. 2 (Internal)	3 5/16
	On and after 08/20/90	Improved No. 2 (External), U.S. No. 1 (Internal)	3 5/16

Dated: October 10, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–24250 Filed 10–12–90; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 739]

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 October 14 through October 20, 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 DATES: Regulation 739 (7 CFR part 910) is effective for the period from October 14 through October 20, 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 compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and aproximately 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 estimate of the 1990–91 production is 42,140 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 10,840 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 crop estimate of 42,140 cars, the Committee estimates as of October 2 that about 42.5 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 20.1 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 37.4 percent compared with 34 percent of the 1989–90 crop.

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 October 9, 1990, in Redlands, 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 the same as the estimated projections in the Committee's current shipping schedule.

During the week ending on October 6, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 308,000 cartons compared with 282,000 cartons shipped during the week ending on October 7, 1989. Export shipments totaled 168,000 cartons compared with 194,000 cartons shipped during the week ending on October 7, 1989. Processing and other uses accounted for 227,000 cartons compared with 211,000 cartons shipped during the week ending on October 7, 1989.

Fresh domestic shipments to date for the 1990–91 season total 3,046,000 cartons compared with 2,915,000 cartons shipped by this time during the 1989–90 season. Export shipments total 1,291,000 cartons compared with 1,441,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 2,215,000 cartons compared with 1,330,000 cartons shipped by this time during 1989–90.

For the week ending on October 6, 1990, regulated shipments of lemons to the fresh domestic market were 308,000 cartons on an adjusted allotment of 358,000 cartons which resulted in net undershipments of 50,000 cartons. Regulated shipments for the current week (October 7 through October 13, 1990) are estimated at 310,000 cartons on an adjusted allotment of 344,000 cartons. Thus, undershipments of 34,000 cartons could be carried over into the week ending on October 20, 1990.

The average f.o.b. shipping point price for the week ending on October 6, 1990, was $14.03 per carton based on a reported sales volume of 310,000 cartons compared with last week's average of $14.20 per carton on a reported sales volume of 307,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $13.13 per carton. The average f.o.b. shipping point price for the week ending on October 7, 1989, was $15.12 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.71 per carton.

The Department's Market News Service reported that, as of October 9, the demand for choice quality fruit is moderate and demand for first grade quality fruit is "fairly light". The market for 75's and first grade fruit ranging in size from 95's to 165's is lower while for 200's to 235's and 165's choice quality fruit, the market is higher. At the meeting, a Committee member commented that demand for lemons continues to be good. There is some inventory build-up on choice grade fruit and some minor build-up on fancy grade lemons in District 3. The Committee member indicated that volume regulation is still greatly desired to help ensure an orderly market. Another Committee member stated that demand is strong, especially on small-sized (140's and smaller) fancy grade fruit. The member also indicated that volume regulation is needed to prevent a disorderly market with District 2 winding down, production in District 3 peaking the District 1 soon beginning harvesting. The Committee unanimously recommended volume regulation for the period from October 14 through October 20, 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 $8.83 per carton, 107 percent of the projected season average fresh on-tree parity equivalent price of $8.24 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $9.02, 121 percent of the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of lemons that may be shipped during the period from October 14 through October 20, 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 October 9, 1990, and this action needs to be effective for the regulatory week which begins on October 14, 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:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.1039 is added to read as follows:

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

§ 910.1039 Lemon Regulation 739.

The quantity of lemons grown in California and Arizona which may be handled during the period from October 14 through October 20, 1990, is established at 325,000 cartons.

Dated: October 10, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-24274 Filed 10-12-90; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 958

[Docket No. FV-90-122]

Onions Grown in Designated Counties in Idaho and Malheur County, Oregon; Final Rule to Revise Inspection Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule that allowed onions that have been inspected and certified as meeting marketing order requirements and that are subsequently peeled, chopped, sliced or otherwise further prepared for fresh market to be shipped without being reinspected. The intent of this action is to allow handlers of Idaho-Eastern Oregon onions to expand their markets and provide the trade with a product it desires.

EFFECTIVE DATES: November 14, 1990.

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 No. 130 and Marketing Order No. 958 (7 CFR part 958), both as amended, regulating the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department 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.

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

There are approximately 30 handlers and 450 producers of Idaho-Eastern Oregon onions under this marketing order. 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 may be classified as small entities.

The vast majority of onions grown in the Idaho-Eastern Oregon production area are utilized in fresh market outlets. About 10 percent of the crop is processed. Onions destined for fresh markets are subject to the grade, size, maturity, pack and container requirements specified in § 958.328. Currently, fresh shipments are required to be at least U.S. No. 2 grade, with a minimum diameter of 1 inch for white varieties and 1½ inches for all other varieties.

Under the terms of the marketing order, onions that are shipped to processors for dehydration, canning, freezing, extraction or pickling are exempt from the handling regulation, subject to certain safeguard procedures. Exemptions are also provided for minimum quantities, certain types of onions (e.g. braided red onions) and onions for other specified purposes, including planting.

Onions subject to the handling regulation are required to be inspected by the Federal-State Inspection Service (FSIS) and be covered by a valid inspection certificate at the time of shipment. Pursuant to § 958.60(b) of the order, regarding, resorting or repacking any lot of onions invalidates any inspection certificate issued prior to rehandling. Handlers who ship onions that are regraded, resorted, repacked or in any other way further prepared for market are therefore required to have such onions reinspected.

The interim final rule was issued on July 25, 1990, and published in the **Federal Register** July 31, 1990. The interim final rule revised these inspection requirements by providing that onions that have been inspected and certified as meeting marketing order requirements and that are subsequently peeled, chopped, sliced or otherwise further prepared for fresh market, are exempt from the reinspection requirement. This action is authorized by §§ 958.53 and 958.60 of the marketing order.

Recently, there has been increased interest by handlers in the production area in mechanically peeling onions and marketing them as fresh onions. These onions are being prepared for use primarily by foodservice establishments. Such onions are for immediate use in the fresh form in salad bars and condiment stands. Onions that have been peeled, chopped or sliced are desired by the trade because of the convenience of handling the product. Foodservice operators are able to provide a quality product with minimal effort and reduced labor costs.

However, peeled onions are generally unable to meet the established minimum grade requirement because of the damage incurred during the peeling process. In addition to having the outer layers of skin removed, mechanically peeled onions often have their tops (stem ends) and bottoms (root ends) removed. During this process the inner, fleshy onion layers may also be cut. If the inner layers are cut, such onions are scored as having serious grade defects, and are unable to meet the minimum grade requirement. This would be true even though, prior to alteration, the onions had met marketing order requirements. The interim final rule provided that if onions meet the fresh market quality requirements prior to being peeled, sliced or chopped, handlers may ship these onions to fresh markets without reinspection. Therefore, such onions are not subject to reinspection subsequent to peeling, chopping or slicing. This action helps to expand markets for the Idaho-Eastern Oregon onion industry, and thereby improves returns to producers and handlers.

This action was unanimously recommended by the Idaho-Eastern Oregon Onion Committee (committee), the agency responsible for local administration of the marketing order. In its deliberations, the committee considered several alternative means of facilitating the movement of peeled,

chopped or sliced onions. Included was an exemption for such onions from all handling requirements, including that of an initial inspection. The committee rejected this option, however, because it believes that peeled onions compete directly in the marketplace with other fresh packed onions. As such, it is necessary that these onions be subject to the same minimum quality standards so as not to thwart the industry's objective of providing acceptable quality onions to all fresh market outlets. To allow uninspected cull onions to be used for this purpose would be contrary to this goal, which the industry believes is necessary to maintain and increase its share of the fresh onion market.

Safeguard procedures are established to ensure that only onions of acceptable quality are peeled, sliced or chopped for the fresh market. Handlers shipping onions for this purpose are required to submit to the committee a copy of the inspection certificate issued by the FSIS. This certificate will serve to verify that the onions had been inspected and the minimum marketing order requirements had been met. Such handlers are also required to document on forms provided by the committee, in quadruplicate, the intended use and destination of the onions, referencing the inspection certificate number. Two copies of such forms must be sent on shipment to the handler intending to peel, chop or slice the onions for fresh market, and one copy must be mailed to the committee. The handler responsible for peeling, chopping or slicing the onions is then required to document the weight of the finished product and promptly return one signed copy of the form to the committee.

Handlers in the production area that peel, slice or chop onions grown outside the production area are required to provide the committee with documentation to verify that the onions so handled were not subject to the initial inspection requirement.

These reporting requirements are necessary to enable the committee to determine whether peeled, sliced or chopped onions had been previously inspected and whether they were in compliance with the applicable minimum quality requirements.

The interim final rule also made minor revisions in the introductory paragraph and paragraphs (c) and (f) of § 958.328 that appear in this final rule. These revisions were needed to make conforming changes to those paragraphs.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB), and have been assigned OMB No. 0581–0087.

The interim final rule published in the July 31, 1990, **Federal Register** (55 FR 31034) afforded interested person until August 30, 1990, to submit written comments. No comments were received.

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

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

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

For the reasons set forth in the preamble, the interim final rule amending 7 CFR part 958 which was published at 55 FR 31034 on July 31, 1990, is adopted as a final rule without change.

Dated: October 10, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–24251 Filed 10–12–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8313]

RIN 1545–AP09

Exception From the Prohibition of Federal Guarantees—Permitted Investments of Tax-Exempt Bond Proceeds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the prohibition of federal guarantees with respect to bonds the interest on which is excludable from gross income. The Tax Reform Act of 1984 changed the applicable law and, with certain exceptions, provides that interest on a bond issued by a state or local governmental unit is not excludable from gross income if payment of the bond's principal or interest is directly or indirectly guaranteed by the United States (or any agency or instrumentality thereof). These temporary regulations provide that investments in obligations issued by the Resolution Funding Corporation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 are excepted from the prohibition of federal guarantees. The text of the temporary regulations set forth in this document also serves as the text of the notice of proposed regulations cross-referenced in the proposed rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These temporary regulations are effective for investments made on or after October 2, 1990.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo, 202–566–3283 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adds temporary regulations to the Income Tax Regulations (26 CFR part 1) under section 149(b) of the Internal Revenue Code. The provisions currently found in section 149(b) were added to the Code by section 622 of the Tax Reform Act of 1984, Public Law No. 98–369, 98 Stat. 494, 918–21.

Explanation of Provisions

Under section 149(b) of the Code, if a state or local bond is federally guaranteed, interest on the bond is not excludable from gross income under section 103(a). A bond is federally guaranteed if: (a) The payment in whole or in part of the bond's interest or principal is guaranteed by the United States (or any agency or instrumentality thereof), (b) a significant portion of the bond's proceeds are used to make federally guaranteed loans, (c) a significant portion of the bond's proceeds are invested in federally insured deposits in financial institutions, or (d) the payment of the bond's principal or interest is otherwise indirectly guaranteed in whole or in part by the United States (or any agency or instrumentality thereof). Without this

provision, a federally guaranteed state or local bond would be more attractive than either taxable federal securities or other state and local bonds lacking federal guarantees, because the bond would have the backing and safety of a federal obligation plus the federal tax exemption of a state or local obligation.

Section 149(b)(3)(B) of the Code lists four specific exceptions to the prohibition of a federal guarantee. It also allows as exceptions other investments permitted in regulations. These temporary regulations exempt investments in obligations issued by the Resolution Funding Corporation from the prohibition of federal guarantees. The regulations are effective for investments made on or after October 2, 1990.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is William P. Cejudo, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.61—1.281–4

Deductions, Exemptions, Income taxes, Reporting and recordkeeping requirements, Taxable income.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * *
§ 1.149(b)(3)–1T also issued under 26 U.S.C. 149(b)(3)(B)(v).

Par. 2. The following new § 1.149(b)(3)–1T is added in the appropriate place:

§ 1.149(b)(3)–1T Permitted investments (temporary).

(a) *Exception under authority of section 149(b)(3)(B)(v).* Section 149(b)(1) does not apply to investments in obligations issued pursuant to section 21B(d)(3) of the Federal Home Loan Bank Act, as amended by section 511(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or any successor provision to section 21B(d)(3) of the Federal Home Loan Bank Act as so amended.

(b) *Effective date.* This section applies to investments made on or after October 2, 1990.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Approved: October 5, 1990.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 90–24219 Filed 10–10–90; 11:51 am]
BILLING CODE 4830–01–M

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26 CFR Parts 1 and 602

[T.D. 9315]

RIN 1545–AJ28

Look-Back Method for Long-term Contracts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the look-back method of section 460(b) of the Internal Revenue Code for long-term contract income reported under the percentage of completion method of accounting. The look-back method was enacted by the Tax Reform Act of 1986 (the "1986 Act"), Public Law 99–514, and amended by the Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act"), Public Law 100–647, and the Revenue Reconciliation Act of 1989 (the "1989 Act"), Public Law 101–239. The purpose of the look-back method is to compensate for deferral or acceleration of contract income that results from the use of estimated, rather than actual, total contract price and contract costs in applying the percentage of completion method. Taxpayers are required to pay interest if long-term contract income is deferred, and are entitled to receive interest if long-term contract income is accelerated, under the percentage of completion method. These regulations provide the public with guidance as to how interest is computed under the look-back method, and also include simplified methods to reduce the complexity of computing interest under the look-back method.

EFFECTIVE DATE: These regulations are effective with respect to contracts entered into after February 28, 1986; however, § 1.460–6(d) (regarding the application of the simplified marginal impact method to domestic contracts of widely held pass-through entities) does not apply to any contract completed in a tax year for which the due date (determined with regard to extensions) of the return is before November 10, 1988.

FOR FURTHER INFORMATION CONTACT: Cheryl Oseekey of the Office of the Assistant Chief Counsel (Income Tax and Accounting), (202) 566–3024 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)) under control number 1545–1031. The estimated average annual burden per respondent is 13 hours and 55 minutes. This time estimate is included in the burden of Form 8697.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

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

Background

On June 12, 1990, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to the look-back method for long-term contracts under section 460(b) of the Internal Revenue Code. See 55 FR 23755. Written comments were submitted by seven organizations or individuals and a public hearing was held on August 24, 1990. The preamble to the proposed regulations stated that a Treasury Decision adopting the proposed regulations with respect to the simplified marginal impact method in § 1.460–6(d), and the delayed reapplication method in § 1.460–6(e), was expected to be issued no later than September 17, 1990.

This document adds new § 1.460–6 to part 1 of title 26 of the Code of Federal Regulations. These regulations conform the Income Tax Regulations to the requirements of section 460(b) of the Code, as enacted by section 804(a) of the 1986 Act and as amended by sections 1008(c)(2) and 5041(d) of the 1988 Act, and sections 7621(b) and 7811(e) of the 1989 Act.

Explanation of Provisions

In General

Section 460(b) of the Code provides that, upon the completion of any long-term contract, the look-back method is applied to amounts reported under the contract using the percentage of completion method. The percentage of completion method requires the use of estimates of total contract price and total contract costs for reporting income in years prior to the year of contract completion. The look-back method is intended to offset the time-value effects of using estimates during the life of a contract that differ from the actual amounts determined upon the completion of the contract.

Under the look-back method, taxpayers are required to pay interest if tax liability is deferred as a result of underestimating the total contract price or overestimating total contract costs. Conversely, taxpayers are entitled to receive interest if tax liability is accelerated as a result of overestimating the total contract price or underestimating total contract costs. The amount of interest a taxpayer is required to pay or is entitled to receive under the look-back method is computed by applying the overpayment rate established by section 6621(a)(1), compounded daily, to the difference between the tax liability reported and the tax liability that would have been reported if the taxpayer had reported income on the basis of the actual contract price and the actual contract costs instead of the estimated contract price and costs (the "hypothetical underpayment" or "hypothetical overpayment"). Congress provided the look-back method to prevent harsh results that would otherwise be produced by the percentage of completion method if, for example, an overall loss is experienced on a contract. H.R. Rep. No. 426, 99th Cong., 1st Sess. 626 (1985), 1986–3 (Vol. 2) C.B. 626.

The look-back method involves only the computation of interest with respect to hypothetical underpayments or overpayments of tax liability attributable to the use of estimated, rather than actual, contract price and contract costs and, accordingly, has no effect on the amount of tax liability reported for a previous tax year. For example, if the tax rates in effect during the second year of a 2-year contract are lower than tax rates in effect during the first year, and if contract income was accelerated to the first year of the contract because estimated contract costs were lower than actual contract costs, interest is credited to the taxpayer on the hypothetical overpayment of tax for the first year based on the tax rate actually in effect for that year. The taxpayer would not be entitled, however, to a refund representing the amount of tax that would have been saved by applying the lower tax rate in effect for the second tax year to the amount of income accelerated to the first year of the contract. The look-back method, therefore, by design only corrects for timing differences, not permanent differences in tax liability that result from over- or underestimation of contract price and costs. Accordingly, the look-back method does not replace the requirement to properly estimate total contract price and contract costs in reporting income under the percentage of completion method for each year of a contract. For this reason, taxpayers' estimates remain subject to verification upon audit. See Notice 89–15, 1989–1 C.B. 634, Q & A 24 through Q & A 27, for rules for estimating the total contract price and total contract costs.

Operation of the Look-Back Method

The amount of interest charged or credited to a taxpayer under the look-back method is generally computed in three steps. The first step is to reapply the percentage of completion method to completed contracts using the actual, rather than estimated, contract price and contract costs. Income from the contract is thus reallocated among prior tax years. The second step is to compare what the tax liability for each affected year would have been if income had been reported as reallocated under the look-back method with the tax liability that was previously determined. If, for any year, there is a difference between these two amounts, the difference is treated as a hypothetical underpayment or overpayment of tax. The third step is to apply the rate of interest on overpayments established by section 6621 of the Code, compounded daily, to the hypothetical underpayment or overpayment of tax, from the year of the underpayment or overpayment until the year the contract was completed. The result is the amount of interest to be paid by or credited to the taxpayer. The regulations illustrate the three steps involved in applying the look-back method.

Simplified Method

The regulations provide a "simplified marginal impact method," which generally simplifies the application of Step Two of the look-back method by eliminating the requirement to determine what a taxpayer's tax liability would have been if income were reported on the basis of actual contract price and actual contract costs. Under the simplified marginal impact method, a taxpayer reapplies the percentage of completion method, using the actual, rather than estimated, total contract price and total contract costs, to all contracts that are completed or adjusted in a particular year. The taxpayer then computes the aggregate marginal increase or decrease in income, from those contracts only, for each tax year affected by those contracts. This increase or decrease in income for each affected tax year is generally deemed to give rise to a hypothetical overpayment or underpayment of tax determined at the highest statutory tax rate in effect for that year under section 1, in the case of an individual, and section 11, in the case of a corporation (currently 28 percent and 34 percent, respectively).

In accordance with section 460(b)(4) of the Code, as added by section 5041 (d) of the 1988 Act, the simplified marginal impact method must be used with respect to income from domestic long-term contracts of a widely held partnership, S corporation, or trust. With respect to this required application, the simplified marginal impact method is applied at the entity rather than at the owner level. In addition, hypothetical overpayments or underpayments of tax liability are deemed to arise at the highest statutory tax rate in effect for the majority of the entity's owners without regard to the actual tax rates or tax attributes of each of the owners.

The regulations also make the simplified marginal impact method available in the case of contracts that are not subject to the statutory simplified method. This extension results from a concern about the administrative burdens that would be imposed on taxpayers in the absence of this simplified method. Considerable complexity arises because a taxpayer otherwise must fully recompute tax liability for several years at a time and, in addition, recompute tax liability multiple times for the same year when the look-back method is applied to a year for which the tax liability has previously been recomputed under the look-back method. Additional complexity results because the time period for determining the amount of interest charged or credited to a taxpayer must be adjusted when the look-back method affects tax attributes such as net operating loss or credit carryovers and carrybacks that change the time period that a hypothetical underpayment or overpayment of tax was actually available to the taxpayer or the government.

The simplified marginal impact method simplifies the computation of hypothetical overpayments and underpayments and, in some cases, the time period for charging or crediting interest. Therefore, the regulations also permit C corporations, owners of widely held pass-through entities with respect to foreign contracts, owners of closely held passthrough entities, and sole proprietors to elect the simplified marginal impact method. The simplified marginal impact method is made available to these taxpayers under the authority of section 460(h), which provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 460.

A taxpayer that either is required to or elects to use the simplified marginal impact method must apply the method to all of the taxpayer's completed long-term contracts. If, however, the amount of income originally reported with respect to a long-term contract for any redetermination year exceeds the amount of income reallocated under the look-back method with respect to that contract for that year (*i.e.*, using actual contract price and contract costs) by the lesser of $1,000,000 or 20 percent of the amount of income reallocated under the look-back method with respect to that contract for that year, the regulations provide that the Commissioner may require a taxpayer that uses the simplified marginal impact method to apply the look-back method to that contract as if the simplified method did not apply. In determining whether to exercise this authority, the district director may take into account whether the taxpayer overreported income for a purpose of receiving interest on a hypothetical overpayment determined at the highest statutory tax rate. The district director also may take into account whether the taxpayer underreported income for the year in question with respect to other contracts. Moreover, if the Form 8697 is examined for any completion year and a year in which income was overreported is open under the statute of limitations, an adjustment to tax, rather than to look-back interest, will be made if the taxpayer did not properly estimate contract price and contract costs and the taxpayer would otherwise be permitted to obtain a permanent tax benefit.

To prevent the running of interest in a taxpayer's favor on amounts in excess of the taxpayer's actual tax liability for any year, a hypothetical overpayment in the case of a taxpayer electing the simplified marginal impact method is limited to the taxpayer's actual tax liability for the year, taking into account net operating losses carried to that year. Representatives of the construction industry commented that this tax liability ceiling could make the simplified marginal impact method impractical for contractors who experience wide fluctuations in their taxable income from year to year. The final regulations, however, retain the tax liability ceiling as a necessary limitation on hypothetical overpayments to prevent those taxpayers who were excluded from the statutory simplified method from receiving an unintended windfall by use of the method. Moreover, to the extent that the ceiling is based on a taxpayer's overall tax liability, the profitability of some activities will either partially or fully offset the negative impact on the ceiling from less profitable activities.

The tax liability ceiling does not apply in the case of the required use of the simplified marginal impact method. In this context, application of the ceiling would be impractical and would defeat the purpose of the simplified marginal impact method because hypothetical overpayments are determined solely at the pass-through entity level. Several commentators requested that closely held pass-through entities electing to use the simplified marginal impact method also be permitted to apply the method at the entity level to further reduce complexity arising from the owner level application. To the extent that a pass-through entity is closely held, each owner's share of income from a contract, and thus the potential for distortion from an entity-level application of the simplified marginal impact method, is likely to increase and yet could not be practicably made subject to the tax liability ceiling. Consequently, the regulations do not permit application of the elective use of the simplified marginal impact method at the entity level.

Form 8697

The amount of interest due or to be refunded as a result of applying the look-back method is computed and reported on Form 8697 (Interest Computation Under the Look-back Method for Completed Long-term Contracts) for any tax year in which one or more long-term contracts are completed, or in which the contract price or contract costs are adjusted for one or more long-term contracts that were previously completed. Form 8697 is due no later than the due date (including extensions) of the tax return for the year of completion or adjustment. Form 8697 is filed with the same Internal Revenue Service Center with which a taxpayer's income tax return is filed.

In general each taxpayer that reports income from a long-term contract, or adjusts amounts attributable to a completed long-term contract, is required to file Form 8697 to apply the look-back method. In the case of a pass-through entity, such as a partnership or an S corporation, however, the regulations clarify that the owners or shareholders generally are required to file Form 8697 and are liable for, or entitled to receive, interest with respect to their distributive shares of income from a contract. However, widely held pass-through entities are required to apply the look-back method at the entity level with respect to income from domestic contracts.

Mid-Contract Change in Taxpayer

The proposed regulations provided rules for applying the look-back method when there is a mid-contract change in the taxpayer reporting income from a contract. As proposed, these rules require the completing taxpayer to apply the look-back method with respect to all years of the contract, including tax years of a predecessor taxpayer. Several commentators have indicated that taxable sales should be excluded from this rule and treated as a constructive completion of the contract, consistent with the prior law treatment of taxable sales of a long-term contract. In part, the proposed regulations reflected the

concern that a constructive completion would require the look-back method to be applied before actual completion of the contract and on the basis of estimates or, in the case of a sale of an entire business, on the basis of an allocation of the purchase price of the business, thereby producing results that may conflict with the purpose of the look-back method. In response, these commentators have stated that this concern is adequately alleviated by the tension in the taxable sale context between the seller's motivation to underallocate the purchase price to the contract (to minimize look-back interest) and the purchaser's motivation to overallocate the purchase price to the contract (to minimize the allocation to goodwill). In these final regulations, the treatment of mid-contract changes in the taxpayer is reserved for further consideration.

Scope of Look-Back Method

The regulations describe the scope of the look-back method, which generally includes all long-term contracts entered into after February 28, 1986, that are reported under the percentage of completion method or the percentage of completion-capitalized cost method. In the case of any long-term contract reported under the percentage of completion-capitalized cost method, interest is charged or credited to the taxpayer with respect to the percentage (40, 70, or 90, whichever applies) of the contract reported under the percentage of completion method.

Section 56(a)(3) provides that, in determining the amount of the alternative minimum taxable income for any tax year, the percentage of completion method of accounting (as modified by section 460(b)) is used in lieu of the method of accounting that is used for purposes of computing the regular tax. The regulations clarify that the look-back method accordingly applies to alternative minimum taxable income computed using the percentage of completion method as well as to regular taxable income.

De Minimis Exception

The 1988 Act amended section 460(b) to exempt from the look-back method certain long-term contracts that are not otherwise exempt from the required use of the percentage of completion method (or the percentage of completion-capitalized cost method). Under section 460(b)(3)(B), the look-back method does not apply to any contract completed within 2 years if the gross contract price does not exceed the lesser of $1,000,000 or 1 percent of the taxpayer's average annual gross receipts. The regulations clarify that this de minimis exception is mandatory, even if income from the contract was accelerated as a result of the use of inaccurate estimates of contract price and contract costs, so that the taxpayer would otherwise be entitled to receive interest on the resulting hypothetical overpayment of tax.

If the de minimis exception applies to a contract for regular taxable income, then the exception also applies for alternative minimum taxable income. Because of the adjustments required for computing alternative minimum taxable income, a taxpayer's gross receipts for alternative minimum tax purposes may differ from gross receipts for regular income tax purposes. Thus, if the criteria for meeting the de minimis exception were applied separately for alternative minimum tax purposes using alternative minimum tax gross receipts, a difference between alternative minimum tax gross receipts and regular tax gross receipts could cause a contract to qualify for the de minimis exception for regular tax purposes, but not for alternative minimum tax purposes, or vice versa. To prevent this result, the regulations provide that gross receipts are determined for purposes of section 460(b)(3)(B) by reference only to regular taxable income.

The de minimis exception was enacted in 1988, effective for qualifying contracts entered into after February 28, 1986, and, therefore, may apply to contracts for which a taxpayer has already applied the look-back method. Since the de minimis exception was enacted retroactively, taxpayers are permitted to file an amended Form 8697 to reverse the application of the look-back method to qualifying contracts.

Treatment of Look-Back Interest

In accordance with section 460(b)(1), interest required to be paid by a taxpayer is treated as an increase in tax for purposes of subtitle F of the Code (other than the estimated tax penalty); however, interest received by a taxpayer is not treated as a reduction in tax liability. Under the regulations, the determination of whether interest computed under the look-back method is treated as tax for this purpose is determined on a "net" basis for each filing year. Thus, if a taxpayer computes for the current filing year both hypothetical overpayments and hypothetical underpayments for prior years, the taxpayer has an increase in tax only if the interest computed on the underpayments for all those prior years exceeds the interest computed on the overpayments for all those prior years.

For purposes of determining taxable income under subtitle A of the Code, however, any amount of interest required to be paid by the taxpayer under the look-back method is treated as interest expense. Consistent with the proposed regulations, the final regulations provide that this interest expense is treated as interest expense arising from an underpayment of income tax. Thus, any look-back interest required to be paid in the case of an individual (including an individual owner of any pass-through entity) is treated as personal interest in accordance with § 1.163-9T(b)(2), even if that interest is attributable to long-term contract income of a trade or business.

Several commentators were of the view that the disallowance of a deduction for look-back interest is unfair to individual contractors that are not taxed as corporations. According to these commentators, look-back interest expense should not be subject to § 1.163-9T(b)(2) because it results from hypothetical, not actual tax liabilities. However, by its terms, § 1.163-9T(b)(2) generally applies to all interest relating to tax liabilities, including certain deferred tax liabilities that do not result from an error in the computation of tax. Further, in the legislative history underlying section 453A, which requires interest to be paid on deferred taxes arising from installment sales, Congress clarified that personal interest included interest relating to deferred taxes as well as actual tax deficiences. See H.R. Conf. Rep. No. 495, 100th Cong., 1st Sess. 930 (1987), 1987-3 C.B. 930. Interest expense required to be paid under the look-back method relates to the deferral of tax liability and, therefore, is within the scope of § 1.163-9T(b)(2).

With respect to interest that is refunded under the look-back method, the regulations similarly provide that, for purposes of subtitle A, this amount is taxable interest income. The regulations also clarify that interest computed under the look-back method at the entity level under the simplified marginal impact method is allocated among the owners (or beneficiaries) in the same manner that interest income and interest expense are allocated to owners (or beneficiaries) and subject to the requirements of section 704 and any other applicable rules.

Treatment of Change Orders

The regulations clarify that the look-back method is applied to all amounts attributable to a single long-term contract. Section 460(f), which defines the term "long-term contract,"

authorizes the Secretary to prescribe regulations that require (1) two or more contracts that are interdependent (by reason of pricing or otherwise) to be treated as a single contract, and (2) a single contract that is properly severed to be treated as multiple contracts. Notice 89–15, Q & A 37 and 38, provides that the rules for severing and aggregating contracts in § 1.451–3(e) determine what constitutes a single long-term contract for purposes of reporting income and allocating costs to long-term contracts under section 460. These rules apply for determining whether a change order or other similar agreement is treated as a separate contract or as part of the original contract. *Cf.* Notice 89–15, Q & A 11. Because the look-back method involves a hypothetical reapplication of the percentage of completion method (as modified by section 460), the same rules apply in determining what constitutes a single long-term contract for purposes of the look-back method. Accordingly, under the regulations, if a contract change order does not constitute a separate contract under the rules for severing and aggregating contracts, the revenue and expenses attributable to the change order are allocable under the look-back method to all tax years of the underlying contract.

Time at Which Look-Back Method is Applied

Section 460(b)(1)(B) of the Code requires the look-back method to be applied upon completion of a long-term contract, and then to be reapplied in any tax year in which there are post-completion adjustments to the contract price or contract costs.

Completion

The regulations define the term "completion" for this purpose to mean final completion and acceptance within the meaning of § 1.451–3(b)(2). With respect to any long-term contract, therefore, the look-back method generally is applied no later than the year in which the subject matter of the contract has been delivered and is available for use by the customer, even if the taxpayer expects to incur additional contract costs in a year subsequent to the completion year.

Although § 1.451–3(b)(2) determines the "time" for completion, the provisions in § 1.451–3(b)(2), and § 1.451–3(d) (which separate contract revenues and contract costs from a long-term contract in certain circumstances, such as in the case of a dispute or contract term relating to contingent compensation) do not apply for purposes of the look-back method. These provisions, which are designed to prevent inappropriate deferral of income and expenses by taxpayers using the completed contract method, are not relevant under the percentage of completion method. Moreover, these provisions are inconsistent with the requirement of section 460(b)(1)(b) to reapply the look-back method to amounts taken into account after completion, since their application would otherwise permit income from a long-term contract to be accounted for under a method of accounting that is not subject to the look-back method.

In addition, section 460(b)(1) requires any portion of the contract price not previously included in income to be included in income for the year immediately following the completion year, even if the taxpayer expects to incur additional contract costs in a year subsequent to the year immediately following the completion year. This rule does not apply for purposes of the look-back method, however. Thus, to the extent that a taxpayer incurs additional costs after the year immediately following the year of completion, the taxpayer will be entitled to receive interest under the look-back method to compensate for any acceleration of income that resulted from this requirement.

Post-Completion Reapplications

The regulations clarify that, after completion of a contract, section 460(b) generally requires the look-back method to be reapplied in any subsequent tax year in which additional contract revenues or contract costs are taken into account, or in which amounts previously taken into account as income or deductions are adjusted for any reason. In reapplying the look-back method when any amount is taken into account after completion, including when any amount of revenue that is taken into account in the year immediately following the year of completion by reason of section 460(b)(1), the regulations provide that only costs actually incurred as of the reapplication year are included in the denominator of the percentage of completion ratio. Section 460(b)(2) provides that these amounts may be taken into account, for purposes of reapplying the look-back method, at a value that is discounted from the time the amount is taken into account to the time of completion. The regulations clarify that amounts of contract revenue that are properly taken into account under the percentage of completion method at the time of, or prior to, contract completion are not discounted under this rule, even if received after contract completion. Although section 460(b)(2) permits taxpayers to discount adjustments on a contract-by-contract basis, if a taxpayer discounts any adjustments relating to a particular contract, the taxpayer must discount all contract price or contract cost adjustments arising from the contract. See H.R. Rep. No. 247, 101st Cong., 1st Sess. 1411 (1989), which provides that adjustments to costs are to be treated in the same manner as adjustments to price.

The regulations provide a "delayed reapplication method" which, if elected, may reduce the number of times the look-back method is required to be reapplied for post-completion adjustments to a taxpayer's long-term contracts. Under the delayed reapplication method, taxpayers will be permitted to wait until the cumulative amount of adjustments to either the contract price or contract costs reaches a threshold of 10 percent of these amounts prior to adjustment or, if lesser, $1,000,000. To insure that all adjustments to the contract price are ultimately taken into account under the look-back method, a reapplication of the look-back method must be made (without regard to the thresholds) 5 years after the most recent application of the look-back method, or, if earlier, the year in which the taxpayer reasonably believes the contract is finally settled and closed.

Several commentators suggested that the look-back method should not have to be reapplied at any time after completion if the cumulative adjustments to net profit are de minimis. Because section 460(b) does not permit amounts attributable to a contract to be permanently forgiven from the application of the look-back method, the final regulations do not adopt this suggestion.

The regulations also do not reflect the comment that taxpayers be permitted to apply the look-back method prior to completion of a contract. Such a rule would unduly increase the complexity of the look-back method and, to the extent the regulations cannot require an early application, would be invoked selectively by taxpayers.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final

Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for these regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Carol Conjura of the Office of Associate Chief Counsel (Technical), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.441–1 through 1.483–2

Income Taxes, Accounting, Deferred compensation plans.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

The following amendments to 26 CFR parts 1 and 602 are adopted:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805. * * * Section 1.460–6 is also issued under 26 U.S.C. 460(h).

Par. 2. New §§ 1.460–0 and 1.460–6 are added under the heading "Taxable Year for Which Items of Gross Income Included" to read as follows:

§ 1.460–0 Outline of regulations under section 460.

This section lists the paragraphs contained in §§ 1.460–1 through 1.460–6.

§ 1.460–7 Exempt long-term contracts. [Reserved]

§ 1.460–8 Changes in method of accounting. [Reserved]

§ 1.460–1 Accounting for long-term contracts in general. [Reserved]

§ 1.460–2 Definition of long-term contract. [Reserved]

§ 1.460–3 Percentage of completion method. [Reserved]

§ 1.460–4 Percentage of completion-capitalized cost method. [Reserved]

§ 1.460–5 Cost allocation rules. [Reserved]

§ 1.460–6 Look-back method.

(a) *In general*—(1) *Introduction.* With respect to income from any long-term contract reported under the percentage of completion method, a taxpayer is required to pay or is entitled to receive interest under section 460(b) on the amount of tax liability that is deferred or accelerated as a result of overestimating or underestimating total contract price or contract costs. Under this look-back method, taxpayers are required to pay interest for any deferral of tax liability resulting from the underestimation of the total contract price or the overestimation of total contract costs. Conversely, if the total contract price is overestimated or the total contract costs are underestimated, taxpayers are entitled to receive interest for any resulting acceleration of tax liability. The computation of the amount of deferred or accelerated tax liability under the look-back method is hypothetical; application of the look-back method does not result in an adjustment to the taxpayer's tax liability as originally reported, as reported on an amended return, or as adjusted on examination. Thus, the look-back method does not correct for differences in tax liability that result from over- or under-estimation of contract price and costs and that are permanent because, for example, tax rates change during the term of the contract.

(2) *Overview.* Paragraph (b) explains which situations require application of the look-back method to income from a long-term contract. Paragraph (c) explains the operation of the three computational steps for applying the look-back method. Paragraph (d) provides guidance concerning the simplified marginal impact method. Paragraph (e) provides an elective method to minimize the number of times the look-back method must be reapplied to a single long-term contract. Paragraph (f) describes the reporting requirements for the look-back method and the tax treatment of look-back interest. Paragraph (g) provides rules for applying the look-back method when there is a transaction that changes the taxpayer that reports income from a long-term contract prior to the completion of a contract. Paragraph (h) provides examples illustrating the three computational steps for applying the look-back method.

(b) *Scope of look-back method*—(1) *In general.* The look-back method applies to any income from a long-term contract within the meaning of section 460(f) that is required to be reported under the percentage of completion method (as modified by section 460) for regular income tax purposes or for alternative minimum tax purposes. If a taxpayer uses the percentage of completion-capitalized cost method for long-term contracts, the look-back method applies for regular tax purposes only to the portion (40, 70, or 90 percent, whichever applies) of the income from the contract that is reported under the percentage of completion method. The requirements of section 460 also apply to income and expenses attributable to activities that benefit any long-term contract entered into by a party related to the taxpayer within the meaning of section 707(b) or 267(b), determined without regard to section 267(f)(1)(A) and by substituting "80 percent" for "50 percent" with regard to the ownership of the stock of a C corporation. Therefore, to the extent that the percentage of completion method is required to be used with respect to income and expenses that are attributable to activities that benefit a related party's long-term contract, the look-back method also applies to these amounts, even if those activities are not performed under a contract entered into directly by the taxpayer.

(2) *Exceptions from section 460.* The look-back method generally does not apply to the regular taxable income from any long-term construction contract within the meaning of section 460(e)(4) that:

(i) Is a home construction contract within the meaning of section 460(e)(1)(A), or

(ii) Is not a home construction contract but is estimated to be completed within a 2-year period by a taxpayer whose average annual gross receipts for the 3 tax years preceding the tax year the contract is entered into do not exceed $10,000,000 (as provided in section 460(e)(1)(B)). These contracts are not subject to the look-back method for regular tax purposes, even if the taxpayer uses a version of the percentage of completion method permitted under § 1.451–3, unless the taxpayer has properly changed its method of accounting for these contracts to the percentage of completion method as modified by section 460(b). The look-back method, however, applies to the alternative minimum taxable income from a contract of this type, unless it is exempt from the required use of the percentage of completion method under section 56(a)(3).

(3) *De minimis exception.* Notwithstanding that the percentage of completion method is otherwise required to be used, the look-back method does not apply to any long-term contract that:

(i) Is completed within 2 years of the contract commencement date, and

(ii) Has a gross contract price (as of the completion of the contract) that does not exceed the lesser of $1,000,000 or 1 percent of the average annual gross receipts of the taxpayer for the 3 tax years preceding the tax year in which the contract is completed.

This de minimis exception is mandatory and, therefore, precludes application of the look-back method to any contract that meets the requirements of the exception. The de minimis exception applies for purposes of computing both regular taxable income and alternative minimum taxable income. Solely for this purpose, the determination of whether a long-term contract meets the gross receipts test for both alternative minimum tax and regular tax purposes is made based only on the taxpayer's regular taxable income.

(4) *Alternative minimum tax.* For purposes of computing alternative minimum taxable income, section 56(a)(3) generally requires long-term contracts within the meaning of section 460(f) (generally without regard to the exceptions in section 460(e)) to be accounted for using only the percentage of completion method as defined in section 460(b), including the look-back method of section 460(b), with respect to tax years beginning after December 31, 1986. However, section 56(a)(3) (and thus the look-back method) does not apply to any long-term contract entered into after June 20, 1988, and before the beginning of the first tax year that begins after September 30, 1990, that meets the conditions of both section 460(e)(1)(A) and clauses (i) and (ii) of section 460(e)(1)(B), and does not apply to any long-term contract entered into in a tax year that begins after September 30, 1990, that meets the conditions of section 460(e)(1)(A). A taxpayer that applies the percentage of completion method (and thus the look-back method) to income from a long-term contract only for purposes of determining alternative minimum taxable income, and not regular taxable income, must apply the look-back method to the alternative minimum taxable income in the year of contract completion and other filing years whether or not the taxpayer was liable for the alternative minimum tax for the filing year or for any prior year. Interest is computed under the look-back method to the extent that the taxpayer's total tax liability (including the alternative minimum tax liability) would have differed if the percentage of completion method had been applied using actual, rather than estimated, contract price and contract costs.

(5) *Effective date.* The look-back method, including the de minimis exception, applies to long-term contracts entered into after February 28, 1986. With respect to activities that are subject to section 460 solely because they benefit a long-term contract of a related party, the look-back method generally applies only if the related party's long-term contract was entered into after June 20, 1988, unless a principal purpose of the related-party arrangement is to avoid the requirements of section 460.

(c) *Operation of the look-back method*—(1) *Overview*—(i) *In general.* The amount of interest charged or credited to a taxpayer under the look-back method is computed in three steps. This paragraph (c) describes the three steps for applying the look-back method. These steps are illustrated by the examples in paragraph (h). The first step is to hypothetically reapply the percentage of completion method to all long-term contracts that are completed or adjusted in the current year (the "filing year"), using the actual, rather than estimated, total contract price and contract costs. Based on this reapplication, the taxpayer determines the amount of taxable income (and alternative minimum taxable income) that would have been reported for each year prior to the filing year that is affected by contracts completed or

adjusted in the filing year if the actual, rather than estimated, total contract price and costs had been used in applying the percentage of completion method to these contracts, and to any other contracts completed or adjusted in a year preceding the filing year. If the percentage of completion method only applies to alternative minimum taxable income for contracts completed or adjusted in the filing year, only alternative minimum taxable income is recomputed in the first step. The second step is to compare what the tax liability would have been under the percentage of completion method (as reapplied in the first step) for each tax year for which the tax liability is affected by income from contracts completed or adjusted in the filing year (a "redetermination year") with the most recent determination of tax liability for that year to produce a hypothetical underpayments or overpayment of tax. The third step is to apply the rate of interest on overpayments designated under section 6621 of the Code, compounded daily, to the hypothetical underpayment or overpayment of tax for each redetermination year to compute interest that runs, generally, from the due date (determined without regard to extensions) of the return for the redetermination year to the due date (determined without regard to extensions) of the return for the filing year. The net amount of interest computed under the third step is paid by or credited to the taxpayer for the filing year. Paragraph (d) provides a simplified marginal impact method that simplifies the second step—the computation of hypothetical underpayments or overpayments of tax liability for redetermination years—and, in some cases, the third step—the determination of the time period for computing interest.

(ii) *Post-completion revenue and expenses*—(A) *In general.* The look-back method is applied upon the completion of any long-term contract and (unless the taxpayer elects the delayed reapplication method of this section) is applied in any subsequent tax year for which there are taken into account any increases or decreases in either total contract price or total contract costs allocable to the contract under section 460(c) ("allocable contract costs") to the extent those increases or decreases were not previously taken into account under the percentage of completion method. Any year in which the look-back method must be reapplied is treated as a filing year. See Example (3) of paragraph (h)(4) for an illustration of how the look-back method is applied to post-completion adjustments.

(B) *Completion.* A contract is considered to be completed for purposes of the look-back method no later than the year in which final completion and acceptance within the meaning of § 1.451–3(b)(2) have occurred. Accordingly, determination of the completion year for any long-term contract is based on an analysis of all the relevant facts and circumstances, including the manner in which the parties to the contract deal with each other and with the subject matter of the contract and the nature of any work or costs remaining to be performed or incurred on the contract. Therefore, the first application of the look-back method must occur no later than the tax year in which the subject matter of the contract has been delivered and is available for use by the customer, even if the taxpayer reasonably expects at that time to incur additional allocable contract costs.

(C) *Discounting of contract price and contract cost adjustments subsequent to completion; election not to discount*—(*1*) *General rule.* The amount of any post-completion adjustment to the total contract price or contract costs is discounted, solely for purposes of applying the look-back method, from its value at the time the amount is taken into account in computing taxable income to its value at the completion of the contract. The discount rate for this purpose is the Federal mid-term rate under section 1274(d) in effect at the time the amount is properly taken into account. For purposes of applying the look-back method for the completion year, no amounts are discounted, even if they are received after the completion year.

(*2*) *Election not to discount.* Notwithstanding the general requirement to discount post-completion adjustments, a taxpayer may elect not to discount contract price and contract cost adjustments with respect to any contract. The election not to discount is to be made on a contract-by-contract basis and is binding with respect to all post-completion adjustments that arise with respect to a contract for which an election has been made. An election not to discount with respect to any contract is made by stating that an election is being made on the taxpayer's timely filed Federal income tax return (determined with regard to extensions) for the first tax year after completion in which the taxpayer takes into account (i.e., includes in income or deducts) any adjustment to the contract price or contract costs. See § 5h.6.

(*3*) *Year-end discounting convention.* In the absence of an election not to discount, any revisions to the contract price and contract costs must be discounted to their value as of the completion of the contract in reapplying the look-back method. For this purpose, the period of discounting is the period between the completion date of the contract and the date that any adjustment is taken into account in computing taxable income. Although taxpayers may use the period between the months in which these two events actually occur, in many cases, these dates may not be readily identifiable. Therefore, for administrative convenience, taxpayers are permitted to use the period between the end of the tax years in which these events occur as the period of discounting provided that the convention is used consistently with respect to all post-completion adjustments for all contracts of the taxpayer the adjustments to which are discounted. In that case, the taxpayer must use as the discount rate the Federal mid-term rate under section 1274(d) as of the end of the tax year in which any revision is taken into account in computing taxable income.

(D) *Revenue acceleration rule.* Section 460(b)(1) imposes a special rule that requires a taxpayer to include in gross income, for the tax year immediately following the year of completion, any previously unreported portion of the total contract price (including amounts that the taxpayer expects to receive in the future) determined as of that year, even if the percentage of completion ratio is less than 100 percent because the taxpayer expects to incur additional allocable contract costs in a later year. At the time any remaining portion of the contract price is includible in income under this rule, no offset against this income is permitted for estimated future contract costs. To achieve the requirement to report all remaining contract revenue without regard to additional estimated costs, a taxpayer must include only costs actually incurred through the end of the tax year in the denominator of the percentage of completion ratio in applying the percentage of completion method for any tax years after the year of completion. The look-back method also must be reapplied for the year immediately following the year of completion if any portion of the contract price is includible in income in that year by reason of section 460(b)(1). For purposes of reapplying the look-back method as a result of this inclusion in income, the taxpayer must only include in the denominator of the percentage of completion ratio the actual contract costs incurred as of the end of the year,

even if the taxpayer reasonably expects to incur additional allocable contract costs. To the extent that costs are incurred in a subsequent tax year, the look-back method is reapplied in that year (or a later year if the delayed reapplication method is used), and the taxpayer is entitled to receive interest for the post-completion adjustment to contract costs. Because this reapplication occurs subsequent to the completion year, only the cumulative costs incurred as of the end of the reapplication year are includible in the denominator of the percentage of completion ratio.

(2) *Look-back Step One*—(i) *Hypothetical reallocation of income among prior tax years.* For each filing year, a taxpayer must allocate total contract income among prior tax years, by hypothetically applying the percentage of completion method to all contracts that are completed or adjusted in the filing year using the rules of this paragraph (c)(2). The taxpayer must reallocate income from those contracts among all years preceding the filing year that are affected by those contracts using the total contract price and contract costs, as determined as of the end of the filing year ("actual contract price and costs"), rather than the estimated contract price and contract costs. The taxpayer then must determine the amount of taxable income and the amount of alternative minimum taxable income that would have been reported for each affected tax year preceding the filing year if the percentage of completion method had been applied on the basis of actual contract price and contract costs in reporting income from all contracts completed or adjusted in the filing year and in any preceding year. If the percentage of completion method only applies to alternative minimum taxable income from the contract, only alternative minimum taxable income is recomputed in the first step. For purposes of reallocating income (and costs if the 10-percent year changes for a taxpayer using the 10-percent method of section 460(b)(5)) under the look-back method, the method of computing the percentage of completion ratio is the same method used to report income from the contract on the taxpayer's return. (Thus, an election to use the 10-percent method or the simplified cost-to-cost method is taken into account). See Example (1) of paragraph (h)(2) for an illustration of Step One.

(ii) *Treatment of estimated future costs in year of completion.* If a taxpayer reasonably expects to incur additional allocable contract costs in a tax year subsequent to the year in which the contract is completed, the taxpayer includes the actual costs incurred as of the end of the completion year plus the additional allocable contract costs that are reasonably expected to be incurred (to the extent includible under the taxpayer's percentage of completion method) in the denominator of the percentage of completion ratio. The completion year is the only filing year for which the taxpayer may include additional estimated costs in the denominator of the percentage of completion ratio in applying the look-back method. If the look-back method is reapplied in any year after the completion year, only the cumulative costs incurred as of the end of the year of reapplication are includible in the denominator of the percentage of completion ratio in reapplying the look-back method.

(iii) *Interim reestimates not considered.* The look-back method cannot be applied to a contract before it is completed. Accordingly, for purposes of applying Step One, the actual total contract price and contract costs are substituted for the previous estimates of total contract price and contract costs only with respect to contracts that have been completed in the filing year and in a tax year preceding the filing year. No adjustments are made under Step One for contracts that have not been completed prior to the end of the current filing year, even if, as of the end of this year, the estimated total contract price or contract costs for these uncompleted contracts is different from the estimated amount that was used during any tax year for which taxable income is recomputed with respect to completed contracts under the look-back method for the current filing year.

(iv) *Tax years in which income is affected.* In general, because income under the percentage of completion method is generally reported as costs are incurred, the taxable income and alternative minimum taxable income are recomputed only for each year in which allocable contract costs were incurred. However, there will be exceptions to this general rule. For example, a taxpayer may be required to cumulatively adjust the income from a contract in a year in which no allocable contract costs are incurred if the estimated total contract price or contract costs was revised in that year. However, in applying the look-back method, no contract income is allocated to that year. Thus, there may be a difference between the amount of contract income originally reported for that year and the amount of contract income as reallocated. Similarly, because of the revenue acceleration rule of section 460(b)(1), income may be reported in the year immediately following the completion year even though no costs were incurred during that year and, in applying the look-back method in that year or another year, if additional costs are incurred or the contract price is adjusted in a later year, no income is allocated to the year immediately following the completion year.

(v) *Costs incurred prior to contract execution; 10-percent method*—(A) *General rule.* There are two situations in which allocable contract costs may be incurred without causing contract income to be reported under the percentage of completion method. First, allocable contract costs that are incurred in tax years prior to the tax year the contract is entered into are deductible in the tax year the contract is entered into, and no contract income is required to be reported in any of these prior tax years. The look-back method does not require allocation of contract income to tax years before the contract was entered into. Costs incurred prior to the year a contract is entered into are similarly first taken into account in the numerator of the percentage of completion ratio in the year the contract is entered into. Second, under the elective 10-percent method of section 460(b)(5), a taxpayer takes no contract revenues or contract costs into account until the tax year as of the close of which at least 10 percent of the total estimated contract costs are incurred (the 10-percent year). Instead, contract costs incurred in a tax year preceding the 10-percent year are deferred until the 10-percent year, at which time they are included in the numerator of the percentage of completion ratio and deducted from gross income. A taxpayer using the 10-percent method must also use the 10-percent method in applying the look-back method, using actual total contract costs to determine the 10-percent year. Thus, contract income is never reallocated to a year before the 10-percent year as determined on the basis of actual contract costs. If the 10-percent year is earlier as a result of applying Step One of the look-back method, contract costs incurred up to and including the new 10-percent year (as determined based on actual contract costs), are reallocated from the original 10-percent year to the new 10-percent, and costs incurred in later years but before the old 10-percent year are reallocated to those years. If the 10-percent year is later as a result of applying Step One of the look-back

method, contract costs incurred up to and including the new 10-percent year are reallocated from all prior years to the new 10-percent year. This is the only case in which costs are reallocated under the look-back method.

(B) *Example.* The application of the look-back method by a taxpayer using the 10-percent method is illustrated by the following example:

Example. Z elected to use the 10-percent method of section 460(b)(5) for reporting income under the percentage of completion method. Z entered into a contract in 1990 for a fixed price of $1,000*x*. During 1990, Z incurred allocable contract costs of $80*x* and estimated that it would incur a total of $900*x* for the entire contract. Since $80*x* is less than 10 percent of total estimated contract costs, Z reported no revenue from the contract in 1990 and deferred the $80*x* of costs incurred. In 1991, Z incurred an additional $620*x* of contract costs, and completed the contract. Accordingly, in its 1991 return, Z reported the entire contract price of $1,000*x*, and deducted the $620*x* of costs incurred in 1991 and the $80*x* of costs incurred in 1990.

Under section 460(b)(5), the 10-percent method applies both for reporting contract income and the look-back method. Under the look-back method, since the costs incurred in 1990 ($80*x*) exceed 10 percent of the actual total contract costs ($700*x*), Z is required to allocate $114*x* of contract revenue ($80*x*/$700*x* x $1,000*x*) and the $80*x* of costs incurred to 1990. Thus, application of the look-back method results in a net increase in taxable income for 1990 of $34*x*, solely for purposes of the look-back method.

(vi) *Amount treated as contract price*—(A) *General rule.* The amount that is treated as total contract price for purposes of applying the percentage of completion method and reapplying the percentage of completion method under the look-back method under Step One includes all amounts that the taxpayer expects to receive from the customer. Thus, amounts are treated as part of the contract price as soon as it is reasonably estimated that they will be received, even if the all-events test has not yet been met.

(B) *Contingencies.* Any amounts related to contingent rights or obligations, such as incentive fees or amounts in dispute, are not separated from the contract and accounted for under a non-long-term contract method of accounting, notwithstanding any provision in § 1.451–3(b)(2) (ii), (iii), (iv), and § 1.451–3(d) (2), (3), and (4), to the contrary. Instead, those amounts are treated as part of the total contract price in applying the percentage of completion method and the look-back method. For example, if an incentive fee under a contract to manufacture a satellite is payable to the taxpayer after a specified period of successful performance, the incentive fee is includible in the total contract price at the time and to the extent that it can reasonably be predicted that the performance objectives will be met, for purposes of both the percentage of completion method and the look-back method. Similarly, a portion of the contract price that is in dispute is included in the total contract price at the time and to the extent that the taxpayer can reasonably expect the dispute will be resolved in the taxpayer's favor (without regard to when the taxpayer receives payment for the amount in dispute or when the dispute is finally resolved).

(C) *Change orders.* In applying the look-back method, a change order with respect to a contract is not treated as a separate contract unless the change order would be treated as a separate contract under the rules for severing and aggregating contracts provided in § 1.451–3(e). Thus, if a change order is not treated as a separate contract, the contract price and contract costs attributable to the change order must be taken into account in allocating contract income to all tax years affected by the underlying contract.

(3) *Look-back Step Two: Computation of hypothetical overpayment or underpayment of tax*—(i) *In general.* Step Two involves the computation of a hypothetical overpayment or underpayment of tax for each year in which the tax liability is affected by income from contracts that are completed or adjusted in the filing year (a "redetermination year"). The application of Step Two depends on whether the taxpayer uses the simplified marginal impact method contained in paragraph (d) or the actual method described in this paragraph (c)(3). The remainder of this paragraph (c)(3) does not apply if a taxpayer uses the simplified marginal impact method.

(ii) *Redetermination of tax liability.* Under the method described in this paragraph (c)(3) (the "actual method"), a taxpayer, first, must determine what its regular and alternative minimum tax liability would have been for each redetermination year if the amounts of contract income allocated in Step One for all contracts completed or adjusted in the filing year and in any prior year were substituted for the amounts of contract income reported under the percentage of completion method on the taxpayer's original return (or as subsequently adjusted on examination, or by amended return). See Example (2) of paragraph (h)(3) for an illustration of Step Two.

(iii) *Hypothetical underpayment or overpayment.* After redetermining the income tax liability for each tax year affected by the reallocation of contract income, the taxpayer then determines the amount, if any, of the hypothetical underpayment or overpayment of tax for each of these redetermination years. The hypothetical underpayment or overpayment for each affected year is the difference between the tax liability as redetermined under the look-back method for that year and the amount of tax liability determined as of the latest of the following:

(A) The original return date;

(B) The date of a subsequently amended or adjusted return (if, however, the amended return is due to a carryback described in section 6611(f), see paragraph (c)(4)(iii)); or,

(C) The last previous application of the look-back method (in which case, the previous hypothetical tax liability is used).

(iv) *Cumulative determination of tax liability.* The redetermination of tax liability resulting from previous applications of the look-back method is cumulative. Thus, for example, in computing the amount of a hypothetical overpayment or underpayment of tax for a redetermination year, the current hypothetical tax liability is compared to the hypothetical tax liability for that year determined as of the last previous application of the look-back method.

(v) *Years affected by look-back only.* A redetermination of income tax liability under Step Two is required for every tax year for which the tax liability would have been affected by a change in the amount of income or loss for any other year for which a redetermination is required. For example, if the allocation of contract income under Step One changed the amount of a net operating loss that was carried back to a year preceding the year the taxpayer entered into the contract, the tax liability for the earlier year must be redetermined.

(vi) *Definition of tax liability.* For purposes of Step Two, the income tax liability must be redetermined by taking into account all applicable additions to tax, credits, and net operating loss carrybacks and carryovers. Thus, the tax, if any, imposed under section 55 (relating to alternative minimum tax) must be taken into account. For example, if the taxpayer did not pay alternative minimum tax, but would have paid alternative minimum tax for that year if actual rather than estimated contract price and costs had been used in determining contract income for the year, the amount of any hypothetical overpayment or underpayment of tax must be determined by comparing the hypothetical total tax liability (including hypothetical alternative minimum tax

liability) with the actual tax liability for that year. The effect of taking these items into account in applying the look-back method is illustrated in Examples (4) through (7) of paragraphs (h)(5) through (h)(8) below.

(4) *Look-back Step Three: Calculation of interest on underpayment or overpayment*—(i) *In general.* After determining a hypothetical underpayment or overpayment of tax for each redetermination year, the taxpayer must determine the interest charged or credited on each of these amounts. Interest on the amount determined under Step Two is determined by applying the overpayment rate designated under section 6621, compounded daily. In general, the time period over which interest is charged on hypothetical underpayments or credited on hypothetical overpayments begins at the due date (not including extensions) of the return for the redetermination year for which the hypothetical underpayment or overpayment determined in Step Two is computed. This time period generally ends on the earlier of:

(A) The due date (not including extensions) of the return for the filing year, and

(B) The date both

(*1*) The income tax return for the filing year is filed, and

(*2*) The tax for that year has been paid in full. If a taxpayer uses the simplified marginal impact method contained in paragraph (d), the remainder of this paragraph (c)(4) does not apply.

(ii) *Changes in the amount of a loss or credit carryback or carryover.* The time period for determining interest may be different in cases involving loss or credit carrybacks or carryovers in order to properly reflect the time period during which the taxpayer (in the case of an underpayment) or the Government (in the case of an overpayment) had the use of the amount determined to be a hypothetical underpayment or overpayment. Thus, if a reallocation of contract income under Step One results in an increase or decrease to a net operating loss carryback (but not a carryforward), the interest due or to be refunded must be computed on the increase or decrease in tax attributable to the change to the carryback only from the due date (not including extensions) of the return for the redetermination year that generated the carryback and not from the due date of the return for the redetermination year in which the carryback was absorbed. In the case of a change in the amount of a carryover as a result of applying the lookback method, interest is computed from the due date of the return for the year in which the carryover was absorbed. See Examples (8) and (9) of paragraph (h)(9) for an illustration of these rules.

(iii) *Changes in the amount of tax liability that generated a subsequent refund.* If the amount of tax liability for a redetermination year (as reported on the taxpayer's original return, as subsequently adjusted on examination, as adjusted by amended return, or as redetermined by the last previous application of the look-back method) is decreased by the application of the look-back method, and any portion of the redetermination year tax liability was absorbed by a loss or credit carryback arising in a year subsequent to the redetermination year, the look-back method applies as follows to properly reflect the time period of the use of the tax overpayment. To the extent the amount of tax absorbed because of the carryback exceeds the total hypothetical tax liability for the year (as redetermined under the look-back method) the taxpayer is entitled to receive interest only until the due date (not including extensions) of the return for the year in which the carryback arose.

Example. Upon the completion of a long-term contract in 1990, the taxpayer redetermines its tax liability for 1988 under the look-back method. This redetermination results in a hypothetical reduction of tax liability from $1,500*x* (actual liability originally reported) to $1,200*x* (hypothetical liability). In addition, the taxpayer had already received a refund of some or all of the actual 1988 tax by carrying back a net operating loss (NOL) that arose in 1989. The time period over which interest would be computed on the hypothetical overpayment of $300*x* for 1988 would depend on the amount of the refund generated by the carryback, as illustrated by the following three alternative situations:

(A) If the amount refunded because of the NOL is $1,500*x*: interest is credited to the taxpayer on the entire hypothetical overpayment of $300*x* from the due date of the 1988 return, when the hypothetical overpayment occurred, until the due date of the 1989 return, when the taxpayer received a refund for the entire amount of the 1988 tax, including the hypothetical overpayment.

(B) If the amount refunded because of the NOL is $1,000*x*: interest is credited to the taxpayer on the entire amount of the hypothetical overpayment of $300*x* from the due date of the 1988 return, when the hypothetical overpayment occurred, until the due date of the 1990 return. In this situation interest is credited until the due date of the return for the completion year of the contract, rather than the due date of the return for the year in which the carryback arose, because the amount refunded was less than the redetermined tax liability. Therefore, no portion of the hypothetical overpayment is treated as having been refunded to the taxpayer before the filing year.

(C) If the amount refunded because of the NOL is $1,300*x*—: interest is credited to the taxpayer on $100*x* ($1,300*x*—$1,200*x*) from the due date of the 1988 return until the due date of the 1989 return because only this portion of the total hypothetical overpayment is treated as having been refunded to the taxpayer before the filing year. However, the taxpayer did not receive a refund for the remaining $200*x* of the overpayment at that time and, therefore, is credited with interest on $200*x* through the due date of the tax return for 1990, the filing year. See Examples (10) and (11) of paragraph (h)(9) for a further illustration of this rule.

(iv) *Additional interest due on interest only after tax liability due.* For each filing year, taxpayers are required to file a Form 8697 (Interest Computation Under the Look-back Method for Completed Long-term Contracts) at the time the return for that filing year is filed to report the interest due or to be refunded under the look-back method. Even if the taxpayer has received an extension to file its income tax return for the filing year, look-back interest is computed with respect to the hypothetical increase (or decrease) in the tax liability determined under the look-back method only until the initial due date of that return (without regard to the extension). Interest is charged, unless the taxpayer otherwise has a refund that fully offsets the amount of interest due, (or credited) with respect to the amount of look-back interest due (or to be refunded) under the look-back method from the initial due date of the return through the date the return is filed. No interest is charged (or credited) after the due date of the return with respect to the amount of the hypothetical increases (or decreases) in tax liability determined under the look-back method.

(d) *Simplified marginal impact method*—(1) *Introduction.* This paragraph (d) provides a simplified method for calculating look-back interest. Any taxpayer may elect this simplified marginal impact method, except that pass-through entities described in paragraph (d)(4) of this section are required to apply the simplified marginal impact method at the entity level with respect to domestic contracts and the owners of those entities do not apply the look-back method to those contracts. Under the simplified marginal impact method, a taxpayer calculates the hypothetical underpayments or overpayments of tax for a prior year based on an assumed marginal tax rate. A taxpayer electing to use the simplified marginal impact method must use the method for each long-term contract for which it reports income (except with respect to domestic

contracts if the taxpayer is an owner in a widely held pass-through entity that is required to use the simplified marginal impact method at the entity level for those contracts).

(2) *Operation*—(i) *In general.* Under the simplified marginal impact method, income from those contracts that are completed or adjusted in the filing year is first reallocated in accordance with the procedures of Step One contained in paragraph (c)(2) of this section. Step Two is modified in the following manner. The hypothetical underpayment or overpayment of tax for each year of the contract (a "redetermination year") is determined by multiplying the applicable regular tax rate (as defined in paragraph (d)(2)(iii)) by the increase or decrease in regular taxable income (or, if it produces a greater amount, by multiplying the applicable alternative minimum tax rate by the increase or decrease in alternative minimum taxable income, whether or not the taxpayer would have been subject to the alternative minimum tax) that results from reallocating income to the tax year under Step One. Generally, the product of the alternative minimum tax rate and the increase or decrease in alternative minimum taxable income will be the greater of the two amounts described in the preceding sentence only with respect to contracts for which a taxpayer uses the full percentage of completion method only for alternative minimum tax purposes and uses the completed contract method, or the percentage of completion-capitalized cost method, for regular tax purposes. Step Three is then applied. Interest is credited to the taxpayer on the net overpayment and is charged to the taxpayer on the net underpayment for each redetermination year from the due date (determined without regard to extensions) of the return for the redetermination year until the earlier of

(A) The due date (determined without regard to extensions) of the return for the filing year, and

(B) The first date by which both the return is filed and the tax is fully paid.

(ii) *Applicable tax rate.* For purposes of determining hypothetical underpayments or overpayments of tax under the simplified marginal impact method, the applicable regular tax rate is the highest rate of tax in effect for the redetermination year under section 1 in the case of an individual and under section 11 in the case of a corporation. The applicable alternative minimum tax rate is the rate of tax in effect for the taxpayer under section 55(b)(1). The highest rate is determined without regard to the taxpayer's actual rate bracket and without regard to any additional surtax imposed for the purpose of phasing out multiple tax brackets or exemptions.

(iii) *Overpayment ceiling.* The net hypothetical overpayment of tax for any redetermination year is limited to the taxpayer's total federal income tax liability for the redetermination year reduced by the cumulative amount of net hypothetical overpayments of tax for that redetermination year resulting from earlier applications of the look-back method. If the reallocation of contract income results in a net overpayment of tax and this amount exceeds the actual tax liability (as of the filing year) for the redetermination year, as adjusted for past applications of the look-back method and taking into account net operating loss, capital loss, or credit carryovers and carrybacks to that year, the actual tax so adjusted is treated as the overpayment for the redetermination year. This overpayment ceiling does not apply when the simplified marginal impact method is applied at the entity level by a widely held pass-through entity in accordance with paragraph (d)(4) of this section.

(iv) *Example.* The application of the simplified marginal impact method is illustrated by the following example:

Example. Corporation X, a calendar-year taxpayer, reports income from long-term contracts and elected the simplified marginal impact method when it filed its income tax return for 1989. X uses only the percentage of completion method for both regular taxable income and alternative minimum taxable income. X completed contracts A, B, and C in 1989 and, therefore, was required to apply the look-back method in 1989. Income was actually reported for these contracts in 1987, 1988, and 1989. X's applicable tax rate, as determined under section 11, for the redetermination years 1987 and 1988 was 40 percent and 34 percent, respectively. The amount of contract income originally reported and reallocated for contracts A, B, and C, and the net overpayments and underpayments for the redetermination years are as follows:

	1987	1988
Contract A:		
Originally reported	$5,000x	$4,000x
Reallocated	3,000x	5,000x
Increase/(Decrease)	(2,000x)	1,000x
Contract B:		
Originally reported	6,000x	2,000x
Reallocated	7,000x	1,500x
Increase/(Decrease)	1,000x	(500x)
Contract C:		
Originally reported	8,000x	5,000x
Reallocated	4,000x	7,000x
Increase/(Decrease)	(4,000x)	2,000x
Net Increase/(Decrease)	(5,000x)	2,500x
Tentative (Underpayment)/Overpayment:		
@ .40	2,000x	
@ .34		(850x)
Ceiling:		
Actual Tax Liability (After Carryovers and Carrybacks)	1,500x	500x
Final (Underpayment)/Overpayment	1,500x	(850x)

Under the simplified marginal impact method, X determined a tentative hypothetical net overpayment for 1987 and a net underpayment for 1988. X determined these amounts by first aggregating the difference for contracts A, B, and C between the amount of contract price originally reported and the amount of contract price as reallocated and, then, applying the highest regular tax rate to the aggregate decrease in income for 1987 and the aggregate increase in income for 1988.

However, X's overpayment for 1987 is subject to a ceiling based on X's total tax liability. Because the tentative net overpayment of tax for 1987 exceeds the actual tax liability for that year after taking into account carryovers and carrybacks to that year, the final overpayment under the simplified marginal impact method is the amount of tax liability paid instead of the tentative net overpayment. Since application of the look-back method for 1988 results in a tentative underpayment of tax, it is not subject to a ceiling. If the look-back method is applied in 1991, the ceiling amount for 1987 will be zero and the ceiling amount for 1988 will be $1,350.

X is entitled to receive interest on the hypothetical overpayment from March 15, 1988, to March 15, 1990. X is required to pay interest on the underpayment from March 15, 1989, to March 15, 1990.

(3) *Anti-abuse rule.* If the simplified marginal impact method is used with respect to any long-term contract (including a contract of a widely held pass-through entity), the district director may recompute interest for the contract (including domestic contracts of widely held pass-through entities) under the look-back method using the actual method (and without regard to the simplified marginal impact method). The district director may make such a recomputation only if the amount of income originally reported with respect to the contract for any redetermination year exceeds the amount of income reallocated under the look-back method with respect to that contract for that year (using actual contract price and contract costs) by the lesser of $1,000,000 or 20 percent of the amount of income as reallocated (*i.e.*, based on actual contract price and contract costs) under the look-back method with respect to that contract for that year. In determining whether to exercise this authority upon examination of the Form 8697, the district director may take into account whether the taxpayer overreported income for a purpose of receiving interest under the look-back method on a hypothetical overpayment determined at the applicable tax rate.

The district director also may take into account whether the taxpayer underreported income for the year in question with respect to other contracts. Notwithstanding the look-back method, the district director may require an adjustment to the tax liability for any open tax year if the taxpayer did not apply the percentage of completion method properly on its original return.

(4) *Application*—(i) *Required use by certain pass-through entities*—(A) *General rule.* The simplified marginal impact method is required to be used with respect to income reported from domestic contracts by a pass-through entity that is either a partnership, an S corporation, or a trust, and that is not closely held. With respect to contracts described in the preceding sentence, the simplified marginal impact method is applied by the pass-through entity at the entity level. For determining the amount of any hypothetical underpayment or overpayment, the applicable regular and alternative minimum tax rates, respectively, are generally the highest rates of tax in effect for corporations under section 11 and section 55 (b)(1). However, the applicable regular and alternative minimum tax rates are the highest rates of tax imposed on individuals under section 1 and section 55 (b) (1) if, at all times during the redetermination year involved (*i.e.*, the year in which the hypothetical increase or decrease in income arises), more than 50 percent of the interests in the entity were held by individuals directly or through 1 or more pass-through entities.

(B) *Closely held.* A pass-through entity is closely held if, at any time during any redetermination year, 50 percent of more (by value) of the beneficial interests in that entity are held (directly or indirectly) by or for 5 or fewer persons. For this purpose, the term "person" has the same meaning as in section 7701(a)(1), except that a pass-through entity is not treated as a person. In addition, the constructive ownership rules of section 1563(e) apply by substituting the term "beneficial interest" for the term "stock" and by substituting the term "pass-through entity" for the term, "corporation" used in that section, as appropriate, for purposes of determining whether a beneficial interest in a pass-through entity is indirectly owned by any person.

(C) *Examples.* The following examples illustrate the application of the rules of paragraph (d)(4)(i):

Example (1). P, a partnership, began a long-term contract on March 1, 1986, and completed this contract in its tax year ending December 31, 1989. P used the percentage of completion method for all contract income. Substantially all of the income from the contract arose from U.S. sources. At all times during all of the years for which income was required to be reported under the contract, exactly 25 percent of the value of P's interests was owned by Corporation M. The remaining 75 percent of the value of P's interests was owned in equal shares by 15 unrelated individuals, who are also unrelated to Corporation M. M's ownership of P represents less than 50 percent of the value of the beneficial interests in P, and, therefore, viewed alone, is insufficient to make P a closely held partnership. In addition, because no 4 of the individual owners together own 25 percent or more of the remaining value of P's beneficial interests, there is no group of 5 owners that together own, directly or indirectly, 50 percent or more by value of the beneficial interests in P. Therefore, P is not closely held pass-through entity.

Because P is not a closely held pass-through entity, and because P completed the contract after the effective date of section 460(b)(4), P is required to use the simplified marginal impact method. Any interest computed under the look-back method will be paid to, or collected from, P, rather than its partners, and must be reported to each of the partners on Form 1065 as interest income or expense. Further, assume that, for the redetermination years, Corporation M is subject to alternative minimum tax at the rate of 20 percent and 3 of the individuals who own interests in P are subject to the highest marginal tax rate of 33 percent in 1988. Regardless of the actual marginal tax rates of its partners, P is required to determine the underpayment or overpayment of tax for each redetermination year at the entity level by applying a single rate to the increase or decrease in income resulting from the reallocation of contract income under the look-back method. Because more than 50 percent of the interests in P are held by individuals, P must use the highest rate specified in section 1 for each redetermination year. Thus, the rate applied by P is 50 percent for 1986, 38.5 percent for 1987, and 28 percent for 1988.

Example (2). Assume the same facts as in Example (1), except that one of the individuals, Individual I, who directly owns 5 percent of the value of the interests of P, also owns 100 percent of the stock of Corporation M. Section 1563(e) (4) of the Code provides that stock owned directly or indirectly by or for a corporation is considered to be owned by any person who owns 5 percent or more in value of its stock in that proportion which the value of the stock which that person so owns bears to the value of all the stock in that corporation. Because section 460(b)(4)(C)(iii) and this paragraph (d) (4) provide that rules similar to the constructive ownership rules of section 1563(e) apply in determining whether a pass-through entity is closely held, all of M's interest in P is attributed to I because I owns 100 percent of the value of the stock in M. Accordingly, because I's direct 5 percent and constructive 25 percent ownership of P, plus the interests owned by any 4 other individual partners, equals 50 percent or more of the value of the beneficial interests of P, P is a closely held pass-through entity within the meaning of section 460(b)(4)(C)(iii). Therefore, P cannot use the simplified marginal impact method at the entity level. Accordingly, each of the partners of P must separately apply the look-back method to their respective interests in the income and expenses attributable to the contract, but each partner may elect to use the simplified marginal impact method with respect to the partner's share of income from the contract.

(D) *Domestic contracts*—(*1*) General rule. A domestic contract is any contract substantially all of the income of which is from sources in the United States. For this purpose, "substantially all" of the income from a long-term contract is considered to be from United States sources if 95 percent or more of the gross income from the contract is from sources within the United States as determined under the rules in sections 861 through 865.

(2) *Portion of contract income sourced.* In determining whether substantially all of the gross income from a long-term contract is from United States sources, taxpayers must apply the allocation and apportionment principles of sections 861 through 865 only to the portion of the contract accounted for under the percentage of completion method. Under the percentage of completion method, gross income from a long-term contract includes all payments to be received under the contract (*i.e.*, any amounts treated as contract price). Similarly, all costs taken into account in the computation of taxable income under the percentage of completion method are deducted from gross income rather than added to a cost of goods sold account that reduces gross income. Therefore, allocable contract costs are not considered in determining whether a long-term contract is a domestic contract or a foreign contract, even if, under the taxpayer's facts, the allocation of contract costs to any portion of a contract not accounted for under the percentage of completion method would affect the relative percentages of United States and foreign source gross income from the entire contract if this portion of the contract were taken into account in applying the 95-percent test.

(E) *Application to foreign contracts.* If a widely held pass-through entity has some foreign contracts and some domestic contracts, the owners of the pass-through entity each apply the look-back method (using, if they elect, the simplified marginal impact method) to their respective share of the income and expense from foreign contracts. Moreover, in applying the look-back method to foreign contracts at the owner level, the owners do not take into

account their share of increases or decreases in contract income resulting from the application of the simplified marginal impact method with respect to domestic contracts at the entity level.

(F) *Effective date.* The simplified marginal impact method must be applied to pass-through entities described in paragraph (d)(4)(i) of this section with respect to domestic contracts completed or adjusted in tax years for which the due date of the return (determined with regard to extensions) of the pass-through entity is after November 9, 1988.

(ii) *Elective use*—(A) *General rule.* As provided in paragraph (d)(4)(i) of this section, the simplified marginal impact method must be used by certain pass-through entities with respect to domestic contracts. C corporations, individuals, and owners of closely held pass-through entities may elect the simplified marginal impact method. Owners of other pass-through entities may also elect the simplified marginal impact method with respect to all contracts other than those for which the simplified marginal impact method is required to be applied at the entity level. This rule applies to foreign contracts of widely held pass-through entities. In the case of an electing owner in a pass-through entity, the simplified marginal impact method is applied at the owner level, instead of at the entity level, with respect to the owner's share of the long-term contract income and expense reported by the pass-through entity.

(B) *Election requirements.* A taxpayer elects the simplified marginal impact method by stating that the election is being made on a timely filed income tax return (determined with regard to extensions) for the first tax year the election is to apply. An election to use the simplified marginal impact method applies to all applications of the look-back method to all eligible long-term contracts for the tax year for which the election is made and for any subsequent tax year. The election may not be revoked without the consent of the Commissioner.

(C) *Consolidated group consistency rule.* In the case of a consolidated group of corporations within the meaning of section 1504(a), an election to use the simplified marginal impact method is made by the common parent of the group. The election is binding on all other affected members of the group (including members that join the group after the election is made with respect to all applications of the look-back method after joining). If a member subsequently leaves the group, the election remains binding as to that member unless the Commissioner consents to a revocation of the election. If a corporation using the simplified marginal impact method joins a group that does not use the method, the election is automatically revoked with respect to all applications of the look-back method after it joins the group.

(e) *Delayed reapplication method*—(1) *In general.* For purposes of reapplying the look-back method after the year of contract completion, a taxpayer may elect the delayed reapplication method to minimize the number of required reapplications of the look-back method. Under this method, the look-back method is reapplied after the year of completion of a contract (or after a subsequent application of the look-back method) only when the first one of the following conditions is met with respect to the contract:

(i) The net undiscounted value of increases or decreases in the contract price occurring since the time of the last application of the look-back method exceeds the lesser of $1,000,000 or 10 percent of the total contract price as of that time,

(ii) The net undiscounted value of increases or decreases in the contract costs occurring since the time of the last application of the look-back method exceeds the lesser of $1,000,000 or 10 percent of the total contract price as of that time,

(iii) The taxpayer goes out of existence,

(iv) The taxpayer reasonably believes the contract is finally settled and closed, or

(v) Neither condition (e)(1) (i), (ii), (iii), nor (iv) above is met by the end of the fifth tax year that begins after the last previous application of the look-back method.

(2) *Time and manner of making election.* An election to use the delayed reapplication method may be made for any filing year for which the due date of the return (determined with regard to extensions) is after June 12, 1990. The election is made by a statement to that effect on the taxpayer's timely filed Federal income tax return (determined with regard to extensions) for the first tax year the election is to be effective. An election to use the delayed reapplication method is binding with respect to all long-term contracts for which the look-back method would be reapplied without regard to the election in the year of election and any subsequent year unless the Commissioner consents to a revocation of the election. In the case of a consolidated group of corporations within the meaning of section 1504(a), an election to use the delayed reapplication method is made by the common parent of the group. The election is binding on all other affected members of the group (including members that join the group after the election is made with respect to contracts adjusted after joining). If a member subsequently leaves the group, the election remains binding as to that member unless the Commissioner consents to a revocation of the election. If a corporation that has made the election joins a consolidated group that has not made the election, the election is treated as revoked with respect to contracts adjusted after joining.

(3) *Examples.* The operation of this delayed reapplication method is illustrated by the following examples:

Example (1). X completes a contract in 1987, and applies the look-back method when its return for 1987 is filed. X properly uses $600,000 as the actual contract price in applying the look-back method. In 1990, as a result of the settlement of a dispute with its customer, X redetermines total contract price to be $640,000, and includes $40,000 in gross income. On its return for 1990, X states it is electing the delayed reapplication method. X is not required to reapply the look-back method at that time, because $40,000 does not exceed the lesser of $1,000,000 or 10 percent of the unadjusted contract price of $600,000, and 5 years have not passed since the last application of the look-back method.

Example (2). Assume the same facts as in Example (1), except that at the end of 1992, the fifth year after completion of the contract, no other adjustments to contract price or contract costs have occurred. X is required to reapply the look-back method in 1992 and, accordingly, redetermine its tax liability for each redetermination year. After redetermining the underpayment of tax for those years, X must compute the amount of interest charged on the underpayments. Although 1992 is the filing year, interest is due on the amount of each underpayment resulting from the adjustment only from the due date of the return for each redetermination year to the due date of the return for 1990 because the tax liability for the adjustment was fully paid in 1990. However, from the due of the 1990 return until the due date of the 1992 return, when the look-back method is reapplied for the adjustment, interest is due on the amount of interest attributable to the underpayments.

(f) *Look-back reporting*—(1) *Procedure.* The amount of any interest due or to be refunded as a result of applying the look-back method is computed and reported on Form 8697 for any filing year. In general, the look-back method is applied by and Form 8697 is filed by the taxpayer that reports income from a long-term contract. See paragraph (g) of this section to determine who is responsible for applying the look-back method when, prior to the completion of a long-term contract, there is a transaction that

changes the taxpayer that reports income from the contract.

(2) *Treatment of interest on return*—(i) *General rule.* The amount of interest required to be paid by a taxpayer is treated as an income tax under subtitle A, but only for purposes of subtitle F of the Code (other than sections 6654 and 6655), which adresses tax procedures and administration.

Thus, a taxpayer that fails to file Form 8697 with respect to interest required to be paid or that fails to pay the amount of interest due is subject to any applicable penalties under subtitle F, including, for example, a penalty for failing to file Form 8697. However, interest required to be paid under the look-back method is treated as interest expense for purposes of computing taxable income under subtitle A, even though it is treated as income tax liability for penalty purposes. Interest received under the look-back method is treated as taxable interest income for all purposes, and is not treated as a reduction in tax liability. The determination of whether or not interest computed under the look-back method is treated as tax is determined on a "net" basis for each filing year. Thus, if a taxpayer computes for the current filing year both hypothetical overpayments and hypothetical underpayments for prior years, the taxpayer has an increase in tax only if the interest computed on the underpayments for all those prior years exceeds the interest computed on the overpayments for all those prior years, for all contracts completed or adjusted for the year.

(ii) *Timing of look-back interest.* For purposes of determining taxable income under subtitle A of the Code, any amount of interest refunded to the taxpayer under the look-back method is includible in gross income as interest income in the tax year it is properly taken into account under the taxpayer's method of accounting for interest income. Any amount of interest required to be paid is taken into account as interest expense arising from an underpayment of income tax in the tax year it is properly taken into account under the taxpayer's method of accounting for interest expense. Thus, look-back interest required to be paid by an individual, or by a pass-through entity on behalf of an individual owner (or beneficiary) under the simplified marginal impact method, is personal interest and, therefore, is disallowed in accordance with § 1.163–9T(b)(2). Interest determined at the entity level under the simplified marginal impact method is allocated among the owners (or beneficiaries) for reporting purposes in the same manner that interest income and interest expense are allocated to owners (or beneficiaries) and subject to the requirements of section 704 and any other applicable rules.

(g) *Mid-contract change in taxpayer.* [Reserved]

(h) *Examples*—(1) *Overview.* This paragraph provides computational examples of the rules of this section. Except as otherwise noted, the examples involve calendar-year taxpayers and involve long-term contracts subject to section 460 that are accounted for using the percentage of completion method, rather than the percentage of completion-capitalized cost method. If the percentage of completion-capitalized cost method were used by a taxpayer described in the examples, the amounts of contract income and expenses shown in the examples would be reduced, for purposes of determining regular taxable income, to the appropriate fraction (40, 70, or 90 percent) of contract items accounted for under the percentage of completion method. Tens of thousands of dollars ($ 00,000's) are omitted from the figures in the examples. The contracts described in the examples are assumed to be the taxpayers' only contracts that are subject to the look-back method of section 460. Except as otherwise stated, the examples assume that the taxpayer has no adjustments and preferences for purposes of section 55, so that alternative minimum taxable income is the same as taxable income, and no alternative minimum tax is imposed for the years involved. The examples assume that the taxpayer does not elect the 10-percent method, the simplified marginal impact method, or the delayed reapplication method.

(2) *Step One.* The following example illustrates the application of paragraph (c)(2):

Example (1). In 1989, W completes three long-term contracts, A, B, and C, entered into on January 1 of 1986, 1987, and 1988, respectively. For Contract A, W used the completed contract method of accounting. For Contract B, W used the percentage of completion-capitalized cost method of accounting, taking into account 60 percent of contract income under W's normal method of accounting, which was the completed contract method. For Contract C, W used the percentage of completion method of accounting. The total price for each contract was $1,000. In computing alternative minimum taxable income, W is required to use the percentage of completion method for Contracts B and C. W used regular tax costs for purposes of determining the degree of contract completion under the alternative minimum tax.

Contract A is not taken into account for purposes of applying the look-back method, because it is subject to neither section 460 nor section 56(a)(3). Thus, even if W had used the percentage of completion method as permitted under § 1.451–3, instead of the completed contract method, the look-back method would not be applicable because the Contract A was entered into before the effective date of section 460.

The actual costs allocated to Contracts B and C under section 460(c) and incurred in each year of the contract were as follows:

Contract	1987	1988	1989	Total
B	$200	$400	$200	$800
C	100	300	400	800

In applying the look-back method, the first step is to allocate the contract price among tax years preceding and including the completion year. That allocation would produce the following amounts of gross income for purposes of the regular tax. Note that no income from Contract C is allocated to 1987, the year before the contract was entered into, even though contract costs were incurred in 1987:

Contract	1987	1988	1989
B	$100 (40%X$200/$800X$1000)	$200 ((40%X$600/$800X$1000)–$100)	$700
C	0	500 ($400/$800X$1000)	500

Because the percentage of completion-capitalized cost method may not be used for alternative minimum tax purposes, the allocation of contract income would produce the following amounts of gross income for purposes of computing alternative minimum taxable income:

Contract	1987	1988	1989
B	$250 ($200/$800X$1000)	$500 (($600/$800X$1000)–$250)	$250
C	0	500	500

(3) *Step Two.* The following example illustrates the application of paragraph (c)(3):

Example (2). (i) X enters into two long-term contracts (D and E) in 1988. X determines its tax liability for 1988 as follows:

e=estimate
a=amount originally reported (actual)
h=hypothetical

	1988		Total
	D	E	
1988 contract costs	$3,000a	$2,000a	
Total contract costs	6,000e	8,000e	
Total contract price	10,000e	10,000e	
1988 completion (%)	37.5e	25e	
1988 gross income	3,750a	2,500a	
Less, 1988 costs	(3,000a)	(2,000a)	
1988 net contract income	750a	500a	$1,250a
Other 1988 net income (loss)			(2,000a)
Taxable income (NOL)			(750a)
Tax			0a
Refund from NOL carryback fully absorbed in 1985, at 46%			345a

(ii) X completes Contract D during 1989. X determines its taxable income for 1989 as follows:

	1989		Total
	D	E	
1989 contract costs	$3,000a	0a	
Total contract costs	6,000a	$9,000e	
Total contract price	10,000a	10,000e	
1989 completion (%)	100a	22.2e	
1989 gross income/(loss)	6,250a	(278a)	
Less, 1989 costs	(3,000a)	0a	
1989 net contract income	3,250a	(278a)	$2,972a
Other 1989 net income (loss)			0a
Taxable income (NOL)			2,972a
Tax at 34%			1,011a

(iii) For purposes of the look-back method, X must reallocate the actual total contract D price between 1988 and 1989 based on the actual total contract D costs. This results in the following hypothetical underpayment of tax for 1988 for purposes of the look-back method. Note that X does not reallocate the contract E price in applying the look-back method in 1989 because contract E has not been completed, even though X's estimate of contract E costs has changed. The following computation is only for purposes of applying the look-back method, and does not result in the assessment of a tax deficiency.

	1988		Total
	D	E	
1988 contract costs	$3,000a	$2,000a	
Total contract costs	6,000a	8,000e	
Total contract price	10,000a	10,000e	
1988 completion (%)	50a	25e	
1988 gross income	5,000h	2,500a	
Less, 1988 costs	(3,000a)	(2,000a)	
1988 net contract income	2,000h	500a	$2,500h
Other 1988 net income (loss)			(2,000a)
Taxable income (NOL)			500h
Tax at 34%			170h
Less, previously computed tax			–0a
Underpayment of 1988 tax			170h
Underpayment of 1985 tax from NOL carryback refund in 1988			345h

	1988		Total
	D	E	
Total underpayment of tax			515h

For purposes of any subsequent application of the look-back method for which 1989 is a redetermination year, because the reallocation of contract income and redetermination of tax liability are cumulative, X will use for 1989 the amount of contract D income and the amount of tax liability that would have been reported in 1989 if X had used actual contract costs instead of the amounts that were originally reported using the estimate of $8,000. Assuming no subsequent revisions (due to, for example, adjustments to contract D price and costs determined after the end of 1989), this amount would be determined as follows:

	1989		Total
	D	E	
1989 contract costs	$3,000a	0a	
Total contract costs	6,000a	$9,000e	
Total contract price	10,000a	10,000e	
1989 completion (%)	100a	22.2e	
1989 gross income	5,000h	(278a)	
Less, 1989 costs	(3,000a)	0a	
1989 net contract income	2,000h	(278a)	$1,722h
Other 1989 net income (loss)			0a
Taxable income (NOL)			1,722h
Tax at 34%			585h

(iv) X completes contract E during 1990. X determines its taxable income for 1990 as follows:

	1990		Total
	D	E	
1990 contract costs		$7,000a	
Total contract costs		9,000a	
Total contract price		10,000a	
1990 completion (%)		100a	
1990 gross income		7,778a	
Less, 1990 costs		(7,000a)	
1990 net contract income		778a	$778a
Other 1990 net income (loss)			0a
Taxable income (NOL)			778a
Tax at 34%			265a

(v) For purposes of the look-back method, X must reallocate the actual total contract E price between the 1988, 1989, and 1990, based on the actual total contract E costs.

This results in the following hypothetical overpayment of tax for 1988. Note that X uses the amount of income for contract D determined in the last previous application of the look-back method, and not the amount of income actually reported:

	1988		Total
	D	E	
1988 contract costs	$3,000a	$2,000e	
Total contract costs	$6,000a	$9,000a	
Total contract price	$10,000a	$10,000a	
1988 completion (%)	50a	22.2a	
1988 gross income	$5,000h	$2,222h	
Less, 1988 costs	($3,000a)	($2,000a)	
1988 net contract income	$2,000h	$222h	$2,222h
Other 1988 net income (loss)			($2,000a)
Taxable income (NOL)			$222h
Tax at 34%			$75h
Less, previously computed tax (based on most recent application of the look-back method)			$170h
Overpayment of 1988 tax			($95h)

In applying the look-back method to 1989, X again uses the amounts substituted as of the last previous application of the look-back method with respect to contract D. Thus, X computes its hypothetical underpayment for 1989 as follows:

	1989		Total
	D	E	
1989 contract costs	$3,000a	0a	
Total contract costs	$6,000a	$9,000a	
Total contract price	$10,000a	$10,000a	
1989 completion (%)	100a	22.2a	
1989 gross income	$5,000h	$0h	
Less, 1989 costs	($3,000a)	($0a)	
1989 net contract income	$2,000h	0a	$2,000h
Other 1989 net income (loss)			($0a)
Taxable income (NOL)			$2,000h
Tax at 34%			$680h
Less, previously computed tax			$585h
Underpayment of 1989 tax			$95h

For purposes of any subsequent application of the look-back method for which 1990 is a redetermination year, X will use for 1990 the amount of Contract E income, and the amount of tax liability, that was originally reported in 1990 because X's estimate of the total contract costs from $8,000 to $9,000 did not change after 1989. Without regard to any subsequent revisions, these amounts are the same as in the table in paragraph (h)(3)(iv) above.

(4) *Post-completion adjustments.* The following example illustrates the application of paragraph (c)(1)(ii):

Example (3). The facts are the same as in Example (2). In 1991, X settles a lawsuit against its customer in Contract E. The customer pays X an additional $3,000, without interest, in 1991. Applying the Federal mid-term rate then in effect, this $3,000 has a discounted value at the time of contract completion in 1990 of $2,700. X is required to apply the look-back method for 1991 even though no contract was completed in 1991. X must include the full $3,000 adjustment (which was not previously includible in total contract price) in gross income for 1991. X does not elect not to discount adjustments to the contract price or costs. Thus, X adjusts the contract price by the discounted amount of the adjustment and, therefore, uses $12,700 (not $13,000) for total Contract E price, rather than $10,000, which was used when the look-back method was first applied with respect to Contract E.

For purposes of the look-back method, X must allocate the revised total Contract E price of $12,700 between 1988, 1989 and 1990 based on the actual total Contract E costs, and compare the resulting revised tax liability with the tax liability determined for the last previous application of the look-back method involving those years. This results in the following hypothetical underpayments of tax for purposes of the look-back method:

r=revised

	1988		Total
	D	E	
1988 contract costs	$3,000a	$2,000a	
Total contract costs	$6,000a	$9,000a	
Total contract price	$10,000a	$12,700r	
1988 completion (%)	50a	22.2a	
1988 gross income	$5,000h	$2,822rh	
Less, 1988 costs	($3,000a)	($2,000a)	
1988 net contract income	$2,000h	822rh	$2,222rh
Other 1988 net income (loss)			($2,000a)
Taxable income			$822rh
Tax at 34%			$279rh
Less, previously computed tax			$75h
Underpayment of 1988 tax			$204rh

No Contract E costs were incurred in 1989, and there is no hypothetical underpayment for 1989.

	1990		
	D	E	Total
1990 contract costs		$7,000a	
Total contract costs		$9,000a	
Total contract price		$12,700r	
1990 completion (%)		100a	
1990 gross income		$9,878rh	
Less 1990 costs		*($7,000a)*	
1990 net contract income		$2,878rh	$2,878rh
Other 1990 net income (loss)			0a
Taxable income (NOL)			$2,878rh

	1990		
	D	E	Total
Tax at 34%			$978rh
Less, previously computed tax			$265h
Underpayment of 1990 tax			$713rh

In 1992, X incurs an additional cost of $1,000 allocable to the contract, which was not previously includible in total contract costs. Applying the Federal mid-term rate then in effect, the $1,000 has a discounted value at the time of contract completion of $800. X deducts this additional $1,000 in expenses in 1992. Based on this increase to contract costs, X reapplies the look-back method, and determines the following hypothetical underpayments for 1988, 1989 and 1990 for purposes of the look-back method:

	1988		Total
	D	E	
1988 contract costs	$3,000a	$2,000a	
Total contract costs	$6,000a	$9,800r	
Total contract price	$10,000a	$12,700r	
1988 completion (%)	50a	20.4r	
1988 gross income	$5,000h	$2,592rh	
Less, 1988 costs	*($3,000a)*	*($2,000a)*	
1988 net contract income	$2,000h	592rh	$2,592rh
Other 1988 net income (loss)			*($2,000a)*
Taxable income (NOL)			$592rh
Tax at 34%			$201rh
Less, previously computed tax			$279rh
Overpayment of 1988 tax			($78rh)

No Contract E costs were incured in 1989, and there is no hypothetical underpayment for 1989.

	990		Total
	D	E	
1990 contract costs			$7,000a
Total contract costs		9,800r	
Total contract price		12,700r	
1990 completion (%)		92a	
1990 gross income		9,071rh	
Less, 1990 costs		*(7,000a)*	
1990 Net contract income		2,071rh	$2,071rh
Other 1990 net income (loss)			*0a*
Taxable income (NOL)			2,071rh
Tax at 34%			704rh
Less, previously computed tax			978rh
Overpayment of 1990 tax			(274rh)

(5) *Alternative minimum tax.* The operation of the look-back method in the case of a taxpayer liable for the alternative minimum tax as provided in paragraph (c)(3)(vi) is illustrated by the following examples:

Example (4). Y enters into a long-term contract in 1988 that is completed in 1989. Y used regular tax costs for purposes of determining the degree of contract completion under the alternative minimum tax.

(i) Y determines its tax liability for 1988 as follows:

1988 contract costs	$4,000a
Total contract costs	$8,000e
Total contract price	$20,000e
1988 completion (%)	50e
1988 gross income	$10,000a
Less, 1988 contract costs	*($4,000a*
1988 net contract income	$6,000a
Other 1988 net income/(loss)	($3,400a)
Taxable income	$2,600a
Regular tax at 34%	884a
Adjustments and preferences to produce alternative minimum taxable income	$600a
Alternative minimum taxable income	$3,200a
Tentative minimum tax at 20%	640a
Tax liability	$884a

In 1989, Y determines the following amounts:

1989 contract costs	$6,000a
Total contract costs	$10,000a
Total contract price	$20,000a

(ii) For purposes of applying the look-back method, Y redetermines its tax liability for 1988, which results in a hypothetical overpayment of tax. This hypothetical

overpayment is determined by comparing Y's original regular tax liability for 1988 with the hypothetical total tax liability (including alternative minimum tax liability) for that year because Y would have paid the alternative minimum tax if Y had used its actual contract costs to report income:

1988 contract costs	$4,000a
Total contract costs	$10,000a
Total contract price	$20,000a
1988 completion(%)	40a
1988 gross income	$8,000h
less, 1988 contract costs	($4,000a)
1988 net contract income	$4,000h
Other 1988 net income/(loss)	($3,400a)
Taxable income	$600h
Regular tax at 34%	$204h
Adjustments and preferences to produce alternative minimum taxable income	$600a
Alternative minimum taxable income	$1,200h
Tentative minimum tax at 20%	240h
Alternative minimum tax	$36h
Total tax liability	$240h
less, previously computed tax	$884a
Underpayment/(overpayment)	($644h)

(6) *Credit carryovers.* The operation of the look-back method in the case of credit carryovers as provided in paragraph (c)(3)(v) is illustrated by the following example:

Example (5). Z enters into a contract in 1986 that is completed in 1987. Z determines its tax liability for 1986 as follows:

1986 contract costs	$400a
Total contract costs	$1,000e
Total contract price	$2,000e
1986 completion (%)	40e
1986 gross income	$800a
Less, 1986 costs	($400a)
1986 net contract income	$400a
Other 1986 net income	$0a
Taxable income	$400a
Tax at 46%	$184a
Unused tax credits carried forward from 1985 allowable in 1986	$350a
Net tax due	$0a

Z determines the following amounts for 1987:

1987 contract costs	$400a
Total contract price	$2,000a
Total contract costs	$800a

If Z had used actual rather than estimated contract costs in determining gross income for 1986, Z would have reported tax liability of $276 (46%x$600) rather than $184. However, Z would have paid no additional tax for 1986 because its unused tax credits carried forward from 1985 would have been sufficient to offset this increased tax liability. Therefore, there is no hypothetical underpayment for 1986 for purposes of the look-back method. However, this hypothetical earlier use of the credit may increase the hypothetical tax liability for 1987 (or another subsequent year) for purposes of subsequent applications of the look-back method.

(7) *Net operating losses.* The operation of the look-back method in the case of net operating loss ("NOL") carryovers as provided in paragraph (c)(3)(v) is illustrated by the following example:

Example (6). A entered into a long-term contract in 1986, which was completed in 1987. A determined its tax liability for 1986 as follows:

1986 contract costs	$400a
Total contract costs	$1,000e
Total contract price	$2,000e
1986 completion (%)	40e
1986 gross income	$800a
Less, 1986 costs	($400a)
1986 net contract income	$400a
Other 1986 net income/(loss)	($1,000a)
Taxable income/(NOL)	($600a)
Tax	$0a

A elected to carry this loss forward to 1987 pursuant to section 172(b)(3)(C).

For 1987, A determined the following amounts:

1987 contract costs	$400a
Total contract costs	$800a
Total contract price	$2,000a

If actual rather than estimated contract costs had been used in determining gross income for 1986, A would have reported $1,000 of gross income from the contract rather than $800, and thus would have reported a loss of $400 rather than $600. However, since A would have paid no tax for 1986 regardless of whether actual or estimated contract costs had been used, A does not have an underpayment for 1986 for purposes of the look-back method. If A had, instead, carried back the 1986 NOL, and this NOL had been absorbed in the tax years 1983 through 1985, it would have resulted in refunds of tax for those years in 1986. When A applies the look-back method, a hypothetical underpayment of tax would have resulted for those years due to a hypothetical reduction in the amount that would have been refunded if income had been reported on the basis of actual contract costs. See Example (2)(iii).

(8) *Alternative minimum tax credit.* The following example illustrates the application of the look-back method if affected by the alternative minimum tax credit as provided in paragraph (c)(3)(vi):

(i) Example (4), above illustrates that the reallocation of contract income under the look-back method can result in a hypothetical underpayment or overpayment determined using the alternative minimum tax rate, even though the taxpayer actually paid only the regular tax for that year. However, application of the look-back method had no effect on the difference between the amount of alternative minimum taxable income and the amount of regular taxable income taken into account in that year because the taxpayer was required to use the percentage of completion method for both regular and alternative minimum tax purposes and used the same version of the percentage of completion method for both regular and alternative minimum tax purposes (*i.e.*, the taxpayer had made an election to use regular tax costs in determining the percentage of completion for purposes of computing alternative minimum taxable income).

(ii) The following example illustrates the application of the look-back method in the case of a taxpayer that does not use the percentage of completion method of accounting for long-term contracts in computing taxable income for regular tax purposes and thus must make an adjustment to taxable income to determine alternative minimum taxable income. The example also shows how interest is computed under the look-back method when the taxpayer is entitled to a credit under section 53 for minimum tax paid because of this adjustment.

Example (7). X is a taxpayer engaged in the construction of real property under contracts that are completed within a 24-month period and whose average annual gross receipts do not exceed $10,000,000. As permitted by section 460(e)(1)(B), X uses the completed contract method ("CCM") for regular tax purposes. However, X is engaged in the construction of commercial real property and, therefore, is required to use the percentage of completion method ("PCM") for alternative minimum tax ("AMT") purposes.

Assume that for 1988, 1989, and 1990, X has only one long-term contract, which is entered into in 1988 and completed in 1990. Assume further that X estimates gross income from the contract to be $2,000, total contract costs to be $1,000, and that the contract is 25 percent complete in 1988 and 75 percent complete in 1989. In 1990, the year of completion, the percentage of completion does not change but, upon completion, gross income from the contract is actually $3,000, instead of $2,000, and costs are actually $1,000.

For 1988, 1989, and 1990, X's income and tax liability using estimated contract price and costs are as follows:

Estimates	1988	1989	1990
Regular tax:			
Long-term:			
Contract-CCM	0	0	$2,000
Other Income	0	$5,000	0
Total Income	0	$5,000	$2,000
Tax @ 34%	0	$1,700	$680
AMT			
Gross Income	$500	$1,000	$1,500
Deductions	$(250)	$(500)	$(250)
Total long-term:			
Contract-PCM	$250	$500	$1,250
Other Income	0	$5,000	0
Total Income	$250	$5,500	$1,250
Tax @ 20%	$50	$1,100	$250
Tentative Minimum Tax	$50	$1,100	$250
Regular Tax	0	$1,700	$680
Minimum Tax Credit	0	$(50)	0
Net Tax Liability	$50	$1,650	$680

When X files its tax return for 1990, X applies the look-back method to the contract. For 1988, 1989, and 1990, X's income and tax liability using actual contract price and costs are as follows:

Actual	1988	1989	1990
Regular tax:			
Long-term:			
Contract-CCM	0	0	$2,000
Other Income	0	$5,000	0
Total Income	0	$5,000	$2,000
Tax @ 34%	0	$1,700	$680
AMT			
Gross Income	$750	$1,500	$750
Deductions	$(250)	$(500)	$(250)
Total long-term:			
Contract-PCM	$500	$1,000	$500
Other Income	0	$5,000	0
Total Income	$500	$6,000	$500
Tax @ 20%	$100	$1,200	$100
Tentative Minimum Tax	$100	$1,200	$100
Regular Tax	0	$1,700	$680
Minimum Tax Credit	0	$(100)	0
Net Tax Liability	$100	$1,600	$680
Underpayment	$50		
Overpayment		$50	

As shown above, application of the look-back method results in a hypothetical underpayment of $50 for 1988 because X was subject to the alternative minimum tax for that year. Interest is charged to X on this $50 underpayment from the due date of X's 1988 return until the due date of X's 1990 return.

In 1989, although X was required to compute alternative minimum taxable income using the percentage of completion method, X was not required to pay alternative minimum tax. Nevertheless, the look-back method must be applied to 1989 because use of actual rather than estimated contract price in computing alternative minimum taxable income for 1988 would have changed the amount of the alternative minimum tax credit carried to 1989. Interest is paid to X on the resulting $50 overpayment from the due date of X's 1989 return until the due date of X's 1990 return.

(9) *Period for interest.* The following Examples (8) through (11) illustrate how to determine the period for computing interest as provided in paragraph (c)(4):

Example (8). The facts are the same as in Example (6), except that the contract is completed in 1988, and A determined the following amounts for 1987 and 1988:

For 1987:	
1987 contract costs	0
Total contract costs	$1,000e
Total contract price	$2,000e
1987 completion (%)	$40e
1987 gross income	0a
Less, 1987 costs	0a
Other 1987 net income	$600a
Net operating loss carryforward from 1986	$(600a)
Taxable income	0a
Tax	0a
For 1988:	
1988 contract costs	$400a
Total contract costs	$800a
Total contract price	$2,000a

If actual rather than estimated contract costs had been used in determining gross income for 1988, A would have reported $1,000 of gross income from the contract for 1988 rather than $800, and would have reported a net operating loss carryforward to 1987 of $400 rather than $600. Therefore, A would have reported taxable income of $200, and would have paid tax of $80 (*i.e.*, $200 × 40%) for 1987. The due date for filing A's Federal income tax return for its 1988 taxable year is March 15. A obtains an extension and files its 1988 return on September 15, 1989. Under the look-back method, A is required to pay interest on the amount of this hypothetical underpayment ($80) computed from the due date (determined without regard to extensions) for A's return for 1987 (not 1986, even though 1986 was the year in which the net operating loss arose) until March 15 (not September 15), the due date (without regard to extensions) of A's return for 1988. A is required to pay additional interest from March 15 until September 15 on the amount of interest outstanding as of March 15 with respect to the hypothetical underpayment of $80.

Example (9). The facts are the same as in Example (6), except that A carries the net operating loss of $600 back to 1983 rather than forward to 1987, and receives a refund of $276 ($600 reduction in 1983 taxable income × 46% rate in effect in 1983). As in Example (6), if actual contract costs had been used, A would have reported a loss for 1988

of $400 rather than $600. Thus, A would have received a refund of 1983 tax of $184 ($400 × 46%) rather than $276. Under the look-back method A is required to pay interest on the difference in these two amounts ($92) computed from the due date (determined without regard to extensions) of A's return for 1986 (the year in which the carryback arose rather than 1983, the year in which it was used) until the due date of A's return for 1988.

Example (10). B enters into a long-term contract in 1986 that is completed in 1988. B determines its 1986 tax liability as follows:

1986 contract costs	$400a
Total contract costs	$1,000e
Total contract price	$2,000e
1986 completion (%)	40e
1986 gross income	$800a
Less, 1986 costs	($400a)
1986 net contract income	$400a
Other 1986 net income	$2,000a
Taxable income	$2,400a
Tax at 46%	$1,104a

B determines its tax liability for 1987 as follows:

1987 contract costs	$400a
Total contract costs	$1,600e
Total contract price	$2,000e
1987 completion (%)	50e
1987 gross income (=(50% × $2,000)—$800 previously reported) less, 1987 costs	$200a ($400a)
1987 net contract income	($200a)
Other 1987 net income/(loss)	($2,200a)
Taxable income (NOL)	($2,400a)
Tax	0a

Assume that B had no taxable income in either 1984 or 1985, so that the entire amount of the $2,400 net operating loss is carried back to 1986, and B receives a refund, with interest from the due date of B's 1987 return, of the entire $1,104 in tax that it paid for 1986.

In 1988, B determines the following amounts:

1988 contract costs	$800a
Total contract costs	$1,600a
Total contract price	$2,000a

If B had used actual contract costs rather than estimated costs in determining its gross income for 1986, B would have had gross income from the contract of $500 rather than $800, and thus would have had taxable income of $2,100 rather than $2,400, and would have paid tax of $966 rather than $1,104. B is entitled to receive interest on the difference between these two amounts, the hypothetical overpayment of tax of $138. Interest is computed from the due date (without regard to extensions) of B's return for 1986 until the due date for B's return for 1987. Interest stops running at this date, because B's hypothetical overpayment of tax ended when B filed its original 1987 return and received a refund for the carryback to 1986, and interest on this refund began to run only from the due date of B's 1987 return. See section 6611(f).

Example (11). C enters into a long-term contract in 1986, its first year in business, which is completed in 1988. C determines its tax liability for 1986 as follows:

1986 contract costs	$400a
Total contract costs	$1,000e
Total contract price	$2,000e
1986 completion (%)	40e
1986 gross income	$800a
less, 1986 costs	($400a)
1986 net contract income	$400a
Other 1986 net income	$2,000a
Taxable income (NOL)	$2,400a
Tax at 46%	$1,104a

C determines its tax liability for 1987 as follows:

1987 contract costs	$400a
Total contract costs	$1,066e
Total contract price	$2,000e
1987 completion (%)	75e
1987 gross income	$700a
Less, 1987 costs	($400a)
1987 net contract income	$300a
Other 1987 net income	($2,450a)
Taxable income (NOL)	($2,150a)
Tax	$10a

C carries back the net operating loss to 1986, and files an amended return for 1986, showing taxable income of $250, and receives a refund of $989 (46% x $2,150). Interest on this refund begins to run only as of the due date of C's 1987 return. See section 6611(f).

In 1988, when the contract is completed, C determines the following amounts:

1988 contract costs	$800a
Total contract costs	$1,600a
Total contract price	$2,000a

If C had used actual contract price and contract costs in determining gross income for 1986, it would have reported gross income from the contract of $500 rather than $800, taxable income of $2,100 rather than $2,400, and tax liability of $966 rather than $1,104.

If C had used actual contract price and contract costs in determining gross income for 1987, it would have reported gross income from the contract of $500 rather than $700, and would have reported a net operating loss of $2,350, rather than $2,150, which would have been carried back to 1986.

Under the look-back method, C receives interest with respect to a total 1986 hypothetical overpayment of $138 ($1,104 minus $966). C is credited with interest on $23 of this amount only from the due date of C's 1986 return until the due date of C's 1987 tax return, because this portion of C's total hypothetical overpayment for 1986 was refunded to C with interest computed from the due date of C's 1987 return and, therefore, was no longer held by the government. However, because the remainder of the total hypothetical overpayment of $115 was not refunded to C, C is credited with interest on this amount from the due date of C's 1986 return until the due date of C's 1988 tax return.

Under the look-back method, C receives no interest with respect to 1987, because C had no tax liability for 1987 using either estimated or actual contract price and costs.

§ 1.460-7 Exempt long-term contracts. [Reserved]

§ 1.460-8 Changes in method of accounting. [Reserved]

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by adding in the appropriate place in the table:

"§ 1.460-6 . . . 1545-1031."

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: September 18, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90-24131 Filed 10-12-90; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning October 1, 1990. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in July through September of 1990. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Harold Ashner, Senior Counsel, Office of the General Counsel, Code 22500,

Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778–8824 ((202) 778–8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-empolyer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in Appendix A to the premium regulation and Appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning October 1, 1990, the interest charged on the underpayment of taxes will be at a rate of 11 percent. Accordingly, the PBGC is amending Appendix A to 29 CFR part 2610 and Appendix A to 29 CFR part 2622 to set forth this rate for the October 1–December 31, 1990 quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in Appendix B to the regulation.

The PBGC publishes these monthly interest rates in Appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in Appendix A. (The PBGC publishes the Appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the Appendix A rate, which is determined prospectively, the Appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending Appendix B to part 2610 to add the vested benefits valuation rates for plan years beginning in July through September of 1990.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the Appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in Appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of the public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, appendix A and appendix B to part 2610 and appendix A to part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

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

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, (1988), as amended by sec. 7881(h), Public Law 101–239, 103 Stat. 2106, 2242.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning October 1, 1990, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
•	•	•
October 1, 1990	December 31, 1990	11

3. Appendix B to part 2610 is amended by adding to the table of interest rates therein new entries for premium payment years beginning in July through September of 1990, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates for Valuing Vested Benefits

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

For premium payment years beginning in—	Required interest rate [1]
* * * * *	
July 1990	6.77
August 1990	6.80
September 1990	7.09

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

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 9312, 9313, Pub. L. 100–203, 101 Stat. 1330.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning October 1, 1990, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
* * * * *		
October 1, 1990..	December 31, 1990.	11

Issued in Washington, DC, the 9th day of October 1990.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 90–24213 Filed 10–12–90; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2619

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

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation of Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning November 1, 1990. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after November 1, 1990 and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Senior Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619. Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required. [Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.]

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

The rates and factors currently in use have been in effect since October 1, 1990. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after November 1, 1990, which set reflects an increase of ¼ percent in the immediate interest rate from 7½ to 7¾ percent.

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

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

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after November 1, 1990, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

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

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

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

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 87 of appendix B is revised and Rate Set 88 of appendix B is added to read as follows. The introductory text is published for the convenience of the reader and remains unchanged.

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

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

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
* *	*	*	*	*	*	*	*	
87	10-1-90	11-1-90	7.50	1.0675	1.0550	1.0400	7	8
88	11-1-90		7.75	1.0700	1.0575	1.0400	7	8

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 90-24214 Filed 10-12-90; 8:45 am]
BILLING CODE 7708-01-M

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation the new interest rate in effect from July 1, 1990 to December 31, 1990.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Senior Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-778-8850 (202-778-8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rates for both the July 1, 1990–September 30, 1990 quarter (for which publication was inadvertently omitted) and the October 1, 1990–December 31, 1990 quarter. The interest rate for both periods is 10 percent, which is the same rate that was in effect for the second quarter of 1990. The rates for the third and fourth calendar quarters are based on the prime rate in effect on June 15, 1990 and September 17, 1990, respectively.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

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

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

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

Appendix A [Amended]

2. Appendix A is amended by adding to the end of the table therein two new entries as follows:

From	To	Date of quotation	Rate (percent)
*	*	*	*
07/01/90	09/30/90	06/15/90	10.00
10/01/90	12/31/90	09/17/90	10.00

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 90-24216 Filed 10-12-90; 8:45 am]
BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections

4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of November 1990.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month:	The values for i_k are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_u
*																
November 1990..	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this 9th day of October 1990.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 90–24215 Filed 10–12–90; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles/Long Beach Regulation 90–11]

Security Zone Regulations; Port of Los Angeles, CA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone in the Port of Los Angeles, California, around any vessels moored at LA BERTHS 54 and 55 during the effective period of these regulations. The zone is needed to safeguard vessels involved in military equipment outloads at LA BERTHS 54 and 55 against destruction, loss, or injury from sabotage or other subversive acts, accidents, or causes of a similar nature. Entry into this zone is prohibited unless authorized by the captain of the port.

EFFECTIVE DATE: This regulation becomes effective at 00:01 A.M., October 4, 1990. It terminates at 12 midnight, October 31, 1990.

FOR FURTHER INFORMATION CONTACT: LT R.F. Shields at (213) 499–5570.

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, loss, or injury to vessels involved in military equipment outloads at LA berths 54 and 55.

Drafting Information

The drafters of this regulation are LT R.F. Shields, 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 incident requiring this regulation will begin 00:01 a.m., on October 4, 1990. This security zone is necessary to ensure the security of vessels involved in military equipment outloads at LA berths 54 and 55.

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 160.5.

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

§ 165.T1112 Security Zone: Vessels Moored at Berths 54 and 55, Port of Los Angeles, California.

(a) *Location.* The following area is a security zone:

The waters of Los Angeles Harbor within 100 yards of any vessels moored at LA berths 54 and 55.

(b) *Effective Date.* This regulation becomes effective at 00:01 a.m., October 4, 1990. It terminates at 12 midnight, October 31, 1990.

(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: October 10, 1990.

J.B. Morris,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 90–24234 Filed 10–12–90; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MS–014; FRL 3851–8]

Approval and Promulgation of Implementation Plans Mississippi: Approval of Revisions to the Prevention of Significant Deterioration (PSD) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Mississippi State Implementation Plan (SIP). These revisions were submitted to EPA by the State of Mississippi through the Mississippi Department of Environmental Quality on July 16, 1990. The revisions being approved today incorporate by reference the federal PSD regulations into the Mississippi SIP.

EFFECTIVE DATES: This action will be effective December 14, 1990 unles notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the material submitted may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365

Air Quality Division, Bureau of Pollution Control, Department of Environmental Quality, Post Office Box 10385, Jackson, Mississippi 39209–0385

FOR FURTHER INFORMATION CONTACT: Kay Prince of the EPA Region IV Air Programs Branch at 404–347–2864 or FTS–257–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On June 28, 1990, the Mississippi Commission on Environmental Quality adopted Regulation APC–S–5, "Regulations for the Prevention of Significant Deterioration of Air Quality." The State of Mississippi through the Department of Environmental Quality submitted the revisions to the Mississippi SIP to EPA on July 16, 1990, which became state effective on July 29, 1990. Mississippi requested that the revisions be adopted as part of the federally approved SIP. EPA is today approving Mississippi Regulation APC–S–5.

All of the subsections of 40 CFR 52.21 other than subsections (a) [Plan disapproval], (q) [public participation], (s) [Environmental impact statement], and (u) [Delegation of authority] are adopted and incorporated by reference as official regulations of the State of Mississippi. The term "administrator" as it appears in 40 CFR 52.21 means the Mississippi Environmental Quality Permit Board, except:

(1) In subparagraph (b)(3)(iii) [relating to "net emissions increase"], it means either the Mississippi Environmental Quality Permit Board or the Administrator of the United States Environmental Protection Agency (USEPA).

(2) In the following subsections it continues to mean the Administrator of the USEPA:

(a) (b)(17) [definition of "federally enforceable"];

(b) (f)(1)(v), (f)(3), (f)(4)(i) [Exclusions from increment consumption];

(c) (g)(1)–(g)(6) [Redesignation];

(d) (1)(2) [Air quality models];

(e) (p)(1)–(p)(f2) [Sources impacting Federal Class I areas];

(f) (t) [Disputed permits or redesignations].

The procedural requirements of 40 CFR 51.166(q) (excluding the phrase "The plan shall provide that-") are adopted and incorporated by reference except:

(1) The phrase "specified time period" means thirty (30) days; and

(2) The words "one year" in subparagraph (q)(2) are replaced by the words "one hundred and fifty (150) days."

The term "Administrator" in subparagraph (q)(2)(iv) continues to mean the Administrator of the USEPA.

The regulation also requires transmittal to the Administrator of the USEPA a copy of each permit application filed under the Mississippi PSD Regulations and notification to the Administrator of USEPA of each significant action taken on the application.

The revisions being approved meet all of the requirements for incorporating the federal PSD regulations into the Mississippi SIP. Due to the simplicity of this action, no technical support document has been prepared.

Final Action:

EPA is today approving the revisions to the Mississippi PSD air quality regulations listed above. All of the revisions being approved are consistent with Agency policy.

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

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of

Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 14, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

List of Subjects in 40 CFR Part 52

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

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

Dated: October 2, 1990.

Patrick M. Tobin,

Acting Regional Administrator.

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

PART 52—[AMENDED]

Subpart Z—Mississippi

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1270 is amended by adding paragraph (c)(21) to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

(21) Revisions to APC–S–5 of the Mississippi Air Pollution Control Act which were submitted on July 16, 1990.

(i) *Incorporation by reference.* (A) Regulation APC–S–5, Regulations for the Prevention of Significant Deterioration of Air Quality, effective on July 29, 1990.

(ii) *Other material.* (A) Letter of July 16, 1990, from the Mississippi Department of Environmental Quality.

§ 52.1280 [Amended]

3. Section 52.1280 is amended by:

Removing paragraphs (a) and (b) and redesignating paragraph (c) as (a).

[FR Doc. 90–24212 Filed 10–12–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–47; RM–6588, RM–6591]

Radio Broadcasting Services; Greenville and LaGrange, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 239A to Greenville, Georgia, at the request of Orchon Broadcasting Company. *See* 54 FR 12249, March 24, 1989. Channel 239A can be allotted to Greenville in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) south to avoid a short-spacing to Station WKLS, Channel 241C, Atlanta, Georgia. The coordinates are North Latitude 32–55–45 and West Longitude 84–45–41. With this action, this proceeding is terminated.

DATES: Effective November 23, 1990; the window period for filing applications will open on November 26, 1990, and close on December 26, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–47, adopted September 19, 1990, and released October 9, 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 may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments, is amended under Georgia by adding Greenville, Channel 239A.

Kathleen B. Levitz,

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

[FR Doc. 90–24152 Filed 10–12–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–308; RM–7173]

Radio Broadcasting Services; Statesboro, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 275C3 for Channel 275A at Statesboro, Georgia, and modifies the construction permit of Station WUUF(FM) to specify operation on the higher class channel, at the request of Pamela H. Hodges. *See* 55 FR 25853, June 25, 1990. Channel 275C3 can be allotted to Statesboro, Georgia, in compliance with the Commission's minimum distance separation requirements with a site restriction 13.6 kilometers (8.5 miles) west in order to avoid a short-spacing to Station WIVY(FM), Channel 275C, Jacksonville, Florida, and to Station WBHC(FM), Channel 276A, Hampton, South Carolina. The coordinates for this allotment are North Latitude 32–24–00 and West Longitude 81–55–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 23, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–308, adopted September 21, 1990, and released October 9, 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 may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

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

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

§ 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 275A and adding Channel 275C3 at Statesboro.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24151 Filed 10-12-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-578; RM-7167]

Radio Broadcasting Services; Ocean City, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 295A to Ocean City, Maryland, as that community's third FM broadcast service, in response to a petition filed by Joseph A. Booth. See 55 FR 324, January 4, 1990. The coordinates for Channel 295A are 32-20-00 and 75-05-18.

DATES: Effective November 23, 1990; The window period for filing applications for Channel 295A at Ocean City, Maryland, will open on November 26, 1990, and close on December 26, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-578, adopted September 21, 1990, and released October 9, 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 may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments, is amended under Maryland by adding Channel 295A at Ocean City.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24153 Filed 10-12-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-89; RM-7129]

Radio Broadcasting Services; McCleary, WA.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 245C3 to McCleary, Washington, as that community's first FM service, in response to a petition filed by Susan M. Ciborosky. *See* 55 FR 9149, March 12, 1990. Canadian concurrence has been obtained at coordinates 47-02-20 and 123-16-28.

EFFECTIVE DATE: November 23, 1990; The window period for filing applications for Channel 245C3 at McCleary will open on November 26, 1990, and close on December 26, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-89, adopted September 21, 1990, and released October 9, 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 may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding McCleary, Channel 245C3.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24155 Filed 10-12-90; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 55, No. 199
Monday, October 15, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[FV-90-206-PR]

Expenses and Assessment Rate for Walnuts Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 984 for the 1990–91 marketing year established under the walnut marketing order. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Walnut Marketing Board (Board), the agency responsible for the administration of the order, to have sufficient funds to meet the expenses of operating the program. This facilitates program operations. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture (Department) for approval.

DATES: Comments must be received by October 25, 1990.

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

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524–S, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 984 (7 CFR part 984), as amended, regulating the handling of walnuts grown in California. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

Pursuant to 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 65 handlers of walnuts grown in California who are subject to regulations under the walnut marketing order and approximately 5,000 producers of walnuts in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual revenues 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 walnut producers and handlers may be classified as small entities.

The walnut marketing order requires that the assessment rate for a particular marketing year shall apply to all assessable walnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the Department for approval. The Board consists of handlers, producers, and a non-industry member. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas 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 assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of walnuts. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Board shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Board will have funds to pay its expenses.

The Board met on September 14, 1990, and unanimously recommended 1990–91 marketing order expenditures of $1,703,505 and an assessment rate of $0.0088 per kernelweight pound of walnuts. Assessment income for the 1990–91 marketing year is estimated at $1,711,370 based on a merchantable supply of 194,474,000 kernelweight pounds of walnuts. Comparative actual expenditures in 1989–90 were $1,321,415 and the assessment rate was $0.0085 per kernelweight pound of walnuts. Estimated assessment income in 1989–90 was $1,539,707 based on a merchantable supply of 181,142,000 kernelweight pounds of walnuts.

Major budget categories for the 1990–91 marketing year $855,000 for the domestic market research and development program, $346,382 for walnut production research, $126,840 for administrative and office salaries, and $40,000 for walnut crop estimates. Comparable actual expenditures for the 1989–90 marketing year were $664,368, $298,122, $121,654, and $37,000, respectively. The domestic market research and development program increase from $664,368 to $855,000 is due to the Board's recommendation to further expand and improve existing markets and create new markets for California walnuts. The increase from $298,122 to $346,382 for walnut production research is due to seven new additional research projects that were recommended by the Board. The majority of these studies concern various methods to control codling moths which cause walnut tree damage. The increase in the administrative and

office salaries category reflects a 4.7 percent raise in administrative and office salaries which was recommended by the Board.

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

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

List of Subjects in 7 CFR Part 984

Marketing agreements, Reporting and recordkeeping requirements, and Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be 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 984—WALNUTS GROWN IN CALIFORNIA

2. A new section 984.342 is added to read as follows:

§ 984.342 Expenses and assessment rate.

Expenses of $1,703,505 by the Walnut Marketing Board are authorized and an assessment rate of $0.0088 per kernelweight pound of merchantable walnuts is established for the 1990–91 marketing year ending on July 31, 1991. Unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: October 10, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–24249 Filed 10–12–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–84–90]

RIN 1545–AP11

Exception from the Prohibition of Federal Guarantees—Permitted Investments of Tax-Exempt Bond Proceeds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the prohibition of federal guarantees with respect to bonds the interest on which is excludable from gross income. The temporarty regulations provide that investments in obligations issued by the Resolution Funding Corporation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 are excepted from the prohibition of federal guarantees. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be received by December 14, 1990. These regulations are proposed to be effective for investments made on or after October 2, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI–84–90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo, 202–566–3283 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the rules and regulations portion of this issue of the **Federal Register** add new § 1.149(b)(3)–1T to the Income Tax Regualtions (26 CFR part 1). The new temporary regulations permit investments of tax-exempt bond proceeds in obligations issued by the Resolution Funding Corporation. The text of the new temporary regulations serves as a comment document for this notice of proposed rulemaking.

For the text of the temporary regulations, see T.D. 8313 published in the rules and regulations portion of this issue of the **Federal Register.**

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is William P. Cejudo, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects 26 CFR 1.61–1.281–4

Deductions, Exemptions, Income taxes, Reporting and recordkeeping requirements, Taxable income.

Proposed Amendments to the Regulations

The temporary regulations, T.D. 8313, published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under section 149 of the Internal Revenue Code.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90–24220 Filed 10–10–90; 11:51 am]

BILLING CODE 4830–01–M

31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers by Banks and Transmittals of Funds by Other Financial Institutions

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: To assist in the investigation and prosecution of money laundering and other financial crimes, Treasury is proposing enhanced recordkeeping requirements relating to funds transfers by banks and to transmittals of funds by other financial institutions subject to the Bank Secrecy Act. Each domestic bank involved in a funds transfer will have to retain certain information about the transfer. The amount and type of information will depend upon the bank's role in the funds transfer process. In addition, banks will be required to verify the name and address and obtain additional identifying information on originators and beneficiaries of funds transfers who are not deposit accountholders. Financial institutions other than banks that transmit and receive funds will have similar recordkeeping requirements. Finally, the regulations permitting Treasury to target for reporting certain transactions with foreign financial institutions are proposed to be amended to permit Treasury to require reports of all funds transfers by banks and transmittals of funds by financial institutions other than banks.

DATES: Comments are due on November 29, 1990.

ADDRESSES: Comments should be sent to Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Linda Noonan, Senior Counsel for Financial Enforcement, Office of the Assistant General Counsel (Enforcement), (202) 566–2941.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Public Law 91–508 (codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5326), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax and regulatory matters. The primary purpose of the Bank Secrecy Act is to identify the sources, volumes and movements of moneys moving into and out of the country and through domestic financial institutions. See H.R. Rep. No. 975, 91st Cong., 2d Sess. 11–13 (1970). In exercising this far-reaching authority, Treasury has been mindful of issues concerning implications of foreign laws and has been careful not to encumber the free flow of legitimate international trade and commerce.

On October 31, 1989, Treasury published an Advance Notice of Proposed Rulemaking to deal with the problem of money laundering through the international funds transfer system. 54 FR 45769. Funds transfers are a series of messages to and through one or more banks that are intended to result in the payment of funds from one person to another. This usually is accomplished through a debit to the account of the person sending the money (the "originator") and a corresponding credit to the person receiving the funds (the "beneficiary").

Money laundering is a vital component of drug trafficking and other criminal activity throughout the world. Currently, illegal funds are being transferred domestically and from and to the United States and "cycled" through intricate money laundering schemes involving international payments, particularly funds transfers. Several recent money laundering operations, which have been discovered by Treasury and other Federal law enforcement agencies, such as Operations C–Chase and Polar Cap, are testaments to this phenomenon. In an April 26, 1989, submission to the Director, Office of National Drug Control Policy, reprinted in the Congressional Record of May 18, 1989, the American Bankers Association stated that, "Funds transfers, which are essentially unregulated, have emerged as the primary method by which high volume launderers ply their trade." 135 Cong. Rec. S5555.

The Advance Notice of Proposed Rulemaking focused on funds transfers through banks. There is also a serious money laundering problem involving non-bank financial institutions that are subject to recordkeeping and reporting requirements of the Bank Secrecy Act, such as transmitters of funds and telegraph companies. Therefore, this proposal also addresses recordkeeping by these financial institutions with respect to funds they transmit and receive.

Major Comments Received to the Advance Notice of Proposed Rulemaking

In the Advance Notice, Treasury set forth seven different regulatory proposals that it was considering implementing. There were a total of 114 comments on these proposals. Of those comments, 81 were from banks. The remainder were from non-bank financial institutions, trade associations, government agencies, and other miscellaneous institutions and individuals. Generally, most of the commenters noted their opposition to drugs and their desire to assist in fighting the problem. However, they also noted that the essence of the automated international payments system is the speed with which it moves funds and that anything which slows down the system would make United States banks less competitive. Most commenters also pointed out that the vast majority of international payments are legitimate.

In addition, many commenters noted that some of the proposals might violate foreign privacy laws and that Treasury should be sensitive to other countries' concerns. Other commenters suggested that the proposals, if adopted, would unreasonably burden the international payments system and financial institutions in general. The comments expressed concern that regulations would be costly to implement, and they suggested that Treasury focus on other money laundering "choke points," *e.g.*, the points where cash enters the financial system, to detect criminal activity.

Treasury appreciates the willingness of financial institutions to cooperate in combating drug trafficking and money laundering. In developing the regulations proposed today and in considering any final regulations, Treasury will balance the law enforcement need for the information against the costs to financial institutions and the effect on the payments system and the free flow of legitimate funds through the funds transfer process. Treasury understands that privacy laws in other countries may prohibit financial institutions from disclosing the names of customers to United States financial institutions on a routine basis, and has taken this into account in issuing the proposed regulations.

The comments also raised questions about the use of domestic funds transfers to launder money, and suggested that the regulations cover both domestic and international funds transfers. Currently, § 103.33 of the regulations, 31 CFR 103.33, requires only records on certain international funds transfers, not information on domestic funds transfers. In response to these comments, Treasury has included in the proposed regulations provisions that cover both domestic and international

funds transfers. Records on domestic funds transfers have been included because often it is impossible for a financial institution to know whether an incoming funds transfer originated abroad or whether an outgoing funds transfer is destined ultimately for a place outside the United States.

Comments Received on Specific Proposal

#1: Require a report or record by the financial institution originating or receiving an international wire transfer of funds for a customer which includes identifying and account information about the originator, beneficiary and the person on whose behalf the payment was made or received and whether the sender or receiver is aware of any separate payment instructions regarding the payment unknown to the financial institution.

#2: Require that all international wire transfer messages contain all known third party identifying information, e.g., account numbers, addresses, and names of the originator and beneficiary of the payment.

The vast majority of the comments received by Treasury were directed at these two proposals. Generally, if commenters expressed a preference, it was for recordkeeping, not reporting. In addition to the general comments, many commenters noted that the funds transfer system was highly automated with no manual review, and that any requirement to delay a transfer in order to verify information would disrupt international payments. The commenters requested that, if Treasury were to require reporting, the report contain only "known" information, with the preference for it being filed electronically. Most commenters stated that it was easier to get information on transfers that originated in the United States, as opposed to transfers that originated from abroad, because United States financial institutions can more readily obtain information about transfers originating at their institutions. Many commenters noted that foreign financial institution privacy laws would prohibit foreign banks from providing the name of a foreign originator.

There was a split of opinion among the commenters on whether exemptions should be permitted to any reporting or recordkeeping requirements for funds transfers. Those expressing concern about exemptions were worried that the system would be modeled after the currency transaction reporting exemption system, *i.e.*, on an account-by-account basis. Those in favor of exemptions suggested a broad exception program instead, suggesting that exceptions be permitted for categories of transactions such as transfers conducted for: corporations traded on one of the public stock exchanges; the bank's own account; a company rated by one of the securities ratings services or recognized by a credit ratings service; public utilities; government agencies; and businesses who make regular transfers commensurate with their business activity.

Many commenters suggested some sort of monetary threshold for records or reports for funds transfers, such as $10,000. Several commenters stated that Treasury should be clearer about the terminology used, and that any regulation should use the same terminology as is used in proposed Uniform Commercial Code (UCC) Article 4A on funds transfers. There was concern over whether a transaction had to be refused or payment delayed if the required information was not available.

Finally, there also were questions concerning the ability of a financial institution to determine whether an apparently domestic funds transfer was part of an international payment. This is because where intermediary financial institutions are used in many funds transfers, the originating financial institution or beneficiary's financial institution may not be aware when a particular payment order relates to funds originating with an international funds transfer. Some commenters recommended that the same recordkeeping requirements be placed on all transfers—domestic and international. Several commenters noted that it would be administratively easier for them to keep the records on all transfers.

Treasury has decided to propose only enhanced recordkeeping requirements at this time. Reporting of international funds transfers or of categories of funds transfers is still under consideration. Treasury is considering either routine reporting or only reporting of suspicious funds transfers, based on a suspicious transfer profile developed by Treasury and supplemented by individual institutions. Treasury continues to be interested in comments on the concept of reporting and how reporting would relate to recordkeeping measures taken in response to this proposal.

Under the proposed regulations, domestic banks, depending upon their role in the funds transfer process (originator's bank, beneficiary's bank, or intermediary bank), will have to keep certain records on all funds transfers, regardless of amount. Generally, there are no exemptions from recordkeeping requirements under the Bank Secrecy Act. However, Treasury is proposing that funds transfers between domestic banks for their own accounts will be exempt from these recordkeeping requirements in view of the lack of law enforcement utility for such records. In the future, if Treasury proposes reporting of funds transfers, Treasury will consider other appropriate exemptions.

Treasury agrees that, in many situations, it is not apparent whether the funds involved in a funds transfer are domestic or international in origin. Treasury has determined that there is law enforcement value in having records of all transfers. Therefore, Treasury is proposing that the recordkeeping regulations apply to both international and domestic transfers.

#3: Require that prior to originating international payments on a customer's behalf, either through a book entry transfers of credit or through international wire transfers of funds, financial institutions apply model "know your customer" procedures to verify the legitimate nature of the customer's business and that the transfers are commensurate with legitimate business activities.

Many commenters stated that they felt that a "know your customer" procedure made good business sense. Many also noted, however, that the nature of funds transfers was different from the nature of currency transactions and that different procedures should be applicable. Most commenters have difficulty with any requirement that they verify the nature of the customer's business and the amount of the transactions, because they would be unable to determine prior to the transfer (or even after) that the customer's business was legitimate and that the amount of the funds transfer was commensurate with the customer's legitimate business. Several commenters asked Treasury to provide guidance or prescribe what the procedures would be and to propose uniform industry standards. More than one commenter noted that the guidelines should avoid reliance on subjective factors.

Several commenters felt that it was not part of their function as a financial institution to investigate in detail the legitimate nature of a customer's business. However, others thought that know your customer procedures should be extended to all areas of a financial institution in order to protect the financial institution against money laundering, and that they would have no problem in attempting to determine whether a funds transfer was commensurate with the customer's business. Several commenters already

have know your customer procedures. Some commenters suggested reviewing the funds transfer after it is completed so as not to disturb the payment process.

After consideration of the comments, Treasury has decided not to pursue this option at the present time, but plans to address this topic in the future in connection with mandatory and comprehensive know your customer procedures for financial institutions. In the meantime, Treasury is encouraged by the many financial institutions who have voluntarily instituted know your customer policies and procedures and reminds all financial institutions to familiarize themselves with their customers' activities to become aware of any suspicious activities or deviations from their normal activities in the funds transfer and other areas. Unless a financial institution knows its customers, it will be vulnerable to money laundering and will not be able to fulfill its obligation to report possible criminal violations of law. *See e.g.*, 12 CFR 21.12.

#4: Require special identification procedures and recordkeeping or reporting of international payments sent or received without established account relationships at financial institutions.

There was a consensus among the commenters, at least for those financial institutions who do PUPID (pay upon proper identification) funds transfers, that they are willing to put into place reasonable special identification procedures for noncustomers receiving funds transfers. Some suggested that the procedures not require more information than is currently required when filling out a Currency Transaction Report on currency transactions exceeding $10,000.

Many banks said that they do not originate funds transfers for nondeposit accountholders or that, if they permit them, they only originate payment orders for small amounts, (*e.g.*, $1,000) and rarely or never receive incoming transfers for nondeposit accountholders. Of those banks which receive these transfers, most said that they ask for at least one piece of identification before releasing the funds to the beneficiary.

Information on originators and beneficiaries who do not have account relationships with banks often is lacking or cannot be retrieved making it difficult for law enforcement authorities to trace funds transfers. Thus, after consideration of the comments, Treasury has decided to propose special identification procedures for funds transfers involving originators or beneficiaries of funds transfers who are nondeposit accountholders.

#5: Require that financial institutions develop a suspicious international wire transfer profile and report suspicious payments to Treasury; the profile might include certain criteria suggested by Treasury, for example, the presence of large currency deposits prior to an outgoing transfer or the existence of an incoming transfer followed by issuance of a cashier's check

It was the overwhelming opinion of the commenters that Treasury, not the financial institutions, should develop suspicious wire transfer profiles, or that financial institution regulators and/or a group of financial institutions should develop the profile. Many commenters felt that they did not have sufficient expertise to develop profiles on their own and indicated that it is often difficult to distinguish between suspicious and legitimate transactions. Some commenters pointed out that because the nature of a funds transfer is different from the nature of currency transactions, it is more difficult to determine what is suspicious activity.

Several commenters stressed that because the funds transfer system is automated and most payment orders are not reviewed before they go out, regulations requiring review prior to transmittal could stop the payment order, and impede the international payments system. Most commenters also noted that their internal computer systems are not integrated and that, as a result, they cannot determine what account activity preceded a funds transfer, *e.g.*, whether there had been a recent large cash deposit.

One bank commenter said that it produces a weekly suspected money laundering report and runs the information against variable parameters to identify activity that is suspicious in relationship to an account's overall activity. Another commenter said that it could use its current capability to sort funds transfer activity by customer and account officer and have the account officer identify unusual patterns of activity by certain customers. Some commenters noted that the guidelines should be objective, specific and clear so that the financial institution will not be "second-guessed" at a later date if they do not file a suspicious activity report.

After consideration of the comments, Treasury has decided not to require reporting of suspicious funds transfers at this time. However, Treasury is encouraged by the many financial institutions that have developed suspicious funds transfer profiles and encourages other financial institutions to develop their own programs to identify suspicious funds transfers and other suspicious activity. Treasury strongly urges financial institutions to report suspicious activity, including suspicious funds transfers, to the local office of the Internal Revenue Service's Criminal Investigation Division, and in the case of suspicious international wire transfers, notify the local office of the U.S. Customs Special Agent in Charge, and where applicable, also to file the required Criminal Referral Form with the bank regulatory agency. In order to prevent the use of financial institutions by money launderers and other criminals, currency transaction reporting and recordkeeping must be coupled with the reporting of possible violations of law or regulation.

#6: Require that: (A) when an institution, typically a bank, receives a 103.25 targeting order it must obtain to the extent possible, information from other domestic banks involved in the transfer regarding the identity of the originator or beneficiary of the transfer; and (B) that those other domestic banks cooperate in providing this information on a timely basis to the targeted institution

Because the recordkeeping requirements being proposed should obviate the need for financial institutions to obtain additional information from other financial institutions in order to respond to a targeting order issued under 31 CFR 103.25, Treasury has decided not to pursue this option.

#7: Add a category for international book transfers not involving wire transfers, such as transfers of credit in the books of a foreign and a domestic institution, to the 103.25 categories of information that may be requested.

Book transfers generally are transfers of credit between affiliated financial institutions. These institutions can be foreign and domestic branches or subsidiaries of the same financial institution corporation, for example, a corporation's New York branch and its U.K. branch. Transfers between affiliates may be made without use of any wholesale wire transfer systems through private communication systems or even by telephone. Under the Bank Secrecy Act regulations, 31 CFR part 103, a foreign branch is treated as a separate financial institution.

While most financial institutions offered no objection to this proposed provision, they raised several questions about Treasury's purpose in adding a category for international book transfers not involving the use of wholesale wire transfer systems to 31 CFR 103.25. The commenters requested that Treasury be very clear about what it was referring to

and asked Treasury to define all terms. Several commenters noted that they treated book transfers the same way as they treat all other types of funds transfers, and that book transfers should be subject to the same regulations as other funds transfers. Several commenters stated that they do not have foreign branches or do not do book transfers.

Treasury has decided to specify that records relating to all types of funds transfers by banks and transmittals of funds by financial institutions other than banks may be requested in any order issued under § 103.25. The term "funds transfer" as defined in the proposal would include book transfers. The proposal also specifies that if an order issued under § 103.25 calls for information about funds transfers or funds transmittals by financial institutions other than banks, all information required to be maintained with respect to the transfer required in proposed subsections 103.33 (e) and (f) could be required to be furnished.

Proposed Amendments

Several amendments are being proposed today.

Funds Transfers through Banks

Definitions

Initially, Treasury is proposing that several additions be made to the definitions section of the regulations, § 103.11, to cover the funds transfer terminology used in the other proposed regulations. 31 CRF 103.11. In response to the comments, most of the proposed definitions are based upon proposed UCC Article 4A definitions dealing with funds transfers.

A definition of *funds transfer* has been proposed. As noted above, a funds transfer is a series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. Definitions of the various parties in a funds transfer also are being proposed. *The originator or originator of a payment order* is the person causing the initiation of a funds transfer. *The beneficiary or beneficiary of a payment order* is the person to be paid the proceeds of the funds transfer. The *originator's bank* is the first bank to send a payment order to carry out the originator's order. The *beneficiary's bank* is the bank that pays the beneficiary of the payment order. An *intermediary bank* is a financial institution in the funds transfer process which is neither the originator's nor the beneficiary's bank.

Example #1: Ashley Martin, a Kansas bookseller, wishes to send $5,000 to Allingham Books in London to pay for books she is selling at her store. She goes to her bank, the Bank of Main Street, and requests that $5,000 be transferred from her account to the account of Allingham Books in London at Kensington Bank. The Bank of Main Street uses a participant bank in the New York Clearinghouse's Interbank Payments System (CHIPS), CHIPSBank, with which it has a correspondent relationship, to make the transfer to the Kensington Bank, with which CHIPSBank has a correspondent relationship. In this example, Ashley Martin is the originator of the payment order; the Bank of Main Street is the originator's bank; Allingham Books is the beneficiary of the payment order; Kensington Bank is the beneficiary's bank, and CHIPSBank is the intermediary bank. Some funds transfers may have more than one intermediary bank in the funds transfer chain, depending upon the correspondent relationships of the banks involved.

The proposed regulations will require retention of the "date" of the funds transfer. There are two relevant dates, definitions of which are proposed. The *Execution Date* is the date upon which a payment order is to be issued; normally the execution date is the date upon which the order is received by the bank originating the funds transfer. The *Payment Date* of a funds transfer is the day on which the beneficiary's bank is to pay the beneficiary. Many times, these two dates are the same.

Example #2: John James of Chicago requests his bank to send $500 from his savings account on July 6 to his mother Mary Jones in Omaha, payable immediately. The bank receives the request for the transfer on July 6th and sends out the payment order the same day. Mary Jones' bank receives the payment order on July 6th and immediately credits her account for $500. In this example, July 6th is both the execution date and the payment date.

A definition of "payment order" also is being proposed. A *Payment Order* is an instruction of a person to a receiving bank transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary (but does not include ACH payment orders) if: (a) The instruction does not state a condition to payment to the beneficiary other than time of payment; (b) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and (c) the instruction is transmitted by the originator of the payment order directly to the originator's bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

This definition includes not only traditional funds transfers through wholesale wire transfer systems, but also covers book entries, and other ways of transmitting funds by banks, for example, through a bank's internal communication system that links its foreign and domestic affiliates.

Enhanced Recordkeeping for Funds Transfers

Treasury is proposing that financial institutions be required to retain specific information concerning funds transfers except funds transfer between domestic banks for their own accounts. Under current regulations, the only information required is a record of the advice, instruction, or request for international funds transfers over $10,000. However, the regulation does not specify what information must be contained in the record. As a result, many financial institutions have complete, comprehensive information on their funds transfers, while other financial institutions have almost none, making it very difficult for law enforcement to trace the money and for Treasury to use its targeting authority under 31 CFR 103.25 effectively. Drug and other illegal-source money is being sent through the funds transfer system domestically and internationally, in all amounts.

Treasury is proposing that the originator's bank retain the following information for each funds transfer:

(1) The name of the originator of the payment order, and the originator's account number, if applicable;

(2) Unless the originator is a publicly traded corporation, public utility, or government agency, the name of any person on whose behalf the funds transfer was originated, if different from the originator (1);

(3) The amount of the funds transfer;

(4) The execution date of the funds transfer;

(5) The payment instructions, if any;

(6) The identity of the beneficiary's bank; and

(7) The name of the beneficiary of the payment order, and the account number, if applicable.

Treasury also is proposing that a bank which acts as an intermediary bank retain whatever information it receives from the preceding bank, be it the originator's bank or another intermediary bank.

Finally, Treasury is proposing that a bank retain the following information for each funds transfer for which it is the beneficiary's bank:

(1) The name of the beneficiary of a payment order (whether or not a deposit accountholder), and the account number, if applicable;

(2) Unless the beneficiary is a publicly traded corporation, public utility or government agency, the name of any person on whose behalf the funds transfer was received, if different from the beneficiary (1);

(3) The amount of the funds transfer;

(4) The payment date of the funds transfer;

(5) The payment instructions, if any;

(6) The identity of the originator's bank; and

(7) The name of the originator of the payment order, and the account number, if applicable and known.

Treasury is proposing that these records be retrievable by the name of the originator and the account number of the originator, if applicable, for an originator's bank, and by the name of the beneficiary and the account number of the beneficiary, if applicable, for a beneficiary's bank. As with other records maintained under the Bank Secrecy Act, these records may be maintained on paper, microfilm or microfiche or magnetic tape so long as they are available in readable form when requested by the Treasury Department or other law enforcement or regulatory agency. *See* 31 CFR 103.32.

Treasury will consider comments regarding a possible delayed effective date for certain provisions until proposed changes in the format of wire transfer messages for wholesale wire transfer systems can accommodate the additional information.

The term "on whose behalf" has the same meaning that it has with respect to currency transactions reportable under 31 CFR 103.22. For further guidance in this area, financial institutions may refer to Bank Secrecy Act Administrative Ruling 89–5, dated December 21, 1989, (55 FR 1021, January 11, 1990) which discusses "on whose behalf" in the context of currency transactions reportable under 31 CFR 103.22.

Treasury continues to be receptive to alternative suggestions for recordkeeping that would minimize costs to banks without jeopardizing the underlying purpose of these regulations, including suggestions for possible additional exemptions from these requirements.

If in the future, Treasury requires reporting of funds transfers, the information reported may also include the address of the originator, for a report by an originator's bank, and the address of the beneficiary, for a beneficiary's bank.

Nondeposit Accountholder Transactions

Treasury is proposing special identification verification and recordkeeping procedures for a bank that acts as an originator's bank for a funds transfer for a customer who does not have a deposit account at the institution. Treasury is proposing that in that instance, prior to the initiation of the funds transfer, the bank must verify the name and address of the person requesting the funds transfer, and maintain a record, in addition to any other required information, of that person's name, address, social security number, and date of birth.

Similarly, if a bank acts as a beneficiary's bank for a customer who does not hold a deposit account at that institution, the bank must verify the name and address of the beneficiary and maintain a record, in addition to any other required information, of the beneficiary's name, address, social security number, and date of birth prior to payment of the funds.

Time Deadlines

Treasury is proposing that a domestic bank which acts as originator or originator's bank for a funds transfer have the required information prior to the initiation of the funds transfer. Because the originator's bank is located in the United States, the bank should be able to obtain the required information prior to initiating the particular payment order. The intermediary bank merely will retain whatever information is received from the originator's bank or intermediary bank preceding it in the chain of the funds transfer.

Treasury is proposing that a financial institution which acts as a beneficiary's bank for a beneficiary who is not a deposit accountholder have the required information prior to payment of the funds. A bank which acts as a beneficiary's bank with respect to a funds transfer for a deposit accountholder would be required to have the required information within 15 days after payment of the funds transfer to the beneficiary of the payment order if the information is not available at the time of payment.

In the case of a deposit accountholder, if the beneficiary's bank has been unable to secure the necessary information, including the name of the foreign originator, either from the information accompanying the payment order or by contacting the deposit accountholder, it shall nevertheless not be deemed to be in violation of the Bank Secrecy Act if: (1) It made a reasonable effort to secure such information, and (2) it maintains a list containing the names, addresses, and account numbers of the beneficiaries of payment orders on which there is incomplete information. The names, addresses and account numbers would be made available to the Secretary upon request. This is similar to the requirement to obtain taxpayer identification numbers by banks, securities brokers and dealers, casinos, and currency dealers and exchangers. 31 CFR 103.34(a); 31 CFR 103.35(a); 31 CFR 103.36(a); 31 CFR 103.37(a). Treasury suggests that possible "reasonable efforts" would include contacting the deposit accountholder by letter or telephone and then sending a follow-up letter if there is no response to the initial communication.

Treasury stresses that it is not requiring that United States financial institutions contact foreign financial institutions for any additional information. Treasury realizes that a foreign financial institution may be precluded from providing any information because of its financial privacy laws. Thus, Treasury is requiring that United States financial institutions obtain the necessary information from its U.S. customers. Treasury recognizes that in situations where both the originator and beneficiary are outside the U.S. all of the information may not be obtainable due to the operation of foreign secrecy laws. These transactions generally are of far less interest to U.S. law enforcement authorities than transactions that begin and end in the United States.

Nonbank Transmitters of Funds

As noted above, the proposed regulations impose parallel recordkeeping requirements on financial institutions subject to the recordkeeping and reporting requirements of the Bank Secrecy Act, other than banks, which transmit or receive funds for domestically and internationally. *See* 31 CFR 103.11(i). These institutions may be doing business as telegraph companies or check cashers or "fronting" as other businesses, typically as travel agencies. The methods of transmitting funds by nonbank financial institutions also are diverse. The funds may be transmitted through funds transfers through banks, through private communications systems or by a telephone directive to transfer credit in a corresponding nonbank financial institution, such as a foreign exchange dealer in Latin America. However accomplished, records relating to these transmittals of funds and their receipt are of

comparable law enforcement interest to records of funds transfers through banks.

Therefore, Treasury is proposing that financial institutions, other than banks, that transmit funds for customers or receive funds from other financial institutions or foreign financial agencies for payment to any person be required to retain specific information about such transmittals or receipts of funds.

A nonbank financial institution transmitting funds would be required to maintain a copy of any application or form the person initiating the transmittal completes and to record the following information prior to transmitting funds for any person or on its own behalf:

(A) The name, address, social security number, and date of birth of the person instructing that the funds be transmitted and the account number, if applicable;

(B) The name of any person on whose behalf the funds were transmitted if different from (A);

(C) The amount of funds transmitted;

(D) The date of the funds transmission;

(E) Any payment instructions;

(F) The identity of the person or financial institution receiving the funds on behalf of the recipient; and

(G) The name and address of the recipient of the funds transmitted, and account number, if applicable.

A nonbank financial institution receiving a transmittal of funds would be required to maintain a copy of any form or receipt the person receiving the funds completes and to record the following information prior to making payment to any person:

(A) The name, address, social security number, and date of birth of the person receiving the funds and the account number, if applicable;

(B) The name of any person on whose behalf the funds are received if different from (A);

(C) The amount of funds received;

(D) The date the funds were received;

(E) Any payment instructions;

(F) The identity of the person or financial institution transmitting the funds on behalf of the person who instructed transmittal of funds; and

(G) The name and address of the person who ordered the funds transmittal, and account number, if applicable and known.

As in the case of banks dealing with funds transfers for nondeposit accountholders, a nonbank financial institution transmitting funds would be required to verify and record the identity of the person instructing the transmittal prior to transmitting funds, and a nonbank financial institution receiving funds would be required to verify and record the identity of the person receiving payment prior to making payment.

Similar to records of funds transfers maintained by banks, nonbank financial institutions will be required to maintain these records such that they would be retrievable by Treasury or another law enforcement agency by the name of the person instructing the transmittal and by the account number of that person, if applicable, for a financial institution transmitting funds, and by the name of the recipient for financial institutions receiving funds. These records would have to be maintained on-site at the financial institution transmitting or receiving the funds and like all other records under the Bank Secrecy Act, would have to be retained for five years.

Treasury is receptive to alternative suggestions for recordkeeping that would minimize costs to non-bank financial institutions without jeopardizing the underlying purpose of these regulations.

The following are examples of the application of these recordkeeping requirements for nonbank financial institutions:

Example #3: Mary Daker, a California resident, wishes to send $2,500 to her son Peter in Maine. She goes into the local agent of a telegraph company, tenders the funds and arranges to have payment made to her son at the office of the agent of the telegraph company in Maine where Peter Daker then picks up the funds. The agency in California communicates the payment instruction to the agency in Maine through the telegraph company's private communication network and deposits the currency to the agency's own account in California.

The telegraph company agency in California is a nonbank financial institution and its transmittal of funds would be subject to the recordkeeping requirements of proposed § 103.33(g), including the requirement that Mary Daker's identity be verified and recorded. The record would have to be maintained on-site at the California agency. The telegraph company agency in Maine receiving the instruction to make payment to Peter is a nonbank financial institution receiving a transmittal of funds. It would be subject to the recordkeeping requirement of proposed § 103.33(f), including the requirement that Peter's identity be verified and recorded. The record would have to be maintained on-site at the Maine agency. There is no funds transfer involving a bank in this example.

Example #4: Sun and Fun Travel Agency, which also transmits funds on behalf of its customers is a financial institution for purposes of the Bank Secrecy Act regulations. Robert Smith is a customer who wishes to send $500 to his grandmother, Maria Smith, in Peru. Robert Smith gives $500 to Sun and Fun by a personal check. Sun and Fun contacts a foreign currency broker in Peru with which it has an established relationship. The currency broker debits an account in the name of Sun and Fun in Peru, and pays Maria Smith $500. Sun and Fun is acting as the transmitter of funds and must record this transaction prior to initiating it under proposed § 103.33(f). Sun and Fun deposits Robert Smith's check to its account at a local bank and this transaction would be subject to the recordkeeping requirement in proposed § 103.33(f)(2). Sometime later, Sun and Fun will originate a payment to the foreign currency broker covering a number of similar transactions by arranging a funds transfer through its bank to the account of the foreign currency broker in a bank in Peru. Sun and Fun's bank, as an originator bank, would be required at that time to make a record of the transaction as required by proposed § 103.33(e).

Example #5: Casa Check Casher in New York City operates out of a storefront in an ethnic community containing many recent immigrants. Casa is a financial institution under the Bank Secrecy Act regulations. A customer gives Casa $3,000 (in any form, *eg.*, cash, check or money order) to send to his mother in his native country. Casa does not have the ability to arrange for a transmittal of funds directly. Instead, Casa goes to Bank A, its local bank, where it has a deposit account and arranges for its account to be debited $3,000 and for that amount to be transferred through a funds transfer to Bank B, a bank in the native country of Casa's customer. Bank B will arrange payment to the customer's mother. In this situation, Casa would be required to keep the records required by proposed § 103.33(f)(1)(i) as a financial institution transmitting funds.

A separate record of the funds transfer originated by Casa's bank would be maintained by Bank A pursuant to proposed § 103.33(e)(1)(i). Casa would be the originator of the funds transfer. Its customer would be the person on whose behalf Casa was originating payment.

Targeting Orders

Treasury is proposing that in § 103.25, which permits Treasury to issue orders to financial institutions to require reports of certain types of transactions

with foreign financial agencies, be expanded to include in the case of a bank receiving an order, all funds transfers, including book entries, and in the case of financial institutions other than a bank, all transmittals or receipts of funds by the institution. The information that could be requested in the order would be the same information required to be maintained under proposed subsections 103.33 (f) and (g).

Example #6: Metrobank has branches in New York and London. James Smith, a customer of Metrobank in New York, wishes to make payment to Michael Blank, a customer of Metrobank in London, for some paintings. He requests Metrobank New York to debit his account $50,000 and credit it to Michael Blank in London. Metrobank New York telephones Metrobank London to convey Mr. Smith's payment order. The bank notes in its account records that $50,000 was moved from one of its accounts to another. Information required to be retained pursuant to proposed § 103.33(e) about this transaction could be requested in an order issued under § 103.25.

Submission of Comments

Treasury requests comments from all interested persons concerning the proposed amendments. While comments on all aspects of the regulations are welcome, Treasury is particularly interested in receiving comments on how long financial institutions will need to put new regulations into effect. Treasury also is interested in comments on the appropriate format for maintaining the required records in machine-readable form if it is determined to implement routine reporting in the future. All comments received before the closing date will be carefully considered. Oral comments must be reduced to writing and submitted to Treasury to receive consideration. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in comments. All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in room 5030, 1500 Pennsylvania Ave., NW. Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at (202)566-8022.

Executive Order 12291

In the Advance Notice of Proposed Rulemaking, Treasury asked commenters to provide information about the cost of implementing the various proposals including the proposal for enhanced recordkeeping. Treasury did not receive detailed comments in this regard which would lead us to conclude that this proposed rule if adopted as a final rule, would be a major rule for purposes of Executive Order 12291. Therefore, we have no basis to believe that the proposal will have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required. However, Treasury will entertain comments on this point.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The requirements for recordkeeping will affect a number of small non-bank financial institutions, but we do not believe that the requirements will pose a substantial recordkeeping burden on those entities.

Paperwork Reduction Act

The collections of information contained in this Notice of Proposed Rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information and the burden estimate should be directed to the Office of Financial Enforcement at the address noted above or to the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, DC 20503.

The collections of information in this regulation are authorized by 12 U.S.C. 1829b and 1951-1959 and 31 U.S.C. 5311-5326. The likely recordkeepers are banks that perform funds transfers or other financial institutions performing transmittals of funds for themselves or other persons.

Estimated total annual reporting and/or recordkeeping burden: 7.5 million hours.

Estimated average annual burden per respondent and/or recordkeeper: 187½ hours.

Estimated number of respondents and/or recordkeepers: 40,000

Estimated annual frequency of responses: Upon request.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law Enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendment

For the reasons set forth in the preamble, it is proposed to amend 31 CFR part 103 as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 would continue to read as follows:

Authority: Pub. L. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5326).

2. It is proposed to amend § 103.11 by redesignating present paragraphs (c) through (h) as (e) through (j); present paragraphs (i) through (k) as (l) through (n); present paragraphs (l) and (m) as (q) and (r); present paragraphs (n) through (q) as (w) through (z); present paragraphs (r) through (u) as (aa) through (dd); and by adding new paragraphs (c), (d), (k), (o), (p), (s) (t), (u) and (v), all to read as follows:

§ 103.11 Meaning of Terms.

* * * * *

(c) *Beneficiary or Beneficiary of a payment order.* The beneficiary of a payment order, with respect to a funds transfer, is the person to be paid the proceeds of the funds transfer.

(d) *Beneficiary's bank.* The beneficiary's bank, with respect to a funds transfer, is the bank that pays the beneficiary of the payment order.

* * * * *

(k) *Execution Date.* In connection with a funds transfer, the execution date is the date upon which a payment order is to be issued; normally the execution date is the date upon which the order is received by the originator's bank.

* * * * *

(o) *Funds Transfer.* Funds transfer means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(p) *Intermediary bank.* An intermediary bank, with respect to a funds transfer, is a bank in the funds transfer chain which is neither the originator's nor the beneficiary's bank.

* * * * *

(s) *Originator or originator of a payment order.* The originator of a payment order, with respect to a funds transfer, is the person causing the initiation of a funds transfer.

(t) *Originator's bank.* The originator's bank, with respect to a funds transfer, is the first bank to send a payment order to carry out the originator's order.

(u) *Payment date.* The payment date of a funds transfer means the day on which the amount of the order is payable to the beneficiary.

(v) *Payment Order.* A payment order means an instruction of a person given to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary (but does not include ACH payment orders) if:

(1) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the originator directly to the originator's bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

* * * * *

3. It is proposed to revise paragraph (b)(2) of § 103.25 to read as follows:

* * * * *

§ 103.25 Report of transactions with foreign financial agencies.

* * * * *

(b) * * *

(2) Funds transfers or transmittals of funds received by respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency, including all information required to be maintained with respect to such transaction by subsections § 103.33(e) or (f) of this subpart.

4. It is proposed to amend § 103.33 by adding new paragraphs (e) and (f) to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(e)(1) A bank shall retain either the original or a microfilm or other copy or reproduction of—

(i) The following information for each funds transfer for which it is the originator's bank:

(A) The name of the originator of the payment order, and the account number, if applicable;

(B) Unless the originator is a publicly traded corporation, public utility or government agency, the name of any person on whose behalf the funds transfer was originated, if different from (A);

(C) The amount of the funds transfer;

(D) The execution date of the funds transfer;

(E) The payment instructions, if any;

(F) The identity of the beneficiary's bank; and

(G) The name of the beneficiary of the payment order, and the account number, if applicable.

(ii) When acting as an intermediary bank for a funds transfer, any information received by the institution by the originator's bank or another intermediary bank;

(iii) The following information for each funds transfer for which it is the beneficiary's bank:

(A) The name of the beneficiary of the payment order, and the account number, if applicable;

(B) Unless the beneficiary is a publicly traded corporation, public utility or government agency, the name of any person on whose behalf the funds transfer was received, if different from (A);

(C) The amount of the funds transfer;

(D) The payment date of the funds transfer;

(E) The payment instructions, if any;

(F) The identity of the originator's bank; and

(G) The name of the originator of the payment order, and the account number, if applicable and known by the beneficiary. (2)(i)(A) A bank which acts as the originator's bank with respect to a funds transfer for a deposit accountholder must obtain the information required in paragraph (f)(1)(i) prior to the initiation of the first payment order.

(B) Prior to acting as an originator's bank with respect to a funds transfer for a nondeposit accountholder, the financial institution must verify the originator's name and address by examination of a document that contains the name and address of the originator and record that information and the type and number of the identification documentation reviewed. The bank shall maintain a record, in addition to the information required in paragraph (e)(1)(i), of the person's name, address, social security number, and date of birth.

(ii)(A) A bank which acts as a beneficiary's bank with respect to a funds transfer for a deposit accountholder must obtain the information required in paragraph (e)(1)(iii) within 15 days after payment of the funds transfer to the beneficiary. In the event that a financial institution has been unable to secure the required information, it shall nevertheless not be deemed to be in violation of this section if

(*1*) it has made a reasonable effort to secure such information, and

(*2*) it maintains a list containing the names, addresses, and account numbers of those persons originating funds transfers on which there is incomplete information.

The names, addresses and account numbers shall be made available to the Secretary upon request.

(B) Prior to acting as a beneficiary's bank with respect to a funds transfer for a nondeposit accountholder, the bank must verify the name and address of the beneficiary of the funds transfer by examination of a document that contains the name and address of the beneficiary and record that information and the type and number of the identification document reviewed. In addition, the bank also must maintain a record, in addition to the information required in paragraph (e)(1)(iii), of the person's name, address, social security number and date of birth.

(3) The information required in paragraph (e)(1)(i) to be maintained by the originator's bank shall be retrievable by the name of the originator of the funds transfer and by the originator's account number, if applicable. The information required in paragraph (e)(1)(iii) to be maintained by the beneficiary's bank shall be retrievable by the name of the beneficiary of the funds transfer and by the account number of the beneficiary, if applicable.

(4) Funds transfers between domestic banks for their own accounts are not subject to the requirements of this paragraph (e).

(f)(1)(i) A financial institution (other than a bank) that transmits funds for a person or on its own behalf shall retain the original or a microfilm or other copy or reproduction of the following information or record with respect to each transmittal of funds:

(A) The name, address, social security number, and date of birth of the customer instructing that the funds be transmitted and the account number, if applicable;

(B) The name of any person on whose behalf the funds were transmitted if different from (A);

(C) The amount of funds transmitted;

(D) The date of the funds transmittal;

(E) Any payment instructions;

(F) The identity of the person or financial institution receiving the funds on behalf of the recipient;

(G) The name and address of the recipient of the funds transmitted, and account number, if applicable, and

(H) Any application or form completed by the person instructing the transmittal relating to the transmittal.

(ii) Prior to transmitting funds, the financial institution must verify the name and address of the person instructing the transmittal by examination of a document that contains the name and address of the person and record that information and the type and number of the identification document reviewed.

(2)(i) A financial institution (other than a bank) that receives funds for any person or on its own behalf, shall retain the original or a microfilm or other copy or reproduction of the following information with respect to each transmittal of funds it receives:

(A) The name, address, social security number, and date of birth of the person receiving the funds and the account number, if applicable;

(B) The name of any person on whose behalf the funds were received if different from (A);

(C) The amount of funds received;

(D) The date the funds were received;

(E) Any payment instructions;

(F) The identity of the person or financial institution transmitting the funds on behalf of the person who instructed transmittal of funds;

(G) The name and address of the person who ordered the funds transmittal, and account number, if applicable and known; and

(H) Any receipt or form completed by the recipient relating to the receipt of funds.

(ii) Prior to disbursing funds, the financial institution must verify the name and address of the person receiving the funds transmitted by examination of a document that contains the name and address of the recipient and record that information.

(3) The information required in paragraph (f)(1)(i) by the financial institution transmitting funds shall be retrievable by the name of the customer instructing the funds to be transmitted and by the customer's account number, if applicable, and shall be maintained at the location of the branch, agency or office of the financial institution making the transmittal. The information required in paragraph (f)(2)(i) by the financial institution receiving a transmission of funds shall be retrievable by name of the funds recipient of the funds transmitted and shall be maintained at the location of the branch, agency or office of the financial institution receiving the transmittal.

Dated: October 9, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90-24198 Filed 10-12-90; 8:45 am]

BILLING CODE 4810-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-267, DA 90-1379]

Broadcast Services; AM Technical Assignment Criteria

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission extends the time for filing comments in its proceeding reviewing AM technical assignment criteria from October 15, 1990, to November 16, 1990, and the time for filing reply comments from November 14, 1990, to December 17, 1990. The deadline for submitting non-binding letters of intent to migrate to the expanded AM band is also extended from October 15, 1990, to November 16, 1990. The *Notice of Proposed Rulemaking* in this proceeding (FR Doc. 90-18020) may be found at 55 FR 31607 (August 3, 1990). The action is taken because of the complex technical mattters at issue in this Docket.

DATES: Comments are now due on November 16, 1990, reply comments are due on December 17, 1990, and non-binding letters of intent to migrate to the expanded AM band are now due on November 16, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Henry Straube, Mass Media Bureau, (202) 632-6955.

SUPPLEMENTARY INFORMATION:

Order

Adopted: October 4, 1990.
Released: October 4, 1990.
By the Chief, Mass Media Bureau.

1. On July 18, 1990, the Commission released a *Notice of Proposed Rulemaking* in MM Docket 87-267 that proposes to revise the AM technical standards to bring about a reduction of interference in the existing AM band and proposes a means of implementing the expanded (1605kHz-1705kHz) AM band that became available for use on July 1, 1990.[1] The deadlines for filing comments and reply comments are currently October 15, 1990, and November 14, 1990, respectively. Non-binding letters of intent to migrate to the expanded AM band are currently due to be filed October 15, 1990.[2]

2. On September 28, 1990, a request for extension of these deadlines was filed by the Association of Federal Communications Consulting Engineers (AFCCE). That request asks for a sixty (60) day extension of the October 15, 1990, and November 14, 1990, comment and reply comment filing dates.

3. In support of its request for extension of the filing deadlines, the AFCCE argues that, given the complexity of the various proposed changes to the AM technical rules, additional time is required to perform the requisite analyses necessary for developing a comprehensive response.

4. While we agree with AFCCE that many of the proposed changes to our AM rules involve complex technical matters, we nevertheless believe that sufficient and thorough analyses of these proposals can be accomplished within an additional 30 day period.

5. Accordingly, *It is ordered* That the request to extend the comment and reply comment dates filed by the Association of Federal Communications Consulting Engineers *is granted to the extent indicated herein.* The dates for filing comments and reply comments on the NRPM *are extended* to November 16, 1990 and December 17, 1990, respectively. On our own motion, the deadline for filing non-biding letters of

[1] FCC 90-136, adopted April 12, 1990, 5 FCC Rcd 4381 (1990).

[2] 55 FR 31607 (August 3, 1990).

intent to migrate to the expanded band *is extended* to November 16, 1990. No further extension of these dates is contemplated.

6. This action is taken pursuant to authority found in §§ 4(i) and 303(r) of the Communications Act of 1934, as amended and §§ 0.204(b), 0.283, 1.46, and 1.45 of the Commission's Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 90-24150 Filed 10-12-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-437, RM-7284]

Radio Broadcasting Services; Marion and Orrville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for a rule making filed on behalf of Marion Radio, Inc., permittee of Station WJAM-FM, Channel 248A, Marion, Alabama. Petitioner seeks the substitution of Channel 247A for Channel 248A, as well as a change in the community of license for WJAM-FM from Marion to Orrville, Alabama, and the concomitant modifications of its permit to specify operation on the substitute channel. Coordinates for Channel 247A at Orrville are 32-18-00 and 87-09-30.

DATES: Comments must be filed on or before November 30, 1990, and reply comments on or before December 17, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Marion Radio, Inc., Attn: Paul Reynolds, President, 415 North College, Greenville, AL 36037.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-437, adopted September 21, 1990, and released October 9, 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 may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

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

[FR Doc. 90-24154 Filed 10-12-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 394

[FHWA Docket No. MC-90-2]
RIN 2125-AC48

Notification and Reporting of Accidents; Property Damage

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The FHWA proposes to amend its definition of a "reportable accident" for motor carriers operating in interstate commerce by changing the criterion for reporting accidents resulting in property damage under part 394 of the Federal Motor Carrier Safety Regulations (FMCSR). The current property dollar value assessment would be replaced with a "towaway" criterion. "Towaway" is defined as "one or more vehicles incurring disabling damage as a result of the accident and transported away from the scene by a tow truck or another vehicle." Integral to this definition is the term "disabling damage," which is defined to mean road vehicle damage which precludes departure of the vehicle from the scene of the accident in its usual operating manner in daylight after simple repairs. This proposed amendment does not affect the requirement to report accidents involving injury or death. This action is being taken in an effort to standardize and simplify State and motor carrier industry accident reporting procedures by removing the uncertainty of estimating a dollar value amount. The FHWA is also soliciting comments on two other potential changes: (1) Revising the FMCSR definition of a reportable accident to be consistent with the American National Standard Institute (ANSI) D-16 definition of a motor vehicle traffic accident and (2) removing the instructions for the preparation of the Motor Carrier Accident Reports, Forms MCS 50-T and 50-B, from § 394.20 of the FMCSRs, and printing the instructions on the back of the forms.

DATES: Written comments must be received on or before December 14, 1990.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-90-2, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or WordStar. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Blount, Office of Motor Carrier Standards, (202) 366-2981; Ms. Bonnie Bass, Office of Motor Carrier Information Management and Analysis (202) 366-0089, or Mr. Edward J. Mullaney, Office of the Chief Counsel, (202) 366-1353, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

Public concern over accidents involving large trucks and buses remains strong. Each year about 4,500 [1]

[1] Information abstracted from Fatal Accident Reporting System 1986: A Review of Information on Fatal Traffic Accidents in the United States in 1986, U.S. Department of Transportation, National Highway Traffic Safety Administration, Report DOT HS 807-245, March 1988.

people lose their lives in commercial motor carrier accidents. Yet, national truck accident statistics, which are based mainly on data from State police accident reports, vary tremendously from one Federal agency to another. The variations in truck accident statistics can be attributed in large part to differences in the States' definitions of accidents and vehicle types. The lack of uniformity among the States in the types of truck accident data collected and the inconsistency in the definitions of those data elements make nationwide analysis of interstate truck accident data very difficult and evaluation and comparison of data among the States virtually impossible.

Research Undertaken

In an effort to mitigate these problems, the FHWA contracted with the National Governors' Association (NGA) to identify a minimum set of truck accident data elements that could be collected and defined uniformly by all States. To do this, the NGA assembled a Technical Advisory Group (TAG) made up of State officials from law enforcement agencies, public safety departments, transportation departments and transportation associations. The TAG developed a set of 23 commercial motor vehicle accident data elements and associated definitions. The Governors, at their 1988 winter meeting, unanimously adopted a policy recommending that States collect information on commercial motor vehicle accidents using the same data elements and the same definitions. The NGA endorsed the inclusion of information on the driver, motor carrier, vehicle, roadway, environmental conditions, type of accident, accident events, involvement of hazardous materials and accident results. The collection of standard accident data will enable the States and the Federal government to more effectively evaluate safety programs designed to reduce the volume and severity of commercial motor vehicle accidents. The FHWA will be able to better understand the causes of commercial motor vehicle accidents and to propose more effective countermeasures by evaluating accident data.

Discussion

From the onset of the project, the TAG strived to develop a uniform data set that was objective, simple to understand, and easy to collect. In keeping with this approach, the TAG opted for a "towaway" definition in lieu of the traditional dollar value of damage to categorize accidents involving only property damage. In the opinion of the TAG, the "towaway" approach had several distinct advantages over the property damage dollar value estimate approach. First of all, a "towaway" criterion is observable. It is certainly much easier for the attending officer to determine if a vehicle was towed than to try to subjectively estimate the severity of the property damage and determine whether it exceeds a specified property damage dollar value threshold.

Second, the "towaway' approach is not affected by inflation. The effect of inflation on dollar amount thresholds has long been a problem. When the costs of repairs rise, more accidents will be reported, even though there may have been no increase in the number or severity of accidents. Therefore, a dollar amount threshold is not a good measure for historical comparison (i.e., trend analyses). The FHWA and some States have attempted to deal with this problem by adjusting their thresholds to account for inflation. (NGA, Capital Ideas, June 1988).

Third and perhaps most important, a "towaway" criterion provides for greater uniformity by eliminating the variation among the States caused by differing property damage thresholds. The NGA's June 1988 edition of Capital Ideas reported that 39 States use property damage thresholds ranging from $100 in Louisiana to $1,000 in Massachusetts. Investigating officers often have difficulty assessing the severity of the damage in terms of cost. As a result, accident statistics vary widely among States due mainly to the definition of a reportable accident based on a dollar value threshold.

At the Federal level, a major problem which results from the use of a property damage threshold is the need to regularly update the dollar value threshold in order to make property damage estimates comparable from year to year. On February 20, 1986, the FHWA published a final rule in the **Federal Register** (51 FR 6121) (FHWA Docket No. MC–117; Amendment Number 83–16), which raised the dollar value threshold for reporting property damage accidents from $2,000 to $4,200 based upon the increased cost of repairs and replacement of property. The FHWA believed that adopting any fixed figure for this criterion would be inappropriate because of the changing value of the dollar. Therefore, it was decided to update the $2,000 property damage criterion for reporting accidents by applying the Gross National Product (GNP) deflator to the 1973 figure, and to undertake an annual adjustment of the property damage amount used in defining "reportable accidents."

In 1987, the FHWA adjusted the accident reporting dollar value threshold to $4,400 (52 FR 7278, March 10, 1987). Since then, the FHWA has reviewed the process by which the accident reporting minimum is adjusted. The relatively minor adjustment of $200 provided by the annual review in arriving at the reporting threshold for 1987 did not provide enough benefit to offset the uncertainty of estimating the dollar value difference that would have been caused within the motor carrier industry. As a consequence, the FHWA considered foregoing adjustment of the formal reporting minimum unless the changes would be at a last 10 percent of the current reporting minimum, rounded to the nearest $500. The FHWA finds this process to be cumbersome, confusing and ineffective.

The FHWA reviewed State accident files in conjunction with staff from the National Highway Traffic Safety Administration (NHTSA) in order to determine the effect of amending the current definition of accidents involving reportable property damage only, as contained in 49 CFR 394.3. The FHWA identified only one State (Indiana) that included information on the dollar amount of property damage as well as whether a vehicle was towed from the scene of the accident. Based on an analysis of Indiana's 1987 truck accident data, it was estimated that 1,258 accidents had damage above the FHWA's $4,400 threshold. If the FHWA changed its definition to embrace the term "towaway," 1,790 accidents would need to have been reported instead of 1,258. In relative terms, however, the impact on the industry would be minor. In 1988, the vast majority of property damage accidents were reported by medium (20–99 vehicles) and large motor carriers (100 and over vehicles). Even so, in 1988, these carriers submitted an average of fewer than one property damage accident report (.8) per carrier. The FHWA estimates the impact of changing to a "towaway" definition would increase this number to about 1.1 property damage accident reports annually or require one additional accident report per carrier every 3 years. For small motor carriers (1–19 vehicles), which represent 94% of all interstate carriers, the impact would be even less because they submit an average of less than 1 property damage accident report every 10 years.

In addition, the FHWA believes there is a potential for long-term benefits to the industry from this change. When the FHWA accident reporting program,

Safetynet,[2] is operational in all States, the FHWA will reassess its program of requiring commercial motor carriers to report their accidents using the Form MCS 50–T or MCS 50–B.

In view of the foregoing, the FHWA is proposing to amend § 394.3 by revising paragraph (a)(3). This paragraph would replace the dollar value threshold criterion with a "towaway" criterion. Section 394.3(a)(3) will then read as follows: "One or more vehicles incurring disabling damage as a result of the accident and transported away from the scene by a two truck or another vehicle."

It is proposed to add § 394.5, Disabling damage, to make this definition identical to the definition found in section 2.3.10 of the ANSI D–16 "Manual On Classification of Motor Vehicle Traffic Accidents," 4th Edition, December 2, 1984. The FHWA believes this definition will be important to ensure that only serious motor carrier accidents are reported. The FHWA is seeking more information from interested parties on how adoption of the "towaway" definition would affect FHWA accident trends and whether it would be a significant additional burden on industry.

Other Issues Relating to Accident Reporting

The FHWA is also soliciting comments on two other issues; (1) Revising the Federal definition of an accident to be more consistent with the ANSI D–16 definition of a motor vehicle traffic accident and (2) removing the Forms MCS 50–T and 50–B preparation instructions from § 394.20 of the FMCSRs.

The FHWA is considering an amendment and requesting comments to that portion of the definition of "reportable accident" found at § 394.3(a) to be consistent with the ANSI D–16 definition of "traffic accident." The ANSI definition more precisely defines the circumstances under which an accident should or should not be reported. It includes the term "trafficway" to explain where the accident occurred as well as the type of accident to be reported. For the purposes of motor carriers, the term "trafficway" includes the roadway (travelled portion of the road), the shoulders of the road (if any) and the rest of the right-of-way between the shoulders and the boundaries of the adjacent property line. In a traffic accident, either the unstabilized situation must originate on a trafficway or a harmful event must occur on a trafficway. An "unstabilized situation" is a set of events not under human control. It originates when control is lost and terminates when control is regained or, in the absence of persons who are able to regain control, when all persons and property are at rest. A "harmful event" is the occurrence of an injury (bodily harm to a person) or damage (harm that causes reduction in monetary value of property).

A major effect of replacing the current FHWA definition with the ANSI D–16 [3] definition is that motor carriers will be required to submit only a Form MCS 50–T or 50–B accident report to the FHWA for accidents that originated or occurred on a trafficway and not at such places as terminal yards or construction sites. This should have the effect of reducing the number of accidents that must be reported.

Another major effect of replacing the current FHWA definition of "reportable accident" with the ANSI D–16 definition is that it will also make the definition used by the FHWA consistent with the one used by the NHTSA.

The FHWA specifically requests comments on the following issues:

1. How important is it for the FHWA to continue to receive accident reports for accidents that originate or occur in places other than a trafficway?

2. What effect, if any, would the adoption of the ANSI D–16 standard definition have on the motor carrier industry?

3. Who is using the ANSI D–16 accident definitions?

4. What is ANSI D–16 specifically being used for?

5. Will FHWA adoption of the ANSI D–16 standard conflict with other definitions used by the nation's law enforcement agencies?

The FHWA is also soliciting comments on a proposal to remove the instructions for the preparation of Forms MCS 50–T and 50–B from § 394.20 of the FMCSRs because any revision to the Forms MCS 50–T and 50–B requires rulemaking action. The FHWA believes this is burdensome and hampers efforts to keep the information collected from the MCS 50–T and 50–B forms current and relevant.

To ensure that carriers have ready access to the MCS 50–T and 50–B instructions, the instructions would be printed on the back of the approved form, available from commercial distributors or from any FHWA field Office. The address and telephone number of the regional offices are listed in § 390.27 of the FMCSRs. The FHWA specifically requests comments on the following issues:

1. What advantages are there, if any, in keeping the Forms MCS 50–T and 50–B preparation instructions in the FMCSRs?

2. Would any group(s) be adversely affected if the instructions were removed and republished elsewhere?

Regulatory Impact

The impact of this proposal will not result in an annual effect on the economy of $100 million, a major increase in costs or prices, or have a significant adverse effect on the nation's economy. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulations under the regulatory policies and procedures of the Department of Transportation. The proposed revisions contained in this document would simplify State and motor carrier industry accident reporting procedures by removing the uncertainty of estimating a dollar value amount. Although more accidents would have to be reported, the actual impact on the industry would be minor. It is estimated that this proposal would result in the preparation of only one additional accident report per medium and large motor carrier every three years. For smaller motor carriers, this number would be even less. Therefore, a full regulatory evaluation is not required. Commenters may submit any data they may have regarding benefits and/or costs of this proposal.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

[2] Safetynet is an automated information management system designed to support the Motor Carrier Safety Assistance Program by allowing the safety performance of commercial motor carriers to be monitored by participating State and Federal DOT Offices.

[3] The ANSI D–16 definition of traffic accident is found in the Manual on Classification of Motor Vehicle Accidents. Copies may be purchased from the National Safety Council, 444 North Michigan Avenue, Chicago, Illinois 60611.

Federalism Assessment

This proposed rule would change the reporting threshold for motor carrier accidents that result in damage to property only. Nothing in this document directly preempts any State law or regulation. The FMCSRs establish minimum safety requirements which, at the present time, may be supplemented by the States, except for the adoption of inconsistent regulations. The statutory basis for Federal regulation of interstate commerce has been outlined above. A single issue is addressed in this proposed rule and does not involve policies that have federalism implications. This proposed rule would not limit the policymaking discretion of the States. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order.

Environmental Impact Assessment

This regulation does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

List of Subjects in 49 CFR Part 394

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number, 20.217, Motor Carrier Safety)

Issued on: October 5, 1990.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is proposing to amend part 394 of title 49, Code of Federal Regulations, to read as set forth below:

PART 394—[AMENDED]

1. The authority citation for part 394 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

2. In § 394.3, paragraph (a)(3) is revised to read as follows:

§ 394.3 Definition of "reportable accident."

(a) * * *

(3) One or more vehicles incurring disabling damage as a result of the accident and transported away from the scene by a tow truck or another vehicle.

* * * * *

3. A new § 394.5 is added to read as follows:

§ 394.5 Disabling damage.

The term disabling damage means road vehicle damage which precludes departure of the vehicle from the scene of the accident in its usual operating manner in daylight after simple repairs.

(a) *Inclusions.* Vehicles which could be driven but would be further damaged if so driven.

(b) *Exclusions.* (1) Damage which can be remedied temporarily at the accident scene without special tools or parts other than tires.

(2) Tire disablement without other damage even if no spare tire is available.

(3) Headlamp or taillight damage, which would make nighttime driving hazardous but would not affect daytime driving.

(4) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

§ 394.20 [Removed and Reserved]

4. Section 394.20 is removed and reserved.

[FR Doc. 90-24239 Filed 10-12-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018-AB22

Humane and Healthful Transport of Wild Mammals and Birds to the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to amend a rule establishing standards for the humane and healthful transport of wild mammals and birds to the United States. The amendments are intended to alter provisions of the rule that rendered it difficult to enforce, that might have contributed to inhuman shipping conditions, or that would have been inappropriate or unrealistic for shippers, carriers, or importers.

DATES: The Service will consider comments received by December 14, 1990, in formulating a final rule.

ADDRESSES: Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358-2093.

SUPPLEMENTARY INFORMATION: The Lacey Act Amendments of 1981 (Publ L. 87-79, 95 Stat. 1073), enacted on November 16, 1981, required the Secretary of the Interior to prescribe requirements for the humane and healthful transport of wild animals and birds to the United States. This requirement was delegated to the Service, which held a public meeting on march 28, 1982, in Wahington, DC, to receive information and comments regarding the development of appropriate regulations. On June 30, 1982 (47 FR 28432), the Service published a notice of intent that summarized the issues raised and discussed at the March 28, 1982, public meeting and invited comments and recommendations from all interested persons. On December 4, 1985, the Service published a proposed rule (50 FR 49709-49736). Comments received in response to the notice of intent were summarized in that proposal. A final rule was published in the **Federal Register** on November 10, 1987 (52 FR 43274), and was to have taken effect on February 8, 1988. A notice correcting several typographical errors appeared in the **Federal Register** of December 3, 1987 (52 FR 46019).

Before the effective date of the final rule, the Service received a significant number of comments indicating the likelihood of impediments to its enforcement, the possibly inhumane treatment that could be brought about by compliance with some of its provisions, and the possibility that some of the rule's requirements could without good reason render the transport of some animals virtually impossible. In addition, the Service received indications that some air carriers were prepared to refuse all wildlife shipments bound for the United States because of a perceived inability to assure compliance with the new rule. Critics of the rule met with Service officials on January 22, 1988, to discuss their reservations over its implementation. Service officials also met during late January 1988 with representatives of groups supporting implementation of the rule. Subsequently, a decision was made to extend the effective date until August 1, 1988, so that a thorough evaluation could be conducted. Notice of the extension and of the opening of a 30-day comment period was published in the **Federal Register** of February 10, 1988 (53 FR 3894). A further notice of explanation appeared on March 17, 1988 (53 FR 8765).

On April 18, 1988, however, responding to a lawsuit seeking implementation of the November rule, the United States District Court for the District of Columbia issued a preliminary injunction ruling that delay of the effective date was without good cause. Consequently, the Service issued a notice of effective date and enforcement policy on April 27, 1988 (53 FR 15041) and a further notice of enforcement policy on May 23, 1988 (53 FR 18287).

On August 10, 1988, the Service published a notice of intent (53 FR 30077) indicating those provisions of the November 1987 rule that appeared to warrant amendment or clarification and inviting public comment to assist in developing a proposed rule. The comment period for that notice closed on September 9, 1988. The proposed rule presented below is based on analysis of the existing rule in the light of comments received since its adoption and is intended to embody a reasonable, enforceable, and effective means of promoting the humane and healthful transport of wild mammals and birds to the U.S.

A comparison of the newly proposed rule with the present version is presented below in section-by-section order. Where section numbers have been changed, existing sections are cited in square brackets. Minor changes intended to minimize redundancy, improve clarity of expression, or correct grammatical errors are not explained in detail.

Section-by-Section Analysis

Section 14.101 Purposes.

The purposes of the rule would remain unaltered.

Section 14.102 Definitions.

Several definitions would be added, deleted, or altered, as noted below.

Ambient air temperature. This definition would be reworded to clarify the intention that temperatures are to be measured outside, rather than within, primary enclosures.

Auxiliary ventilation. This definition would be added in order to avoid repetitive descriptions of the term in the text of the rule.

Carrier. This definition would remain unchanged, as recommended by several commenters.

Domesticated. This term would be newly defined in order to better indicate what animals are considered "wild," and therefore covered by the rule.

In advanced stages of pregnancy. This definition would be eliminated because the term is not used in either the current rule or the proposed revision.

Injured. Although it has been suggested that this term be defined in order to clarify its meaning in § 14.105(c), the Service believes that the meaning is clear without provision of a further regulatory definition. The term is intended to apply to animals suffering from unhealed injuries that are life-threatening or disabling.

Marine mammal. This term would be defined in the sense of its application for this rule.

Normal rigors of transportation. A new definition would be provided for this expression because the current definition is difficult to understand. The proposed version would refer to the unavoidable stress to an animal caused by transport. Several commenters recommended changes in the existing definition, and the Service has referred to these in formulating its proposal. The definition should be understood in relation to its use in § 14.105(b). The intention is that, before being accepted by a carrier, animals be certified by a qualified veterinarian as able to withstand the stresses that are unavoidably associated with transport.

Noxious machinery. This term is undefined in the current regulations and would not be defined in this proposal. In addition, the word "noxious" would be deleted from § 14.111. The current regulation requires that animals be protected from harassment by noxious machinery. The Service intends the proposed rule to require that animals not be exposed unnecessarily to machinery that makes noise; emits fumes, heat, or light; or causes vibrations, and consequently would add these descriptive terms to the proposed regulation.

Obvious distress. This term would remain undefined because it has no specialized meaning within the regulation.

Old-world primate. This definition would be deleted, along with the requirement in § 14.121 of the existing rule that animals so defined test negative for tuberculosis before being accepted by a carrier. The rationale for removing this requirement is explained below in the discussion of § 14.121.

Physical trauma. The Service finds no compelling reason to define this term in a way to alter its ordinary meaning.

Primary conveyance. Because of confusion regarding the intent of the existing definition, a new definition is proposed that would make it clear that any conveyance playing a significant role in transporting an animal to the United States is considered "primary", and that more than one "primary conveyance" may be employed during a given shipment.

Professionally-accepted standards. A minor alteration is proposed for this definition so that the noun "standards" would not be defined by an adjectival phrase.

Psychological trauma. A new definition would be provided in response to comments indicating that the existing definition is vague. The intent is to give a more objective and verifiable description of what is meant by this expression.

Recently given birth. This definition would be deleted because the term is not used in either the present rule or the proposed revision.

Unhealthy conditions. This definition would be deleted because the term is not used in either the current rule or this proposed revision.

Wild. This term would be newly defined in order to indicate the intended scope of the rule. The Service believes that the use of this term is sufficiently distinct in this regulation to warrant a definition separate from that of "wildlife" in 50 CFR 10.12.

Section 14.103 Prohibitions.

This section would not change.

Section 14.104 Translations.

The title of this section would be changed to better reflect its content. English translations of certificates would continue to be required. A clarifying change would indicate that this provision applies to health certificates only, since these are the only certificates required by the subpart.

Section 14.103 Consignment to carrier.

A veterinary examination would be required to be performed by a veterinarian whose qualifications are certified by the country in which transport begins. It is not intended that a carrier verify the qualifications of the examining veterinarian beyond ascertaining that he or she has been issued a license, certificate, or other documentation customarily used by the country to establish professional veterinary qualifications. The Service considers a requirement that the examining veterinarian be a salaried employee of the country in which the certificate is issued to be beyond its ability to enforce. Evidence of inadequate national certification procedures in a country of origin, however, may lead the Service not to accept certificates issued in that country. Any such intention not to accept certificates would be announced

beforehand with an explanation for its basis.

The proposal would revise the upper and lower limits for the length of time before scheduled departure during which a shipment could be consigned to a carrier. The existing rule requires that consignment be between 6 and 10 hours before scheduled departure. The Service now believes that a lower limit of 2 hours is reasonable and consistent with normal consignment practices, and more particularly, considers the 6-hour lower limit to be potentially excessive. An upper limit of 8 hours appears to be sufficient to ensure that animals are transported expeditiously and are not kept in holding areas for excessive lengths of time. In addition, the upper limit is believed to be long enough to avoid the difficulty of having animals held for unreasonable periods on the ground because they could not be consigned to an airline, as feared by some respondents.

The requirement that transport be accomplished expeditiously and stopovers be minimized would be removed from this section because it is identical to a requirement in § 14.109, where it is more appropriately placed.

The proposal would not allow the transport of un-fledged chicks for purposes other than medical treatment, in addition to the existing restriction on transport of un-weaned mammals. Chicks that have not yet developed their adult plumage are difficult to identify correctly, more prone to disease, and more susceptible to the stresses and rigors of transportation.

Section 14.106 Primary enclosures.

This section would be reorganized for greater clarity, and several substantive changes would be introduced as well:

Compliance with the Live Animals Regulations (LAR) adopted by the International Air Transport Association (IATA) would still be required, but the statement that such compliance would meet minimum requirements for this subpart would be deleted as having no real significance and being possibly misleading. Similarly, the statement that enclosures are to comply with other requirements of this subpart would be deleted as redundant.

The size requirements for spacer bars (bars attached to enclosures to ensure adequate space for ventilation between enclosures) would be altered so that a bar would never be required to exceed 6 inches (15 centimeters) in width, although the existing requirement that its width equal at least 10% of the longer dimension of the side to which it is attached would be retained below that limit. Rather than requiring a proportionality relationship between the width of spacers and the number of animals contained within an enclosure, the required width would be doubled, up to the same limit of 6 inches (15 centimeters), for enclosures containing more than one animal. The Service believes that these changes will ensure that enclosures have adequate spacers, but not bars so large as to be potentially destabilizing. Despite objections from some commenters, the Service does not believe the 10% formula to be confusing.

The requirement for a paper lining in the bottom of an enclosure containing birds would be deleted, as recommended by most respondents. The Service recognizes that a paper liner or loose litter could become hazardous to birds during transport.

The requirement that an enclosure be marked "THIS SIDE UP" on one of its sides has been deleted because of the potential for confusion. The requirement for markings with arrows indicating upright position is believed to more appropriately ensure that the enclosure will be stowed in the proper position.

The requirement that instructions for care and copies of shipping documents be attached to enclosures is retained because of the necessity of such documents to insure humane conditions and allow adequate inspections. The Service does not consider it unreasonable to require that such documents be readily available.

Rather than specifying that a wooden float be placed in a water trough intended for birds, the proposal would allow a foam or sponge insert or other device to prevent spillage or drowning. The Service recognizes the potential danger that a wooden float could pose for some kinds of birds.

Section 14.107 Primary conveyance.

The requirement that an enclosure be positioned in the conveyance in such a way as to be easily removed in an emergency would be deleted as difficult to comply with in many circumstances and of little practical value in most emergencies that are likely during transport. In addition, placement for easy removal (e.g. near a doorway) could in some instances require the enclosure to be moved or off-loaded more frequently than would be consistent with humane treatment. The Service recognizes the concerns expressed by some commenters as to the necessity of this or a similar requirement, but declines to prescribe the positioning of enclosures within a conveyance in the absence of evidence that inconvenience of removal has contributed to inhumane conditions.

The provision requiring sufficient air for normal breathing, which has been challenged as unenforceable, would be deleted. Although there is evidence that lack of proper ventilation has contributed to inhumane transport conditions, the Service knows of no way to establish that particular instances of morbidity or mortality can be ascribed to insufficient air. It is hoped that the provisions requiring that enclosures be adequately vented and fitted with spacer bars, that cargo holds be pressurized, and that shipments be periodically observed will ensure that animals are able to breathe normally during transport.

Other requirements of this section would be retained substantially in their current form.

Section 14.108 Food and water.

The requirement that animals be provided "potable" water would be replaced by one that requires "water suitable for drinking" to avoid possible confusion with potability standards for drinking water intended for human consumption, which may not be suitable for some animals. It is understood that water provided for animals is to be clean and not a source of contagion. The Service considers "potable" and the term proposed to replace it to be functionally equivalent and this wording change to be without substantive effect on the regulation.

Because of the possibility that an animal arriving in the United States may have exhausted its supply of water or other source of moisture and that it may remain for some time before being claimed by a consignee, requirements have been added that it be observed periodically, fed according to the shipper's instructions and that water or another suitable source of moisture be made available as necessary upon arrival.

The requirement that veterinary care be provided if an animal is observed to be in distress during a stopover would be deleted from this section because it is understood to duplicate the similar requirement that is more properly located in § 14.109(a).

Section 14.109 Care in transit.

This section would be reorganized to improve clarity and reduce duplication. Paragraphs (e)–(g) of this section would be relocated to § 14.111, where they are more appropriately placed.

In addition, several substantive changes would be made. The requirement that an enclosure be inspected "as frequently as circumstances allow" would be deleted

because it is vague and could lead to disturbance of animals by too-frequent inspection. Inspection would continue to be required at least every 4 hours when an enclosure is accessible.

Provision would be made for an examining veterinarian to authorize a variation from the existing pressurization requirement when this would be advantageous to the animal being transported.

The text would be altered to indicate that a carrier is responsible to inspect for signs of distress, including those described in a document attached to an enclosure. The Service recognizes that normal behavior in some animals might be mistaken for distress by persons unfamiliar with them, and wishes to avoid the possibility of encouraging inappropriate attempts to alleviate non-existent "stress." The proposal requires shippers to affix a document with food, water, and care instructions, and signs of stress, to each enclosure; in the absence of such a document, the carrier remains responsible to inspect for signs of distress. The Service recognizes that some shippers may not know all of the signs of distress in the species being shipped, but urges shippers to indicate all available information on the aforementioned document.

At the suggestion of shippers, a carrier would be required to consult with the shipper before providing veterinary care to an animal in distress.

An allowance would be made for an examining veterinarian to specify temperatures outside the ranges generally required for mammals in transport when such temperatures would be more appropriate for a given kind of mammal. The Service recognizes that some mammals may require higher or lower temperatures than those specified in order to be shipped healthfully and humanely.

Section 14.110 Terminal facilities.

The requirement to separate species of primates in a holding area has been deleted and incorporated in § 14.123, in the specifications for primates.

Section 14.111 Handling.

Generally, provisions that duplicate requirements found elsewhere in the subpart would be eliminated from this section and editorial changes would be made to improve clarity. In lieu of defining the term "noxious," which is used in paragraph (e) of the current regulation, the primary disturbing effect that might be caused by machinery would be enumerated.

The requirement that animals be first loaded and last unloaded would be replaced by one that specifies loading as late as possible and unloading as early as possible. The Service has been persuaded by the comments of shippers that animals could be held within conveyances for excessive lengths of time or stowed in inaccessible areas of cargo holds if the provisions of the existing regulation are complied with.

The express requirement that incompatible animals not be held within visual or olfactory contact would be deleted as unnecessarily specific. The Service considers that the proposed provisions of § 14.111(c), requiring that incompatible animals not be held in proximity, provides an adequate mechanism to enforce reasonable separation of such animals.

Section 14.112 Other applicable provisions.

The existing section of this number, titled "Harm during shipment," has been deleted as essentially redundant. The Service will continue to consider evidence establishing compliance with temperature, pressure, and ventilation standards, including evidence provided through automatic instrumentation or personal observation, in evaluating possible violations of this subpart. The Service no longer considers it necessary, however, to include a section that essentially does no more than reinforce requirements contained in other sections.

Proposed § 14.112 would coordinate the general and specific provisions of part 14, so that both the requirements of §§ 14.101–14.111 and the specifications for particular groups would have to be complied with for a given shipment. This coordination is currently contained in a paragraph under "Consignment to carrier" within each set of specifications.

Specifications for Non-Human Primates

Section 14.121 Primary enclosures. [present § 14.122]

In the existing regulations, the section with this number is titled "Consignment to carrier for transport." As noted above, the portion of the section functioning to coordinate the general and specific provisions of the part would be deleted from each set of specifications, and the coordination would be accomplished by a new § 14.112.

The second paragraph of the existing section, which requires a negative tuberculosis test for old-world primates, would also be eliminated. The Service no longer believes that this one communicable disease should be singled out for screening while all others are subject only to the health certification requirements of § 14.105(b).

No substantive changes would be made to the provisions dealing with enclosures.

Section 14.111 Food and water. [present § 14.123]

No substantive changes would be made to this section.

Section 14.123 Care in transit. [present § 14.124]

This section would remain essentially unchanged except that the provisions now located in § 14.110(a), requiring separation of primate species in terminal facilities, would be incorporated. The Service believes that this provision is reasonable in light of the behavioral characteristics of primates, which make disease transmission a particular problem with members of this group. They may, for instance, throw food or feces between enclosures.

[present § 14.125]

This section would be deleted because it largely duplicates the general provisions of § 14.111. Requiring compliance with two sets of slightly different standards covering the same subject matter is likely to engender confusion and reduce enforceability.

Specifications for Marine Mammals

Section 14.131 Primary enclosures. [present § 14.132]

As explained above under § 14.121, the contents of the section now bearing this number would be deleted.

Only minor editorial changes and deletions of redundant provisions would be made to the provisions dealing with enclosures.

Section 14.132 Food and water. [present § 14.132

This section would be consolidated somewhat and shortened by removal of unnecessary explanatory language.

Section 14.133 Care in transit. [present § 14.134]

Only minor editorial changes to promote understanding would be made to this section.

[present § 14.135]

This entire section would be deleted for the reasons explained above under § 14.125.

Specifications for Elephants and Ungulates

Section 14.141 Consignment to carrier.

As noted above, the coordinating function now served by this section would be placed in new § 14.112. The remainder of existing § 14.141 would remain in this section.

Section 14.142 Primary enclosures.

The requirement to provide a water trough would be altered in order to make it more easily understandable and to avoid possible injuries to animals. Otherwise only clarifying changes would be made.

Specifications for Sloths, Bats, and Flying Lemurs (Cynocephalidae)

Section 14.151 Primary enclosures. [present § 14.172]

Starting with this section, all the remaining sections would be renumbered to eliminate a gap in the numerical series that is present in the existing regulations. In addition, the order of this set of specifications and those covering other terrestrial mammals would be reversed.

No substantive changes would be made in this section.

[present § 14.173]

This section would be deleted entirely for the reasons given above for previous similar sections.

Specifications for Other Terrestrial Mammals

Section 14.161 Primary enclosures. [present § 14.152]

Only minor clarifying changes would be made in this section.

[present § 14.153]

This section would be deleted entirely for the reasons explained above under § 14.125.

Specifications for Birds

All the sections dealing with birds would be consolidated under this set of specifications in order to reduce duplication.

Section 14.171 Consignment to carrier. [present §§ 14.181, 14.191, 14.201]

Other than the consolidation of these provisions in a single section, no substantive changes would be made.

Section 14.172 Primary enclosures. [present §§ 14.182, 14.192, 14.202]

This section would be reorganized, and the following substantive changes are proposed.

The confusing requirement that perching birds be afforded sufficient room to "stretch each wing" while perched would be replaced by one that there be sufficient space for all birds to perch simultaneously. This is believed to provide sufficient space for humane conditions when combined with a newly proposed limit of 50 birds in any one enclosure. In order to conform with the IATA Live Animals Regulations, large psittacine birds (longer than 23 cm, or 9 inches) are proposed to be limited to 25 birds in any one enclosure.

The requirement that the enclosure be large enough to permit perching without the tail feathers being damaged would be deleted because it is nearly impossible to enforce and is easily circumvented by plucking or clipping the feathers.

Section 14.173 Temperature standards. [present § 14.183, 14.193, 14.203]

This section would be renamed, and minor clarifying changes would be made to it.

[present §§ 14.184, 14.194, 14.204]

As with several similar sections above, these would be entirely deleted.

Public Comments Solicited

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

Executive Order 12291 and the Regulatory Flexibility Act

It has been determined that the proposed revisions to 50 CFR part 14 do not constitute a "major" rule under the criteria established by Executive Order 12291. The revisions principally represent clarifications of existing provisions that are expected to make compliance more practical and enforcement more efficient. It has also been certified that these revisions will not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Small entities are already required to comply with the current regulations. It is expected that the proposed revisions would reduce the burden on small entities by making requirements clearer, but not more stringent.

Author

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List of Subjects in 50 CFR Part 14

Exports, Imports, Labeling, Reporting requirements, Transportation and Wildlife.

Proposed Regulation Promulgation

PART 14—[AMENDED]

Accordingly, it is hereby proposed to amend part 14 of chapter 1 of title 50 of the Code of Federal Regulations to read as follows:

1. The authority citation for part 14 reads as follows:

Authority: 18 U.S.C. 42; 16 U.S.C. 3371–3378; 16 U.S.C. 1538(d)–(f), 1540(f); 16 U.S.C. 1382; 16 U.S.C. 704, 712; 31 U.S.C. 483(a); 16 U.S.C. 852(c).

2. Subpart J is revised to read as follows:

Subpart J—Standards for the Humane and Healthful Transport of Wild Mammals and Birds to the United States

Sec.

Subpart J—Standards for the Humane and Healthful Transport of Wild Mammals and Birds to the United States

§ 14.101 Purposes.

The purpose of this subpart is to prescribe importation requirements necessary to ensure that live mammals and birds shipped to the United States arrive alive, healthy, and uninjured and that transportation of such animals occurs under humane and healthful conditions. These regulations implement section 9(d) of the Lacey Act Amendments of 1981.

§ 14.102 Definitions.

In addition to the definitions contained in part 10 of this subchapter B, in this subpart—

Ambient air temperature means the temperature of the air surrounding a primary enclosure containing a wild mammal or bird.

Auxiliary ventilation means cooling provided by such means as vents, fans, blowers, or air conditioning.

Carrier means any person operating an airline, railroad, motor carrier, shipping line or other enterprise engaged in the business of transporting any wild mammal or bird for hire, for commercial purposes, or for exhibition.

Communicable disease means any contagious, infectious, or transmissible disease of wild mammals or birds.

Domesticated means belonging to a species that has been habituated through human genetic selection for many generations to living in close proximity to humans and that has been bred to fulfill human requirements for food, fiber, aesthetic enjoyment, or companionship, or as a subject of scientific research.

Do not tip means do not excessively rock or otherwise move from a vertical to a slanting position, knock over, or upset.

Handle means feed, manipulate, crate, shift, transfer, immobilize, restrain, treat or otherwise control the movement or activities of any wild mammal or bird.

Holding area means a designated area at or within a terminal facility that has been specially prepared to provide shelter and other requirements of wild mammals or birds being transported to the United States, and in which such mammals or birds are maintained prior to, during, or following such shipment.

Kept clean means maintained free from dirt, trash, refuse, excreta, remains from other cargo, and impurities of any type.

Marine mammal means an individual of a species of the orders Cetacea, Pinnipedia, or Sirenia, or a polar bear (*Ursus maritimus*) or sea otter (*Enhydra lutris*).

Non-compatible means not capable of existing together in harmony.

Non-human primate means any non-human member of the order Primates.

Normal rigors of transportation means the stress that wild animal can be expected to experience as a result of exposure to unaccustomed surroundings, unfamiliar confinement, caging, unfamiliar sounds, motions, and other conditions commonly encountered during transport.

Primary conveyance means any vehicle, vessel, or aircraft employed to transport an animal for a significant distance between its origin and destination.

Primary enclosure means any structure used to restrict a mammal or bird to a limited amount of space, such as a cage, room, pen, run, compartment, pool, hutch, or compartment thereof.

Professionally accepted standards means a level of practice established as acceptable by a body of qualified persons of the veterinary medical profession.

Psychological trauma means an episode of exposure to abnormally stressful conditions resulting in significant behavioral abnormality including, but not limited to, manifestations of unaccustomed aggressiveness, self-mutilation, or refusal of food or water.

Sanitize means to make physically clean and, as far as possible, free of toxic or infectious agents injurious to the health of wild mammals or birds.

Scheduled departure time means the time listed on a time-table of departures and arrivals or, in the absence of a time-table, means the time of departure agreed to by a carrier and shipper.

Shipper means any person, other than a carrier, involved in the transport of wild animals to the United States regardless of the purpose of such transport, e.g., exporter, importer, or agent.

Terrestrial mammals means mammals other than marine mammals.

Transport means to move, convey, carry, or ship by any means, or to deliver or receive for the purpose of movement, carriage, or shipment, by air, land, or sea.

Transporting device means any vehicle or device used to transport an animal between a primary conveyance and terminal facility, or in and around a terminal facility of a carrier, or within a primary conveyance.

Wild means belonging to a species that has not been domesticated, or belonging to a population of an otherwise domesticated species that has not been genetically altered for many generations by human intervention to render it compatible with close human contact.

§ 14.103 Prohibitions.

Unless the requirements of this subpart are fully satisfied, and all other legal requirements are met, it is unlawful for any person to transport to the United States, cause to be transported to the United States, or allow to be transported to the United States any live wild mammal or bird. It shall be unlawful for any person to import, to transport, or to cause or permit to be transported to the United States any wild mammal or bird under inhumane or unhealthful conditions or in violation of this subpart J.

§ 14.104 Translations.

Any health certificate required by this subpart to accompany a mammal or bird transported to the United States and written in a foreign language must be accompanied by an accurate English translation.

§ 14.105 Consignment to carrier.

(a) No carrier shall accept any live wild mammal or bird for transport to the United States that has not been examined within 10 days prior to commencement of transport to the United States by a veterinarian certified as qualified by the national government of the initial country from which the mammal or bird is being exported.

(b) A health certificate, signed by the examining veterinarian, stating that the animal has been examined, is healthy, appears to be free of any communicable disease, and is able to withstand the normal rigors of transport must accompany the mammal or bird. A mammal in the last trimester of pregnancy, if this is detectable using professionally accepted standards, shall not be accepted for transport to the United States except for medical treatment and unless the examining veterinarian certifies in writing that the animal has been examined, the state of pregnancy has been evaluated, and that despite the medical condition requiring treatment, the animal is physically able to withstand the normal rigors of transportation to the United States.

A nursing mother with young, an un-weaned mammal unaccompanied by its mother, or an un-fledged bird, shall be transported only if necessary for medical treatment. An un-weaned animal shall not be transported to the United States without its mother unless it is accompanied by an attendant.

(c) A sick or injured wild mammal or bird shall be permitted transport to the United States only if the primary purpose of such transport is for needed medical treatment and upon certification in writing by the examining veterinarian that the animal is able to withstand the normal rigors of travel in its present condition. A sick or injured animal shall be accompanied throughout the transport process by an individual qualified to care for and treat it. This individual shall be in possession of or have ready access to all medications to be administered during the transport.

(d) No carrier shall accept any wild mammal or bird for transport to the United States presented by the shipper less than 2 hours or more than 8 hours prior to the scheduled departure of the primary conveyance on which it is to be transported.

§ 14.106 Primary enclosures.

No carrier shall accept for transport to the United States any live wild mammal or bird in a primary enclosure that does not conform to the following requirements:

(a) The current container requirements of the Live Animal Regulations (LAR) adopted by the International Air Transport Association (IATA) shall be complied with by all parties transporting wild mammals or birds to the United States.

(b) A primary enclosure shall be constructed so that—

(1) The strength of the enclosure is sufficient to contain the mammal or bird and to withstand the normal effects of transport;

(2) The interior of the enclosure is free from any protrusion that could be injurious to the mammal or bird within;

(3) No part of the animal can extend or protrude outside of the primary enclosure in such a way as to cause injury to the contained animal, to nearby persons or animals, or to handlers of the primary enclosure;

(4) Access to the primary enclosure is closed and secured with an animal-proof device designed to prevent accidental opening and release of the mammal or bird;

(5) The opening of the enclosure is easily accessible for emergency removal of the mammal or bird by authorized personnel;

(6) The enclosure has sufficient opening to ensure adequate circulation of air at all times.

(7) The material of which the primary enclosure is constructed is not treated with any paint, preservative, or other chemical that is injurious or otherwise harmful to the health or well-being of mammals and birds.

(c) Unless the enclosure is permanently affixed in the primary conveyance or has an open top, as specified by LAR or below for certain large mammals, spacer bars allowing circulation of air around the enclosure shall be fitted to the exterior of its top, sides, and base. Spacer bars on an enclosure need extend no more than 6 inches (15 centimeters) from the surface of the enclosure. Within this 6-inch limit, the spacers on an enclosure containing one animal shall extend from the surface to which they are attached a distance equal to at least 10% of the longer dimension of the surface and the spacers on an enclosure containing more than one animal shall extend a distance equal to at least 20% of the longer dimension of the surface to which they are attached.

Hand-holds required by § 14.106(c) may serve as spacer bars for the sides of the enclosure to which they are attached. A primary enclosure constructed with one or more slanted or curved walls containing ventilation openings need not be fitted with spacer bars on such walls.

(d) An enclosure that is not permanently affixed within the primary conveyance shall have adequate hand-holds or other devices for lifting by hand or to facilitate lifting and carrying by machine. Such hand-holds or other devices shall be made an integral part of the enclosure, shall enable it to be lifted without excessive tipping, and shall be designed so that the person handling the enclosure will not come into contact with its contents.

(e) An enclosure shall have a solid, leak-proof bottom or removable, leak-proof collection tray under a slatted or wire mesh floor. The slatted or wire mesh floor shall be designed and constructed so that the spaces between the slats or the holes in the mesh cannot trap the limbs of animals contained within the enclosure. An enclosure for mammals shall contain unused absorbent litter on the solid bottom or in the leak-proof tray in sufficient quantity to absorb and cover excreta. This litter shall be safe and non-toxic and shall not resemble food normally consumed by the mammals. An enclosure used to transport marine mammals in water, in a water-proof enclosure, a sling, or on foam is exempt from the requirement to contain litter. An enclosure used to transport birds shall not contain litter.

(f) If an enclosure has been previously used to transport or store wild mammals or birds, it shall have been cleaned and sanitized in a manner that will destroy pathogenic agents and pests injurious to the health of mammals and birds before the enclosure can be re-used.

(g) An enclosure that is not permanently affixed in the primary conveyance shall be clearly marked in English on the outside of the top and one or more sides of the enclosure, in letters not less than 2.5 centimeters (1 inch) in height, "LIVE ANIMALS," "DO NOT TIP," "ONLY AUTHORIZED PERSONNEL MAY OPEN CONTAINER," and other appropriate or required instructions. All enclosure sides shall also be conspicuously marked on the outside with arrows to indicate the correct upright position of the enclosure. These arrows should extend up the sides of the enclosure so that the point of the arrow is visible and clearly indicates the top of the enclosure.

(h) Food and water instructions as specified in § 14.108, information regarding what constitutes obvious signs of stress (when known to the shipper) in the species being transported, and information about any drugs or medication to be administered by a qualified attendant or animal care expert shall be securely attached to each enclosure. Copies of shipping documents accompanying the shipment shall also be securely attached to the primary enclosure. Original documents shall be carried in the carrier's pouch or manifest container, or by the shipper's attendant travelling with the cargo.

(i) Any food and water troughs shall be securely attached to the interior of the enclosure in such a manner that the troughs can be filled from outside the enclosure. Any opening providing access to a trough shall be capable of being securely closed with an animal-proof device. A water trough in an enclosure containing birds shall contain a foam or sponge insert, a perforated wooden block, or other suitable device to prevent spillage or drowning.

(j) When an enclosure is permanently affixed within a primary conveyance so that its front opening is the only source of ventilation, the opening shall face the outside of the conveyance or an unobstructed aisle or passageway within the conveyance. The opening shall occupy at least 90 percent of the total surface area of the front wall of the enclosure and be covered with bars, wire mesh or smooth expanded metal mesh.

§ 14.107 Primary conveyance.

(a) The animal cargo space of a primary conveyance used to transport wild mammals or birds to the United States shall be designed, constructed, and maintained so as to ensure the humane and healthful transport of the animals.

(b) The cargo space shall be constructed and maintained so as to prevent the harmful ingress of engine exhaust fumes and gases produced by the conveyance.

(c) No wild mammal or bird shall be placed in a cargo space of a primary conveyance that does not provide sufficient air for it to breathe normally. Primary enclosures shall be positioned in a cargo space in such a manner that each animal has access to sufficient air for normal breathing.

(d) The interior of an animal cargo space shall be kept clean of disease-causing agents.

(e) A wild mammal or bird shall not be transported in a cargo space that contains any material, substance or device that may reasonably be expected to result in inhumane conditions or be injurious to its health unless all reasonable precautions are taken to prevent such conditions or injury.

§ 14.108 Food and water.

(a) No carrier shall accept any wild mammal or bird for transport to the United States unless written instructions from the shipper concerning the animal's food and water requirements are securely affixed to the outside of its primary enclosure. Such instructions shall be consistent with professionally accepted standards of care and include specifically the quantity of water required, the amount and type of food required, and the frequency of feeding and watering necessary to ensure that it is transported humanely and healthfully.

(b) A mammal or bird requiring drinking water shall have water suitable for drinking made available to it at all times prior to commencement of transport to the United States, during intermediate stop-overs, and upon arrival in the United States, or as directed by the shipper's written instructions.

(c) A mammal or bird that obtains moisture from fruits or other food shall be provided such food prior to commencement of transport to the United States, during stop-overs, and upon arrival in the United States, or as directed by the shipper's written instructions.

(d) During a stop-over or while still in the custody of the carrier after arrival in the United States, a mammal or bird in transit shall be observed no less frequently than once every four hours and given food and water according to the instructions required by § 14.108(a).

(e) The shipper shall be responsible for providing food to be made available during transport unless other arrangements are contracted for between shipper and carrier.

(f) Additional requirements for feeding and watering particular kinds of animals are found below in the specifications for the various groups.

§ 14.109 Care in transit.

(a) During transportation to the United States, including any stopovers during transport, the carrier shall visually inspect each primary enclosure not less than once every 4 hours, or in the case of air transport, every 4 hours whenever the cargo hold is accessible. During such inspections, the carrier shall verify that the ambient air temperature is within allowable limits, that enclosures have not been damaged, that adequate ventilation is being provided, and when transport is by air, that air pressure suitable to support live animals is maintained within the cargo area (pressure equivalent to a maximum altitude of 8000 feet or as otherwise specified in writing as not harmful by the examining veterinarian). During these observations the carrier shall also determine whether any animals are in obvious distress as described in documents attached to the enclosure. The absence of such a document or the absence of information as to signs of distress shall not remove responsibility from the carrier. The carrier shall attempt to correct any condition causing distress and shall consult the shipper concerning any possible need for veterinary care if no veterinarian or qualified attendant is traveling with the shipment.

(b) Unless otherwise allowed by the specifications below for particular groups of species or specified in writing by the examining veterinarian, the ambient air temperature in a holding area, transporting device, or primary conveyance containing mammals shall not be allowed to fall below 7.2 degrees C (45 degrees F), to exceed 23.9 degrees C (75 degrees F), nor to exceed 21.1 degrees C (70 degrees F) for more than 4 hours at a time. Auxiliary ventilation shall be provided when the ambient air temperature is 21.1 degrees C (70 degrees F) or higher. Temperature standards for birds are set out below in § 14.174.

§ 14.110 Terminal facilities.

(a) Any terminal facility used for wild mammal or bird transport in the country of export, stopover countries, or the United States shall contain an animal holding area or areas. No carrier or shipper shall co-mingle live animal shipments with inanimate cargo in an animal holding area.

(b) A carrier or shipper holding any wild mammal or bird in a terminal facility shall provide the following:

(1) A holding area cleaned and sanitized so as to destroy pathogenic agents, maintained so that there is no accumulation of debris or excreta, and in which vermin infestation is minimized;

(2) An effective program for the control of insects, ectoparasites, and pests of mammals or birds;

(3) Sufficient fresh air to allow the animals to breathe normally, with ventilation maintained so as to minimize drafts, odors, and moisture condensation;

(4) Ambient air temperatures maintained within prescribed limits as specified in § 14.109(b) or more specific temperature limits found below for particular species of animals.

§ 14.111 Handling.

(a) Care shall be exercised to avoid handling the primary enclosure in a manner likely to cause physical or psychological trauma to the mammal or bird.

(b) A primary enclosure used to move any mammal or bird shall not be dropped, tipped excessively, or otherwise mishandled and shall not be stacked or placed in a manner that may reasonably be expected to result in its falling or being tipped.

(c) Animals incompatible with one another shall not be crated together or held in close proximity.

(d) Transport of mammals or birds to the United States shall be accomplished by the carrier in the most expeditious manner, with the fewest stop-overs possible, and without unnecessary delays.

(e) Consistent with other procedures and requirements of the carrier, live wild mammals or birds shall be last loaded and first unloaded from an aircraft.

(f) A carrier shall not allow mammals or birds to remain for extended periods of time outside a holding area, and shall move them between a holding area and a primary conveyance as expeditiously as possible. A carrier or shipper maintaining mammals or birds in a holding area or transporting them to or from a holding area or between a holding area and a primary conveyance, shall provide the following:

(1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect animals from the direct rays of the sun.

(2) *Shelter from precipitation.* Animals shall be provided protection so that they remain dry during rain, snow or other forms of precipitation.

(3) *Shelter from cold.* Animals shall be provided protection from cold when ambient air temperatures fall below 10 degrees C (50 degrees F). Protection shall include, but not be limited to, that provided by covering and heating of transporting devices.

(4) *Protection from harassment.* Animals shall be protected from disturbances, including, but not limited to, harassment by humans, other animals, or machinery that makes noise, emits fumes, heat, or light, or causes vibration.

§ 14.112 Other applicable provisions.

In addition to the provisions of §§ 14.101–14.111 above, the requirements of §§ 14.121–14.172 applicable for particular groups of animals shall be met for all shipments of wild mammals and birds covered by this part.

Specifications for Non-Human Primates

§ 14.121 Primary enclosures.

(a) No more than one primate shall be transported in a primary enclosure. However, a mother and her nursing young being transported to the United States for medical treatment, an established male-female pair, a family group, a pair of juvenile animals that have not reached puberty, or other pairs of animals that have been habitually housed together may be shipped in the same primary enclosure. Individually housed non-human primates of different species shall not be shipped together in an enclosure having more than one compartment.

(b) A primary enclosure used to transport a primate shall be large enough to ensure that the animal has sufficient space to turn around freely in a normal manner, lie down, stand up (as appropriate for the species), and sit in a normal upright position without its head touching the top of the enclosure. However, a primate may be restricted in its movements according to professionally accepted standards of care when greater freedom of movement would constitute a danger to the primate or to its handler or other persons.

(c) Except as provided in § 14.106(i), when ventilation openings are located on two opposite walls of a primary enclosure, the ventilation opening on each wall shall comprise at least 30 percent of the total surface area of the wall and be situated above the midline of the enclosure. If ventilation openings are located on all four walls of the enclosure, the openings on each wall shall comprise at least 20 percent of the total surface area of the wall and be situated above the midline of the primary enclosure.

§ 14.122 Food and water.

(a) A non-human primate shall be provided water suitable for drinking within 4 hours prior to commencement to transport to the United States unless the shipper's written instructions direct otherwise. A carrier shall provide suitable drinking water to any primate at least every 12 hours after acceptance for transport to the United States or as instructed by the shipper.

(b) After acceptance for transport, and unless otherwise instructed by the shipper, a carrier shall provide suitable food to any non-human primate at least once in each 24 hour period if it is an adult 1 year of age or over, and at least once every 12 hours if it is less than 1 year of age.

§ 14.123 Care in transit.

(a) A primate shall be observed for condition and given food and water according to the shipper's instructions during any intermediate stop that lasts more than 4 hours.

(b) Care shall be taken to keep enclosures containing primates sufficiently separated in the primary conveyance or holding area to minimize the risk of spread of disease from one species to another.

Specifications for Marine Mammals (Cetaceans, Sirenians, Sea Otters, Pinnipeds, and Polar Bears)

§ 14.131 Primary enclosures.

(a) A primary enclosure that is not open on top shall have air inlets situated at heights that provide cross ventilation at all levels and that are located on all four sides of the enclosure. Such ventilation openings shall comprise not less than 16 percent of the total surface area of each side of the enclosure.

(b) Straps, slings, harnesses, or other such devices used for body support or restraint when transporting marine mammals such as cetaceans or sirenians shall meet the following requirements:

(1) The devices shall not prevent attendants from having access to the mammal to administer care during transportation;

(2) The devices shall be equipped with sufficient padding to prevent trauma or injury at points of contact with the mammal's body;

(3) Slings or harnesses shall allow free movement of flippers outside of the harness or sling;

(4) The devices shall be capable of preventing the mammal from thrashing about and causing injury to itself, handlers, or other persons, but shall be designed so as not to cause injury to the mammal.

(c) A primary enclosure used to transport marine mammals shall be large enough to assure the following:

(1) A sea otter or polar bear has sufficient space to turn about freely with all four feet on the floor and to sit in an upright position, stand, or lie in a natural position;

(2) A pinniped has sufficient space to lie in a natural position;

(3) If a sling, harness or other supporting device is used, there are at least 3 inches of clearance between any body part and the primary enclosure;

(d) A marine mammal may be restricted in its movements according to professionally accepted standards of care when freedom of movement would constitute a danger to the animal or to handlers or other persons.

(e) All marine mammals contained in a given primary enclosure shall be of the same species and be maintained in compatible groups. A marine mammal that has not reached puberty shall not be transported in the same primary enclosure with an adult marine mammal other than its mother. Socially dependent animals (e.g., siblings, mother and offspring) transported in the same primary conveyance shall be allowed visual and, when appropriate for the species, olfactory contact. A female marine mammal shall not be transported in the same primary enclosure with any mature male marine mammal.

§ 14.132 Food and water.

A marine mammal shall not be transported for more than a period of 36 hours without being offered suitable food unless the shipper's written instructions or the shipper's attendant traveling with the mammal direct otherwise. After feeding, a marine mammal shall be rested for 6 hours prior to resuming transport.

§ 14.133 Care in transit.

(a) Any marine mammal shall be accompanied, in the same primary conveyance, by the shipper or an authorized representative of the shipper knowledgeable in marine mammal care to provide for the animal's health and well-being. The shipper or representative shall observe such marine mammals to determine whether or not they need veterinary care and shall provide or obtain any needed veterinary care as soon as possible. Care during transport shall include the following (on a species-specific basis):

(1) Keeping the skin moist or preventing the drying of the skin by such methods as covering with wet cloths,

spraying it with water or applying a non-toxic emollient;

(2) Assuring that the pectoral flippers (when applicable) are allowed freedom of movement at all times;

(3) Making adjustments in the position of the mammal when necessary to prevent necrosis of the skin at weight pressure points; and

(4) Calming the mammal to prevent struggling, thrashing, and other activity that may cause over-heating or physical trauma.

(b) Unless otherwise directed by a shipper or authorized representative, at least one-half of the floor area in a primary enclosure used to transport sea otters to the United States shall contain sufficient crushed ice or ice water to provide each otter with moisture necessary to maintain its hair coat by preventing it from drying and to minimize soiling of the hair coat with urine and fecal matter.

(c) A marine mammal exhibiting excited or otherwise dangerous behavior shall be taken from its primary enclosure except under extreme emergency conditions and then only by the shipper or other authorized individual who is capable of handling the animal safely.

Specifications for Elephants and Ungulates

§ 14.141 Consignment to carrier.

Species that grow antlers shall not be accepted for transport unless the antlers have been shed or surgically removed.

§ 14.142 Primary enclosures.

(a) Except as provided in § 14.106(j), when required ventilation openings are located on two opposite walls of the primary enclosure, these ventilation openings shall comprise at least 16 percent of the total surface area of each wall. When ventilation openings are located on all four walls of the primary enclosure, the openings shall comprise at least 8 percent of the total surface area of each wall. At least one-third of the minimum area required for ventilation shall be located on the lower one-half of the primary enclosure and at least one-third of the total minimum area required for ventilation shall be located on the upper one-half of the primary enclosure.

(b) No more than one elephant or ungulate shall be transported in a primary enclosure. However, a mother and nursing young may be shipped in the same primary enclosure if the shipment complies with the provisions of § 14.105(b).

(c) A primary enclosure used to transport an elephant or ungulate shall be large enough to allow the animal to lie or stand in a natural upright position with the head extended, but not large enough for the animal to roll over.

(d) A primary enclosure used to transport an elephant or ungulate with horns or tusks shall be designed and constructed to prevent the horns or tusks from becoming trapped or injuring the animal itself, other animals nearby, attendants, or cargo handlers.

(e) A primary enclosure for an elephant or ungulate shall be equipped with a removable water trough that can be securely hung within the enclosure above the floor and can be filled from outside the enclosure.

Specifications for Sloths, Bats, and Flying Lemurs

§ 14.151 Primary enclosures.

(a) Except as provided § 14.106(j) of this subpart, when required ventilation openings are located on two opposite walls of the primary enclosure, the ventilation openings shall comprise at least 16 percent of the total surface area of each wall. When ventilation openings are located on all four walls, the openings shall comprise at least 8 percent of the total surface area of each wall. At least one-third of the total minimum area required for ventilation of the primrary enclosure shall be located on the upper one-half of the primary enclosure.

(b) No more than one sloth, bat, or flying lemur (Cynocephalidae) shall be transported in a primary enclosure. However, a mother and her nursing young being transported for medical reasons, an established male-female pair, a family group, a pair of juvenile animals that have not reached puberty, or other groups of animals that have been habitually housed together may be shipped in the same primary enclosure.

(c) A primary enclosure used to transport sloths, bats, or flying lemurs shall be large enough to ensure that each animal has sufficient space to move freely and in a normal manner and shall have a wide perch, bar or mesh of suitable strength fitted under the top of the enclosure and spaced from it in such a way that the animals may hang from it in a natural position.

Specifications for Other Terrestrial Mammals

§ 14.161 Primary enclosures.

(a) Except as provided in § 14.106(j), when required ventilation openings are located on two opposite walls of the primary enclosure, these openings shall comprise at least 16 percent of the total surface area of each wall. When openings are located on all four walls of the enclosure, the openings shall comprise at least 8 percent of the total surface area of each wall. At least one-third of the minimum area required for ventilation shall be located on the lower one-half of the enclosure, and at least one-third of the total minimum area required for ventilation shall be located on the upper one-half of the enclosure.

(b) No more than one terrestrial mammal (other than rodents) shall be transported in a primary enclosure. However, a mother and her nursing young may be shipped in the same primary enclosure if the shipment complies with the provisions of § 14.105(b).

(c) More than one rodent may be transported in the same primary enclosure if they are members of the same species and are maintained in compatible groups. Rodents that are incompatible shall be transported in individual primary enclosures that are stored and transported so they are visually separated. A female with young being transported for medical reasons shall not be placed in a primary enclosure with other animals. The following chart specifies allowable densities for transporting rodents that fall within the specified weight limitations. Rodents weighing more than 5,000 grams shall be transported in individual enclosures.

DENSITY GUIDELINES FOR RODENTS

Wt. in grams of rodent	Max. No.	Space/animal		Ht. of box	
		cm²	in²	cm	in
220 or less	20	194	30	15	6
220–450	12	388	60	20	8
450–1,000	6	770	120	25	10
1,000–5,000	2	2,310	360	30	12

(d) A primary enclosure used to transport terrestrial mammals shall be large enough to ensure that each animal has sufficient space to turn around freely in a normal manner. The height of the primary enclosure shall provide adequate space for the animal to stand upright in a normal posture. The length of the primary enclosure shall be great enough to enable the animal to lie in a full prone position.

Specifications for Birds

§ 14.171 Consignment to carrier.

(a) A personally owned pet bird originally transported from the United States and being returned to this country with its original United States health certificate within 60 days of departure may be accepted by a carrier without a new veterinary examination.

(b) No carrier shall accept for transport to the United States any bird that was captured in the wild unless a qualified veterinarian, authorized by the national government of the country from which the bird is being exported, certifies that the bird has been held in captivity for at least 14 days.

§ 14.172 Primary enclosures.

(a) A primary enclosure for birds shall have ventilation openings on two vertical sides that comprise at least 16 percent of the surface area of each side and are positioned so as to decrease the likelihood of creating a draft.

(b) Perches shall be provided for birds that rest by perching. The diameter of the perch shall be sufficient to permit the birds to maintain a firm, comfortable grip. Perches shall be placed so that dropings do not fall into food or water troughs or onto other perched birds. There shall be enough head room to allow the birds to move onto and off the perches without touching the top of the enclosure.

(c) An enclosure used to transport one or more perching birds shall be large enough to ensure that each bird has sufficient perch space to perch comfortable at the same time. No more than 50 perching birds shall be transported in one primary enclosure, with the exception of large psittacines (longer than 25 cm, or 9 inches), which are limited to a maximum of 25 per primary enclosure.

(d) A primary enclosure used to transport a raptorial bird shall be large enough to transport the bird comfortably and to permit it to turn around freely and stretch its wings without injury. Only one raptorial bird shall be contaiend in a primary enclosure.

(e) A primary enclosure containing non-perching, non-raptorial brids shall be large enough for the birds to turn around, to lie down, to stand fully erect, and to change posture in a normal manner.

(f) Nectar-feeding birds shall either be transported in a primary enclosures equipped with feeding bottles accesible from outside the enclosure for replenishment, or hand-carried and fed in accordance with the written instructions of the shipper.

(g) Birds transported in the same primary enclosure shall be of the same species and be compatible with one another. Birds that are incompatible shall be placed in individual primary enclosures and these enclosures shall not be stored or transported in visual proximity to one another.

§ 14.173 Temperature standards.

The following standards shall apply for birds in holding areas, transporting devices, and primary conveyances, unless an examining veterinarian certifies in writing higher or lower temperatures that will not be harmful for a particular shipment:

(a) The ambient air temperature for perching birds shall not be allowed to fall below 12.8 degrees C (55 degrees F), to exceed 29.5 degrees C (85 degrees F), nor to exceed 26.7 degrees C (80 degrees F) for more than 4 hours. Auxiliary ventilation shall be provided when the ambient air temperature is higher than 26.7 degrees C (80 degrees F).

(b) The ambient air temperature for a raptorial bird shall not be allowed to fall below 7.2 degrees C (45 degrees F), to exceed 29.5 degrees C (85 degrees F), exceed 23.9 degrees C (75 degrees F) for more than 4 hours, not to exceed 26.7 degrees C (80 degrees F) for more than 45 minutes. Auxiliary ventilation shall be provided when the ambient air temperature exceed 23.9 degrees C (75 degrees F).

(c) The ambient air temperature for non-perching, non-raptorial birds other than penguins or auks shall not be allowed to fall below 7.2 degrees C (45 degrees F), to exceed 29.5 degrees C (85 degrees F), nor to exceed 18.3 degrees C (65 degrees F) for more than 4 hours. Auxiliary ventilation shall be provided when the ambient air temperature exceed 23.9 degrees C (75 degrees F).

(d) The ambient air temperature for penguins and auks shall not be allowed to exceed 18.3 degrees C (65 degrees F) at any time. Auxiliary ventilation shall be provided when the ambient air temperature exceeds 15.6 degrees C (60 degrees F).

Dated: June 1, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

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50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Proposal to List the Mussel Cumberland Pigtoe (Pleurobema gibberum) as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Cumberland pigtoe (*Pleurobema gibberum*) as an endangered species under the Endangered Species Act of 1973, as amended. This species is endemic to the Caney Fork River system (a Cumberland River tributary) in Grundy, Van Buren, Warren, and White Counties, Tennessee. Although presumably once wildely distributed in the Caney Fork system, the species is presently known from short reaches in only four Caney Fork River tributaries. The species has been and continues to be impacted by water quality deterioration resulting from siltation contributed by coal mining and poor land use practices, by other water pollutants, and by impoundments. Comments and information are sought from the public on this proposal.

DATES: Comments from all interested parties must be received by December 14, 1990. Public hearing requests must be received by November 29, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The Cumberland pigtoe mussel (*Pleurobema gibberum*), which was described by Lea (1838), is apparently endemic to the Caney Fork River System above the Great Falls Lake Dam is now located at the Great Falls), Cumberland River basin, Tennessee (Anderson 1990, Gordon and Layzer 1989). This small freshwater mussel (rarely exceeds 60 mm in length) has a triangular, compressed, somewhat heavy shell. The shell's outer surface on young individuals is a yellowish-brown color; adults have a dark mahogany shell. The inside of the shell is a distinctive peach to orange color (Anderson 1990). Like other freshwater mussels, this animal feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel's larvae likely parasitize fish. The mussel's life span, parasitic host, and most aspects of its life history are unknown.

Historic mussel collection records reviewed by Anderson (1990) revealed that the Cumberland pigtoe has been reported from five Caney Fork River tributaries, all above the Great Falls Reservoir. Anderson (1990) conducted a

mussel survey of the Caney Fork River system above and below the Great Falls Reservoir and reported that the species is now restricted to isolated populations in short reaches of four Caney Fork tributaries—Barren Fork, Warren County; Calfkiller River, White County; Cane Creek, Van Buren County; and Collins River, Warren and Grundy Counties. Although the species likely occurred in the main stem of the Caney Fork and has been historically collected from Hickory Creek, no specimens were taken at the four sampling stations in the Hickory Creek system, nor was the mussel collected in any unimpounded reaches of Caney Fork River. It is believed that the species has now been extirpated from both of these areas. The mussel was also not taken in collections made in other Caney Fork tributaries—Big Creek, Big Hickory Creek, Charles Creek, Dry Branch Barren River, Falling Water River, Firescald Creek, Fultz Creek, Little Hickory Creek, Mountain Creek, Pine Creek, Rocky River, Sink Creek, Smith Fork, Smith Fork Creek, and West Fork Hickory Creek.

The Cumberland pigtoe's distribution has been impacted by such factors as impoundments and the general deterioration of water quality resulting from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges. These factors continue to impact the species and its habitat. Because the populations inhabit only short river reaches, they are also very vulnerable to extirpation from accidental toxic chemical spills.

On December 8, 1989, the Service notified by mail (30 letters) the appropriate interested individuals, Federal and State agencies, and local governments within the species' present range that a status review was being conducted specifically to determine if the Cumberland pigtoe should be protected under the Act. A total of five written responses was received as a result of the December 8, 1989, notification. No objections to the potential listing of the Cumberland pigtoe were received. No additional information on the species' status and its former and present distribution was provided.

Summary of Factors Affecting the Species

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

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Based on historic mussel collection records from the Cumberland River system (Anderson 1990, Gordon and Layzer 1989), the Cumberland pigtoe is restricted to the Caney Fork River basin above the Great Falls. Within this isolated river basin the species has been reported from only five Caney Fork River tributaries. However, historic mussel collection records from the upper Caney Fork system are very limited. Thus, considering the extent of the mussel's preferred habitat (riffle areas with sand and gravel with occasional mud and cobble substrates (Anderson 1990, Gordon and Layzer 1989)), which was inundated by the construction of Great Falls Reservoir at the site of the Great Falls in the 1910s, the species was likely much more widely distributed within the upper Caney Fork system than available records indicate.

Presently, the species is restricted to isolated populations in short reaches of four Caney Fork tributaries—Barren Fork, Warren County; Calfkiller River, White County; Cane Creek, Van Buren County; and Collins River, Warren and Grundy Counties (Anderson 1990). These populations are adversely affected by impoundments and the general deterioration of water quality resulting from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges. Mussel populations in adjacent wstersheds with similar geology (upper Duck and Elk Rivers) have already lost much of their mussel fauna because of poor land management practices and impoundments (Anderson 1990).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no indication that overutilization has been a problem for this species. However, because of the mussel's restricted range, its slow growth rate, and low reproductive capacity, collection of the species could be a problem if specific locations of populations were known. Therefore, the present range of the species has been described only in general terms.

C. *Disease or predation.* Although the Cumberland pigtoe is consumed by predatory animals, there is no evidence that predation is a serious threat to the species. However, freshwater mussel die-offs have recently (early to mid-1980s) been reported throughout the Mississippi River basin (Richard Neves, Virginia Polytechnic Institute and State University, personal communication, 1986). The cause of the die-offs has not been determined, but significant losses have occurred in some populations.

D. *The inadequacy of existing regulatory mechanisms.* The State of Tennessee prohibits taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, the species is generally not protected from other threats. Federal listing will provide additional protection for the species from mussel collectors by requiring Federal endangered species permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

E. *Other natural or manmade factors affecting its continued existence.* As the Cumberland pigtoe is presently restricted to short river reaches, it is also very vulnerable to extirpation from accidental toxic chemical spills; and as the populated reaches are physically isolated from each other by impoundments, recolonization of any extirpated population would not be possible without human intervention. Additionally, because natural gene flow among populations is no longer possible, the long-term genetic viability of these remaining isolated populations is questionable.

The Service has carefully assessed the best scientific and commercial information regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Cumberland pigtoe mussel (*Pleurobema gibberum*) as endangered. Presently only four isolated populations are known to exist. Because of the restircted nature of these populations and their vulnerability, endangered status appears to be the most appropriate classification for the species. (See "Critical habitat" section for a discussion of why critical habitat is not being proposed for the Cumberland pigtoe mussel.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Such

a determination would result in no known benefit to the species.

As part of the development of this proposed rule, Federal agencies were notified of the Cumberland pigtoe mussel's distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the species. No specific projects were identified. Should any future projects occur in the Caney Fork system, the involved Federal agency will already have the distributional data needed to determine if the species may be impacted by their action. Thus, no additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species.

In addition, this species is rare, and taking for scientific purposes and private colleciton could be a threat. The publication of critical habitat maps and other publicity accompanying critical habitat designation could increase that threat. The locations of populations of this species have consequently been described only in general terms in this proposed rule. Precise locality data would be available to appropriate Federal, State, and local governmental agencies from the Service office described in the "**ADDRESSES**" section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and 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)(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 the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs affecting the species. No specific proposed Federal actions were identified. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, river channel maintenance, stream alterations, wastewater facility development, pesticide registration, and road and bridge construction. However, it has been the experience of the Service that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives met.

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 (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 endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

In some instances permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. This species is not in trade, and such permit requests are not expected.

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 this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

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

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the office described in the "**ADDRESSES**" section.

National Environmental Policy Act

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

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Anderson, R.M. 1990. Status survey of the Cumberland pigtoe pearly mussel, *Pleurobema gibberum*. Tennessee Cooperative Fishery Research Unit, Tennessee Technological University, Cookeville, Tennessee. Unpublished report. Submitted to the U.S. Fish and Wildlife Service, Asheville Field Office, Asheville, NC. 10 pp.

Gordon, M.E., and J.B. Layzer. 1989. Mussels (BIVALVIA: UNIONOIDAE) of the

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Author

The primary author of this proposed rule is Richard G. Biggins (see "ADDRESSES" section) (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and Recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: 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 § 17.11(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:							
*	*	*	*	*	*	*	
Pigtoe, Cumberland	*Pleurobema gibberum*	U.S.A. (TN)	NA	E		NA	NA
*	*	*	*	*	*	*	

Dated: September 21, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–24223 Filed 10–12–90; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; To Determine the Uncompahgre Fritillary Butterfly To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes a butterfly, the Uncompahgre fritillary (*Boloria acrocnema*), to be an endangered species. Critical habitat is not being proposed. This butterfly has been verified at only two major sites above 4,040 meters (13,200 ft.) elevation in the San Juan Mountains of southwestern Colorado. In 1989, the total known population was estimated to be less than 1,000 individuals. Taking by collectors, adverse climatic conditions, lack of protective regulations, small population size, and low genetic variation endanger the species. Its habitat is potentially threatened by trampling from humans and livestock. This proposal would implement the protection provided by the Endangered Species Act of 1973, as amended. Comments on this proposal are sought.

DATES: Comments from all interested parties must be received by December 14, 1990. Public hearing requests must be received by November 29, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 730 Simms Street, Room 290, Golden, Colorado 80401. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John Anderson, Biologist, Fish and Wildlife Enhancement, 529 25 1/2 Road, Suite B–113, Grand Junction, Colorado 81505 at (303) 243–2778 or FTS 322–0351.

SUPPLEMENTARY INFORMATION:

Background

The Uncompahgre fritillary butterfly was discovered on Mount Uncompahgre, Hinsdale County, Colorado, on July 30, 1978. It was subsequently described as a new species (*Boloria acrocnema*) by Gall and Sperling (1980). The butterfly also has been included in the genus *Clossiana* (Ferris 1984), although this name is more properly considered a subgenus of *Boloria*.

The most recent treatment of North American butterflies lists this taxon as a species (Ferris 1989). Other major books published in the last 10 years also consider the Uncompahgre fritillary to be a full species (Ferris and Brown 1981, Gall 1983, Pyle 1981). However, one recent book considers the Uncompahgre fritillary to be a subspecies (*Boloria improba* ssp. *acrocnema*) of the Dingy Arctic fritillary (*Boloria improba*) (Scott 1986). For the purpose of this listing action, the Service will recognize this taxon at the species level. If the Uncompahgre fritillary is later recognized as a subspecies of *B. improba*, the designation of this taxon as an endangered species will remain valid because section 3(15) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) permits the listing of subspecies.

The Uncompahgre fritillary is a small butterfly with a 2–3 centimeter (1 in.) wingspan. Males have rusty brown wings criss-crossed with black bars; females' wings are somewhat lighter (Gall 1983). Underneath, the forewing is light ochre and the hindwing has a bold, white jagged bar dividing the crimson brown inner half from the purple-grey scaling on the outer wing surface. The body has a rusty brown thorax and a brownish black abdomen (Gall and Sperling 1980).

The Uncompahgre fritillary has the smallest total range of any North American butterfly species. Its habitat is limited to two verified major sites and two possible small colonies in the San Juan Mountains in Hinsdale County in southwestern Colorado. One major site is the type locality on Mount Uncompahgre, which is managed by the Forest Service. The second major site was discovered in 1982 on land managed by the Bureau of Land Management and is not generally known. Because of the potential threat from collecting, the location of this colony is referred to herein only as "site 2."

Despite numerous attempts to locate other populations, no other major populations have been verified. In 1988, three individuals were captured at one

new location and one individual was captured at another new location. These sites must be investigated to determine if they represent possible new colonies. There is a report of five colonies in the San Juan Mountains, but these unverified sites, if extant, have been kept secret by their discoverer. As the butterfly is found only in remote, generally inaccessible areas, it is possible that the species may occur in other mountain ranges in Colorado, but there have been no reports of the butterfly from these other mountain ranges.

All known populations are associated with large patches of snow willow (Sal ix nivalis) above 4,040 meters (13,200 ft.), which provide food and cover. The species has been found only on northeast-facing slopes, which are the coolest and wettest microhabitat available in the San Juans (Brussard and Britten 1989). The females lay their eggs on snow willow, which is also the larval food plant, while adults take nectar from a wide range of flowering alpine plants.

Brussard and Britten (1989) believe that the species has a biennial life history, which means that it requires 2 years to complete its life cycle. Eggs laid in 1990 (even-year brood) will be caterpillars in 1991 and mature into adults in 1992. Similarly, eggs laid in 1991 (odd-year brood) will become adults in 1993. The odd- and even-year broods function as essentially separate populations. It is assumed that odd- and even-year populations existed at both major sites historically, since there is anecdotal evidence that butterflies flew each year at these sites prior to 1987 (Brussard and Britten 1989).

During 1987 and 1988, field surveys and genetic studies were carried out by Dr. Peter Brussard and students under a contract funded by the Forest Service, Bureau of Land Management, and Fish and Wildlife Service (Brussard and Britten 1989). Though they visited over 50 sites that appeared to satisfy the butterfly's habitat requirements, they found only the few individuals at the two new sites previously mentioned.

These researchers believe there has been a decline in the butterfly's known population The even-year broods at the two known sites appear to be declining, and the odd-year brood at the type locality may be extinct. The status of the odd-year brood at site 2 is unclear. On Mount Uncompahgre, the 1978 population (even-year brood) was estimated to be 800 individuals (Interagency Agreement 1984); the 1988 population was estimated to be 208 individuals (Brussard and Britten 1989). At site 2, the 1982 population was estimated to be between 1,000 and 1,500 individuals (Interagency Agreement 1984); the 1988 estimate was 200 individuals (Brussard and Britten 1989). There are anecdotal reports of an odd-year population at Mount Uncompahgre prior to 1987, but no Uncompahgre fritillaries were captured in 1987. The status of the odd-year population at site 2 is difficult to assess due to a lack of historical data on estimated population size. Assuming the species has a biennial life history, then adding the 1987 and 1988 data results in a total estimated population size at the two known sites of approximately 700 individuals.

Brussard and Britten (1989) also used electrophoretic techniques to examine population genetic variability. Their studies revealed low genetic variability in the Uncompahgre fritillary when compared to the level of genetic variability in fritillaries, in general. This low genetic variability would indicate less environmental adaptability, which would reduce its ability to adapt to a changing environment.

The species faces many threats. As it is one of the few new North American butterfly species discovered in the last half century, it is attractive to collectors. Its sedentary nature, weak flying ability, and tendency to fly low to the ground make it easy to collect. Possible overcollection is considered the greatest human-caused threat to the species. Other actual or potential threats to the species include adverse climatic conditions, lack of protective regulations, small population size, and low genetic variability. There is a minor potential threat from trampling by humans and livestock. The species' small population size, together with the threats listed above, justifies the proposal of the Uncompahgre fritillary butterfly as an endangered species.

On November 5, 1979, the Service was petitioned by Lawrence F. Gall to list the butterfly under provisions of the Endangered Species Act of 1973. In response, the Service published a notice of status review on the butterfly on February 6, 1980 (45 FR 8029), which solicited public comments. Comments from the public supported listing and protection under the Act, but the Service did not propose its listing. Subsequently, the Service included the butterfly in a notice of petition findings on January 20, 1984 (49 FR 2485), which stated that listing the butterfly was warranted but precluded, and noted that it was a category 2 species (a species which may be appropriate to list, but for which there is not enough biological data at the time to support the listing). Its status was changed from category 2 to category 1 (a species for which there is sufficient biological data on hand to support listing) in the Invertebrate Notice of Review published on May 22, 1984 (49 FR 21664). The Service made 1-year findings that listing the species was warranted but precluded on May 10, 1985 (50 FR 19761); January 9, 1986 (51 FR 996); June 30, 1987 (52 FR 24312); July 7, 1988 (53 FR 25511); December 29, 1988 (53 FR 52746); and April 25, 1990 (55 FR 17475). This proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Uncompahgre fritillary butterfly (*Boloria acrocnema*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The known populations of the butterfly are on Federal land. The Mount Uncompahgre habitat is in the Big Blue Wilderness in the Uncompahgre National Forest, while site 2 is in a wilderness study area on land administered by the Bureau of Land Management. Both areas are above timberline, hence there are no threats from logging. Mining activity does not appear to be a threat to the known populations. Historically, herds of sheep were driven over both mountains where the butterflies occur, but there is no grazing currently at the major sites.

The main hiking trail to the summit of Mount Uncompahgre bisects the colony on that mountain, but there seems to be no evidence that hikers or pack horses have damaged the nature of the butterfly's habitat. One day's observation by the author of this rule demonstrated that hikers do not linger or rest in the colony area. Moreover, pack horses are uncommon on this trail. A hiking trail passes near site 2, but routing changes were made to the trail to reduce the likelihood that hikers will deviate from the trail and cross through the butterfly site. Trampling of the colonies by collectors or biologists is a potential threat, but there has been no demonstrated habitat change due to this factor.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The Uncompahgre fritillary

butterfly has been the subject of intense sampling by biologists and collectors since its discovery. In 1981, collection of the species for research or marketing to private collectors probably exceeded 100 adults, or up to 20 percent of the Mount Uncompahgre population (Interagency Agreement 1984). The genus *Boloria* is extremely popular with collectors. Specimens of *B. acrocnema* have been offered by dealers for prices exceeding $100 for males and even higher prices for females (Gall 1983). Collecting from small colonies or repeated handling and marking (particularly of females and/or in years of low abundance) could seriously damage the populations through loss of individuals and genetic variability. Collection of females dispersing from a colony also can reduce the probability that new colonies will be founded. Extremely small populations, such as those of the Uncompahgre fritillary, should not be subjected to undue pressure from collectors.

C. *Disease or predation.* There are no known diseases of the butterfly that could threaten its continued existence. Wilcove (1980) recorded an instance of direct predation on the butterfly by a brown-capped rosy finch (*Leucosticte australis*), and identified other potential avian predators. However, there is no indication as yet that predation is a significant threat.

D. *The inadequacy of existing regulatory mechanisms.* The Mount Uncompahgre site is in the Big Blue Wilderness. In addition to wilderness management restrictions, the Forest Service has prohibited the collection of butterflies on Mount Uncompahgre since 1984. There is no sheep grazing on the site at the present time, and there is a proposal to restrict horse use to an area downslope from the butterfly site. Nevertheless, it has been reported that some collectors may be collecting the species despite the ban. Site 2 is located in a wilderness study area. The Bureau of Land Management has terminated grazing in this area, but there is no prohibition against collecting. The Colorado Division of Wildlife does not possess the legal authority to protect the species. The Colorado Natural Areas Program has registered, but not yet designated, the Mount Uncompahgre site as a State Natural Area. This means that the site has been identified as one deserving special attention, but a management agreement has not been finalized. In 1984, the Forest Service and Bureau of Land Management signed an interagency agreement for the conservation of the Uncompahgre fritillary. The parties are implementing this agreement, but the level of implementation is limited by available funding.

These voluntary efforts on the part of the Forest Service, Bureau of Land Management, and the Colorado Natural Areas Program are commendable. Having identified the Uncompahgre fritillary as a species in need of protection, they have taken important steps to protect this species. However, the species-specific protections are discretionary and could be withdrawn or lapse in effectiveness if funding diminishes. Federal listing of the butterfly would provide a greater level of protection. Listing would ensure that Federal agencies would not take actions likely to jeopardize the species, and promote efforts toward species recovery. It would also allow for the prosecution of collectors under Federal law and provide for the issuance of permits to limit and manage those who wish to conduct scientific studies of the butterfly. Finally, it would improve the cooperating agencies' chances of obtaining additional funding to protect, research, and recover the species.

E. *Other natural or manmade factors affecting its continued existence.* Many other factors threaten the continued existence of the Uncompahgre fritillary. First, the butterfly exists only in the highest, wettest peaks in southwestern Colorado. Biologists who completed population surveys of the butterfly in 1987–88 believe that several recent drought years have stressed the butterfly, which evidently requires a cool and wet microhabitat to successfully complete development (Brussard and Britten 1989). Climatic stress may be a major factor underlying recent population declines.

If the species does have a biennial life history, then the possible extinction of the odd-year population at Mount Uncompahgre is cause for concern. Odd-year and even-year broods function essentially as separate populations. It may be possible for an extinct odd-year population to be reestablished if a few individuals from the even-year brood at the same site take 3 years instead of 2 to complete development, but reestablishment would be very slow.

The small population size and limited genetic variability of the species is itself a threat. The small size of the known populations makes them vulnerable to extinction from natural (*e.g.*, drought, exceptionally warm temperatures) or human (*e.g.*, overcollection) causes. In addition, random demographic effects (*e.g.*, skewed sex ratios) and/or the loss of alleles due to random genetic effects could cause permanent loss of one or both populations.

As noted earlier, this butterfly has the smallest known range of any North American species when the total area occupied by the two verified colonies are considered. Although small habitat size might normally be a threat in itself, the colonies are placed such that snow avalanches are not likely, and fire or other kinds of calamities are not likely.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Uncompahgre fritillary butterfly (*Boloria acrocnema*) as endangered. Since the species' discovery in 1978, only two major sites have been identified, and, based on available data, their populations have declined. The odd-year population at the type locality already may be extinct. Despite the administrative protections currently being implemented, the remaining populations are endangered by taking by collectors, adverse climatic conditions, lack of protective regulations, small population size, and low genetic variation. The species' habitat is potentially threatened by trampling from humans and livestock. These factors could lead to the species' extinction throughout all or a significant portion of its range.

The Service recognizes that listing the species may increase collection pressures due to the loss of protective anonymity. However, the Service is required to list species deserving of the Act's protection, and final listing will provide additional protection, as explained above, and encourage actions to recover the species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the Uncompahgre fritillary. As discussed under Factor B in the "Summary of Factors Affecting the Species," possible overcollection of this butterfly is one of the major threats to its existence. Though some collectors know of the Mount Uncompahgre site, the exact location of site 2 is not generally known. Publication of the exact location of these sites would endanger the species further. The Forest Service and the Bureau of Land

Management, upon whose land the butterfly occurs, are aware of the location of the butterfly populations and the importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through section 7 procedures.

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)(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 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.

Current Federal involvement and management for the species were discussed earlier. Long-term monitoring should be continued, as well as research into the species' life history and habitat requirements. If possible, artificial recolonization should be attempted to establish additional colonies in suitable habitat to reduce the risk of extinction.

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 (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 endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations on animals and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Room 432, 4401 N. Fairfax Dr., Arlington, Virginia 22203 (703/358–2093, FTS 921–2093).

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 any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Uncompahgre fritillary;

(2) The location of any additional populations of the Uncompahgre fritillary and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on the Uncompahgre fritillary.

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

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

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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Wilcove, D.S. 1980. A report on the birds of Uncompahgre with reference to their predation on *Boloria acrocnema*. Unpublished report prepared for Larry Gall and the Xerces Society, in U.S. Fish and Wildlife Service files, Denver, Colorado. 5 pp.

Author

The primary author of this proposed rule is Dr. Paul A. Opler, Office of Information Transfer, U.S. Fish and Wildlife Service, 1025 Pennock Place, Suite 212, Fort Collins, Colorado 80524 (303/493-8401; FTS 323-5401).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: 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 § 17.11(h) by adding the following in alphabetical order, under INSECTS to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES								
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules	
INSECTS								
Butterfly, Uncompahgre fritillary.	*Boloria acrocnema*	U.S.A. (CO)	NA	E		NA	NA	

Dated: October 1, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-24224 Filed 10-12-90; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Proposal to Determine the Plant Eutrema penlandii (Penland alpine fen mustard) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes that *Eutrema penlandii* (Penland alpine fen mustard) be designated a threatened species under the Endangered Species Act of 1973, as amended (Act). There are eight small occurrences, totalling 5,200 plants, over a 40 kilometer (25 mile) length of the Continental Divide in central Colorado. The species is found growing above 3,810 meters (12,500 feet) elevation on small calcareous wetlands with perennially subirrigated peat soils. Most sites are on Federal land (Forest Service and Bureau of Land Management). The species' fragile wetland habitat is threatened by desiccation from ditches and ruts from off-road vehicles and mining activities, as well as groundwater acidification from mine drainage. Some subpopulations not seen since 1980 are thought to be lost. A determination that *E. penlandii* is threatened 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 December 14, 1990. Public hearing requests must be received by November 29, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Colorado State Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 730 Simms Street, Room 290, Golden, Colorado 80401, or to the U.S. Fish and Wildlife Service, Western Colorado Sub-office, 529 25½ Road, Suite B-113, Grand Junction, Colorado 81505-6199. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Anderson, Botanist, at the above Grand Junction address (303/243-2778 or FTS 322-0351).

SUPPLEMENTARY INFORMATION:

Background

The Penland alpine fen mustard was first collected at "Hoosier Pass" in the Mosquito Range in 1935 by C.W.T. Penland, late professor at Colorado College, and recollected in 1949. A description was published a year later by R. Rollins (1950), an expert in the mustard family. The "Hoosier Pass" population, the type locality, is located at Hoosier Ridge in actuality. It contains approximately half the species' population and is the largest population known.

Eutrema penlandii is a small, herbaceous perennial, 3–8 centimeters (1.2–3.2 inches) tall. It is a shiny green, glabrous (hairless) plant with long-petioled (long-stemmed), heart-shaped basal leaves up to 35 centimeters (14 inches) long and clusters of small, white flowers 2–3.5 millimeters (approximately 0.1 inch) long atop the stems. The generic name refers to the hollow fruits (other mustards have an interior partition called a replum) that are small and rounded, 1.5 millimeter (0.06 inches) wide, and 4–8 millimeters (0.2–0.3 inches) long.

This taxon is closely related to *Eutrema edwardsii*, a circumboreal (inhabiting the northern regions of North America and Eurasia) species in the Arctic that also extends into the mountains of central Asia (Weber and Shashan 1955). Rollins (1982) chose to recognize *E. penlandii* at the species level. Weber (1987) treated this taxon as a subspecies of *E. edwardsii* (*E. edwardsii* ssp. *penlandii*).

For the purposes of this listing action, the Service will recognize this taxon at the species level. If *E. penlandii* is later recognized as a subspecies of *E. edwardsii*, the designation of this taxon as a threatened species will remain valid because section 3(15) of the Endangered Species Act (Act) of 1973, as amended, (16 U.S.C. 1531 *et seq.*) permits the listing of subspecies.

E. penlandii is highly habitat-specific and requires a combination of several environmental factors in its microenvironment. These factors include moss-covered peat fens with perennial subirrigation and calcareous (basic) substrate derived from limestone or dolomite above 3,810 meters (12,500 feet) in elevation. The peat mats form on small, flat benches in leeward cirques (steep-walled rounded glacial valleys) with persistent snowfields that provide the subirrigation. The conditions for maintaining these persistent snowfields only exist along this east-west trending portion of the Continental Divide. Most portions of the Continental Divide are north-south trending and are exposed to snow-melting winds.

This unique habitat is also significant biogeographically. As noted above, the nearest relative of *E. penlandii is E. edwardsii*, an Arctic circumboreal species. All other species of *Eutrema* occur in Asia. *E. penlandii* is thus an extremely disjunct species, separated by more than 1,600 kilometers (1,000 miles) from its nearest relative and the only representative of a primarily Asiatic genus in the lower 48 states. Other rare alpine taxa with Arctic affinities also occur on limestone in the Mosquito Range, either as separate species (*e.g., Sausseria weberi*) or disjunct species (*e.g., Armeria scabra* ssp. *sibirica, Braya glabella,* and *Braye humilis*). *E. penlandii* is the rarest of these, however. This biogeographic pattern, wherein a genus is represented by extremely disjunct species in central Asia and interior western North America, is represented, as well, by several other genera in the mustard family, including *Braya, Stroganowia, Smelowskia,* and *Parrya* (Rollins 1982). The alpine disjunctions have been interpreted as Pleistocene glacial relicts that migrated south from the Arctic along the glacial front and were left stranded in small pockets of habitat with the retreat of the glaciers. Alternatively, *E. penlandii* and others may be Tertiary relics of a more widespread northern hemisphere flora with a continental (interior) climate, which then migrated northward from the Canadian Rockies into the Arctic onto barren habitats newly opened along the front of the retreating glaciers (Weber 1987).

The second and third largest populations were the next discovered. W.A. Weber from the University of Colorado found these in 1967, south of Hoosier Ridge at Mosquito Pass and the Four Mile Creek cirque (between Mount Sheridan and Mount Sherman). Johnston et al. (1981) mapped out these three known populations at Hoosier Ridge, Mosquito Pass, and Mt. Sherman in a 1980 status report. The three populations extend over a 40 kilometer (25 mile) range along the Continental Divide, or approximately 19 kilometers (12 miles) in a straight line, and within 4 kilometers (2.5 miles) of the Continental Divide.

Federal action involving *E. penlandii* 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 Fish and Wildlife Service (Service) published a notice (40 FR 27847) of its acceptance of this 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. *E. penlandii* was included for review as endangered in the July 1, 1975, petition.

In 1976, the Service proposed the species for endangered status, along with 1,700 other plant species (41 FR 24535), but this proposal was eventually withdrawn in 1979 because a final rule had not been prepared within the time limits required under the 1978 Amendments to the Act. On December 15, 1980 (45 FR 82485), the Service published an updated notice reviewing the native plants being considered for classification as threatened or endangered. *E. penlandii* was included in this notice as a category 2 species. Category 2 consists of taxa for which there is some evidence of vulnerability, but for which there is not enough data to support listing proposals at that time.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, required 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 required that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all the taxa contained in the notice, including *E. penlandii*, were treated as being newly petitioned on October 13, 1982.

Based on recommendations from Johnston et al. (1981), in November 28, 1983 (48 FR 53665), the Service dropped *E. penlandii* to category 3C, which consists of taxa that are no longer being considered for listing because they are more abundant and/or widespread than previously thought. In a notice published January 24, 1984 (49 FR 2485), the Service announced a "not warranted" finding on *E. penlandii* due to its reclassification to category 3C. This finding terminated the need for 1-year petition findings on the species. *E. penlandii* remained as a category 3C species in the September 27, 1985, Notice of Review (50 FR 39552). However, if additional information or changes in habitat indicated a significant decline in a taxon's status, it could be reconsidered for inclusion on the candidate list.

In a 1985–1986 reconnaissance survey, Steve O'Kane from the Colorado Natural Areas Program found one new, small population at Pennsylvania Creek consisting of 200 individuals on 0.4 hectares (1 acre). However, he was unable to relocate all of the 1980 occurrences. He also observed threats from ditching associated with renewed gold mining operations that could dessicate the peat fens' hydrologic regime (O'Kane 1988).

The Service funded a new status report through its Section 6 Cooperative Agreement with the Colorado Natural Areas Program in 1988. Only four new populations of 0.4–0.8 hectares (1–2 acres) each were found during the 1988 status survey, all within the previously documented range and representing only about 10 percent of the whole' species' population. Total numbers estimated for the Penland alpine fen mustard are eight populations, 5,200 individuals, and 25 hectares (62 acres) (Naumann 1988). Two subpopulations, at London Mountain Saddle below Mosquito Pass and the Dauntless Mine site below Mount Sherman, were not found again. Also, the dessicating effects of ditching from off-road vehicle ruts and mining activities were observed at several of the populations. For these reasons, Naumann (1988) recommended returning *E. penlandii* to the candidate list. On February 21, 1990, it was added to the 1990 Notice of Review (55 FR 6205) as a category 1 candidate species, which is a species for which the Service has substantial information to support a proposal to list as threatened or endangered.

Most Penland alpine fen mustard plants occur on Federal land: Hoosier Ridge (Forest Service); Mosquito Pass, London Mountain Saddle (Bureau of Land Management); as well as portions of other, smaller sites (Forest Service, Bureau of Land Management). Approximately 15 percent of the species' habitat is on private land (Naumann 1988).

Summary of Factors Affecting the Species

Section 4(a) (1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a) (1). These factors and their application to *Eutrema penlandii* (Penland alpine fen mustard) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Because of its high degree of habitat specificity, which requires the combination of several microenvironmental factors as described earlier, the Penland alpine fen mustard only occupies a small area in Colorado estimated at 25 hectares (62 acres) (Naumann 1988). This habitat is rare in Colorado, and most areas in Colorado with high potential as habitat were surveyed in 1988 (Naumann 1988). *E. penlandii* might be found in Wyoming and Montana, but specimens never have been collected outside Colorado. Therefore, few, if any, additional populations will likely be found, and any impacts to its habitat are significant.

Hydrology is the most fragile aspect of the Penland alpine fen mustard's habitat. Perennial subirrigation is required to maintain the peat fens. Ditching, from the ruts of off-road vehicle tracks or mining activity, can cause desiccation of a peat fen supporting Penland alpine fen mustard. The result can be loss of habitat and, consequently, plants. The Mosquito Pass/London Mountain Saddle site, which contains the second largest population, is in a popular recreational area, and active mines are in operation within this cirque of South Mosquito Creek. In addition, survey markers observed in 1988 mark the route of an annual burro race from Mosquito Pass to Alma, Colorado, through the population. The smaller populations at Mt. Sherman, Pennsylvania Mountain, Cooney Lake, and Buckskin Mountain have also been affected by ditching.

Calcareous substrate is another necessary habitat element for the Penland alpine fen mustard. Acid drainage from mine tailings can affect its habitat by lowering pH and changing it from basic to acidic, contributing to loss of plants. Small subpopulations at London Mountain Saddle below Mosquito Pass and the Dauntless Mine below Mt. Sherman that were observed in 1980 could not be found again in 1988 and were presumably lost due to ditching and acid mine drainage, respectively (Naumann 1988).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No detrimental uses of these plants are known.

C. *Disease or Predation.* No such threats are known. There is evidence of pika and microtene rodent feeding on these plants, but the significance of such herbivory is unknown.

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws protect *E. penlandii*. A Research Natural Area has been proposed for the Hoosier Ridge population on Forest Service land. Final designation is still pending. The Act would provide additional protection and encourage active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* This species' pattern of rarity, with few small populations on small areas of specialized habitat, makes it particularly vulnerable to the threats described above.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Eutrema penlandii* as threatened. This species is a restricted endemic with threats to its fragile wetland habitat. At the present time, there is no acid mine drainage problem at the Hoosier Ridge site, which contains the largest *E. penlandii* population. Existing management at this site should be adequate to maintain the population (Naumann 1988). Nearly all other populations are threatened by acid mine drainage and/or off-road vehicle traffic. At their present level, these threats are not likely to result in species extinction in the foreseeable future. However, with these threats acting on *E. penlandii's* small populations and limited range, this species could become endangered within the foreseeable future throughout all or a significant portion of its range; thus, *E. penlandii* is a threatened species as defined by the Act. For reasons given below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a) (3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be listed as endangered or threatened. The Service finds that designation of critical habitat is not prudent for *E. penlandii* for the following reasons:

First, it may be inadvisable to designate critical habitat because the publication of detailed critical maps would expose this little-known species to the threat of deliberate taking and vandalism, when no such threat existed before.

Second, it is unlikely that designation of critical habitat will provide any benefits to the species beyond those achieved by species listing. Most plants occur on lands under Federal jurisdiction. In fact, the two largest populations (Hoosier Ridge: 2,000+ plants; Mosquito Pass/London Mountain Saddle: 1,550+ plants) occur on Federal land. Listed species on lands managed by a Federal agency are protected under section 7(a) (2) of the Act, which requires that the Federal agency insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the species. Per 50 CFR 17.61 and 17.71, it is also unlawful to remove and reduce to possession any listed plant from an area under Federal jurisdiction. Hence, there will be protective safeguards for plants on Federal lands following listing. Moreover, if the Forest Service designates the area containing the Hoosier Ridge population as a Research Natural Area, this is expected to provide additional protection, if only through notification.

All involved parties and landowners (public and private) have been or will be notified of the location and importance of protecting this species' habitat. Protection will be addressed through the consultation and recovery processes.

Consequently, it would not be prudent to determine critical habitat for *E. penlandii*.

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 proposed or listed species and with respect to 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 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 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.

E. penlandii occurs primarily on Federal land administered by the Forest Service and Bureau of Land Management. Their involvement could include section 7 consultation on mining activities and land exchanges. A recreation plan is needed to manage off-road vehicle use. On both Federal and private land, the Service expects that listing would elevate the awareness of this plant's status and foster efforts aimed toward its conservation.

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, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale 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 are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provides for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. With regard to *E. penlandii*, it is anticipated that few, if any, trade permits would ever be sought or issued since this 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).

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 interested party concerning this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *E. penlandii;*

(2) The location of any additional populations of *E. penlandii* and reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of *E. penlandii;* and

(4) Current or planned activities in the subject area and their possible impacts on *E. penlandii.*

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

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Colorado State Supervisor, U.S. Fish and Wildlife Service, Golden, Colorado (see **ADDRESSES** above).

National Environmental Policy Act

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

References Cited

Johnston, B.C., J.S. Peterson and W. Harmon. 1981. Status report *Eutrema penlandii* Rollins. Unpublished report on file with the Colorado Natural Areas Program, Denver, Colorado. 24 pp.

Naumann, T. 1988. Status report for *Eutrema penlandii*. Colorado Natural Areas Program. 33 pp, plus three appendices.

O'Kane, S. 1988. Colorado's rare flora. Great Basin Naturalist 48:434–484.

Rollins, R.C. 1950. Studies on some North American Cruciferae. Contrib. Gray Herbarium 171:42–53.

Rollins, R.C. 1982. A new species of the Asiatic genus *Stroganowia* (Cruciferae) from North America and its biogeographic implications. Systematic Botany 7(2): 214–220.

Weber, W.A., and S. Shushan. 1955. Additions to the flora of Colorado—II. University of Colorado Studies, Series in Biology 3:65–108.

Weber, W.A. 1987. Colorado flora: western slope. Colorado Associated University Press, Boulder, Colorado. 530 pp.

Author

The primary author of this proposed rule is John L. Anderson, Botanist, U.S. Fish and Wildlife Service, Grand Junction, Colorado (303/243–2778, FTS 322–0351; see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation

Proposed Regulation Promulgation

PART 17— [AMENDED]

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

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

Authority: 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 family 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:						
*	*	*	*	*	*	
Eutrema penlandii	Penland alpine fen mustard	U.S.A. (CO)	T		NA	NA
*	*	*	*	*	*	

Dated: September 25, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-24225 Filed 10-12-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 55, No. 199
Monday, October 15, 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

Agricultural Marketing Service

[No. LS-90-109]

Beef Promotion and Research; Board and State Beef Council Addresses

AGENCY: Agricultural Marketing Service; USDA.

ACTION: Notice.

SUMMARY: This document updates the Notice published in the **Federal Register** on Thursday, October 16, 1986 (51 FR 36832). This Notice (1) Updates the address of the Cattlemen's Beef Promotion and Research Board and the addresses of the initial 40 Qualified State Beef Councils; (2) adds the addresses of four (4) new Qualified State Beef Councils subsequently certified by the Board for a total of 44 State beef councils; and (3) deletes the column listing addresses to be used by persons requesting refunds of assessments since refunds are no longer authorized.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch (202) 382-1115.

SUPPLEMENTARY INFORMATION: Pursuant to the Beef Promotion and Research Act (7 U.S.C. 2901 et. seq.), a Beef Promotion and Research Order (Order) was published in the July 18, 1986, **Federal Register** (51 FR 26132). Regulations implementing the Order were published in the October 1, 1986, issue of the **Federal Register** (51 FR 35196).

The Order and the Regulations provide that, beginning October 1, 1986, cattle sold in the United States are subject to an assessment of $1 per head. Persons who collect assessments from producers under the Order and Regulations are required to remit those assessments to the Qualified State Beef Council in the State where they reside or to the Cattlemen's Beef Promotion and Research Board (Board) if there is no Qualified State Beef Council located in their State. Imported cattle, beef, and beef products are also subject to equivalent assessments; these are paid through the U.S. Customs Service.

The Beef Promotion and Research Act (7 U.S.C. 2901 et. seq.) required that a referendum be conducted by the Secretary 22 months after the issuance of the Order to determine if the Order shall be continued or suspended. Any person had the right to demand and receive from the Board a one-time refund during the period prior to the approval of the continuation of the order pursuant to the referendum. On May 10, 1988, the referendum was conducted and producers voted to continue the checkoff program. After the passage of the referendum, refunds were no longer available.

This Notice provides updated addresses for the original 40 Qualified State Beef Councils. Since the publication of these addresses in the **Federal Register** on October 16, 1986 (51 FR 36832), four (4) newly established State Beef Councils have been certified by the Board. General business and inquiries of these new State Councils should be forwarded to: (1) Delaware Beef Advisory Board, 4601 South Dupont Highway, Dover, Delaware 19901, (2) Hawaii Beef Industry Council, Seven Water Front Plaza, suite 400, 500 Ala Moana Boulevard, Honolulu, Hawaii 96813, (3) Maine Beef Industry Council, Maine Department of Agriculture, Deering Building, State House Station 28, Augusta, Maine 04333, and (4) Vermont Beef Industry Council, P.O. Box 7503, Monshire Museum, suite 200, Norwich, Vermont 05055. Addresses for remittance of assessments and accompanying reports may differ from those for general business and inquiries.

This Notice provides the current addresses of the Board and the 44 Qualified State Beef Councils have different addresses for different purposes. Accordingly, this notice includes two columns for such addresses; one for inquiries and general business and one for remitting assessments and accompanying reports. For inquiries and general business, the address of the Board is Cattlemen's Beef Promotion and Research Board, P.O. Box 3316, Englewood, Colorado 80155. For remitting assessments and accompanying reports, the address of the Board is Cattlemen's Beef Promotion and Research Board, P.O. Box 27-275, Kansas City, Missouri 64180-0001.

ADDRESSES OF THE QUALIFIED STATE BEEF COUNCILS

Inquiries and general business	Remit assessments and accompanying reports to—
Alabama Cattlemen's Association, P.O. Box 2499, Montgomery, AL 36102-2499.	Alabama Cattlemen's Association, P.O. Box 2499, Montgomery, AL 36102-2499.
Arizona Beef Council, 1401 N. 24th Street, Phoenix, AZ 85008.	Arizona Livestock Board, 1688 W. Adams Street, room 333, Phoenix AZ 85007.
Arkansas Beef Council, P.O. Box 31 (72203), 10720 Kanis Road, Little Rock, AR 72211.	Arkansas Revenue Div., Misc. Tax Section, P.O. Box 896, room 230, Little Rock, AR 72203.
California Beef Council, 551 Foster City Blvd., suite A, Foster City, CA 94404.	California Dept. of Food & Agr., Marketing Branch, 1220 N Street, room 210, Sacramento, CA 95814.
Colorado Beef Council, 6551 S. Revere Parkway, suite 120, Englewood, CO 80111.	Colorado Beef Council, 6551 S. Revere Parkway, suite 120, Englewood, CO 80111.
Delaware Beef Advisory Board, 4601 S. DuPont Hwy., Dover, DE 19901.	Delaware Beef Advisory Board, c/o Delaware Dept. of Ag., 2320 S. DuPont Hwy., Dover, DE 19901.
Florida Beef Council, P.O. Box 1929 (327423-1929), 1818 North Bermuda, Kissimmee, FL 32741.	Florida Beef Council, P.O. Box 1929 (32742-1929) North, 1818 North Bermuda, Kissimmee, FL 32741.
Georgia Beef Board, 100 Cattlemen's Drive (31210), P.O. Box 11347, Macon, GA 31212.	Georgia Beef Board, 100 Cattlemen's Drive (31210), P.O. Box 11347, Macon, GA 31212.
Hawaii Beef Industry Council, Seven Water Front Plaza, suite 400, 500 Ala Moana Blvd., Honolulu, HI 96813.	Hawaii Beef Industry Council, Seven Water Front Plaza, suite 400, 500 Ala Moana Blvd., Honolulu, HI 96813.
Idaho Beef Council, 2120 Airport Way, Boise, ID 83705.	State of Idaho Brand Dept., 2118 Airport Way, Boise, ID 83705.
Illinois Beef Association, 993 Clocktower Drive, Springfield, IL 62704.	Illinois Beef Association, 993 Clocktower Drive, Springfield, IL 62704.
Indiana Beef Cattle Association, 8770 Guion Road, suite A, Indianapolis, IN 46268-3013.	Indiana Beef Cattle Association, 8770 Guion Road, suite A, Indianapolis, IN 46268-3013.
Iowa Beef Council, P.O. Box 451, 123 Airport Road, Ames, IA 50010.	Iowa Beef Council, P.O. Box 451, 123 Airport Road, Ames, IA 50010.
Kansas Beef Council, 6031 S.W. 37th, Topeka, KS 66614.	Kansas Beef Council, 6031 S.W. 37th, Topeka, KS 66614.
Kentucky Beef Cattle Association, 733 Red Mile Road, Lexington, KY 40504.	Kentucky Beef Cattle Association, 733 Red Mile Road, Lexington, KY 40504.

ADDRESSES OF THE QUALIFIED STATE BEEF COUNCILS—Continued

Inquiries and general business	Remit assessments and accompanying reports to—
Louisiana Beef Industry Council, 4921 I-10 Frontage Road, Port Allen, LA 70767.	Louisiana Beef Industry Council, 4921 I-10 Frontage Road, Port Allen, LA 70767.
Maine Beef Industry Council, Maine Dept. of Agriculture, Deering Bldg., State House Station 28, Augusta, ME 04333.	Main Beef Industry Council, Route 2, Box 185, Strong, ME 04983.
Maryland Beef Industry Council, University of Maryland, Animal Science Center, College Park, MD 20742.	Maryland Beef Industry Council, P.O. Box 259, Sykesville, MD 21784.
Michigan Beef Industry Commission, 2145 University Park Drive, suite 300, Okemos, MI 48864.	Michigan Beef Industry Commission, 2145 University Park Drive, suite 300, Okemos, MI 48864.
Minnesota Beef Council, 2950 Metro Drive, suite 211, Minneapolis, MN 55420.	Minnesota Beef Council, 2950 Metro Drive, suite 211, Minneapolis, MN 55420.
Mississippi Cattle Industry Board, 121 N. Jefferson, Jackson, MS 39201.	Mississippi Cattle Industry Board, 121 N. Jefferson, Jackson, MS 39201.
Missouri Beef Industry Council, 2015 Missouri Blvd., Jefferson City, MO 65109.	Missouri Beef Industry Council, c/o Missouri Dept. of Agr., P.O. Box 630, Jefferson City, MO 65102.
Montana Beef Council, P.O. Box 5386, Helena, MT 59604-5386.	Montana Dept. of Lvstk., Capitol Station, Helena, MT 59620.
Nebraska Beef Industry Development Board, Rovar Park, Bldg. 1, Unit 1, East Highway 30, Box 2408, Kearney, NE 68847-2408.	Nebraska Beef Industry Development Board, Rovar Park, Bldg. 1, Unit 1, East Highway 30, Box 2408, Kearney, NE 68847-2408.
Nevada Beef Council, P.O. Box 11100 (89510), 350 Capitol Hill Road, Reno, NV 89502.	Nevada Beef Council, P.O. Box 11100 (89510), 350 Capitol Hill Road, Reno, NV 89502.
New Mexico Beef Council, 150 Louisiana N.E., suite C, P.O. Box 8430, Albuquerque, NM 87108.	New Mexico Beef Council, 150 Louisiana N.E., suite C, P.O. Box 8430, Albuquerque, NM 87108.
New York Beef Industry Council, R.D. #1, Box 85, Rome, NY 13440.	New York Beef Industry Council, R.D. #1, Box 85, Rome, NY 13440.
North Carolina Cattlemen's Association, 221 West Martin Street, Raleigh, NC 27611.	North Carolina Dept. of Agr., P.O. Box 27647, Raleigh, NC 27611.
North Dakota Beef Commission, 4023 N. State Street, Bismarck, ND 58501.	North Dakota Beef Commission, 4023 N. State Street, Bismarck, ND 58501.
Ohio Beef Council, P.O. Box 845, 283 S. State Street, suite 103, Westerville, OH 43081.	Ohio Beef Council, P.O. Box 845, 283 S. State Street, suite 103, Westerville, OH 43081.
Oklahoma Beef Commission, 312 NE 28th, room 108, Oklahoma, OK 73105.	Oklahoma Beef Commission, 312 NE 28th, room 108, Oklahoma City, OK 73105.
Oregon Beef Council, Lloyd Center Hotel, 1000 N.E. Multnomah Street, Portland, OR 97232.	Oregon Dept. of Agr., Lvstk. Div., 635 Capitol Street, NE, Salem, OR 97310.
Pennsylvania Beef Council, 4714 Orchard Street, Harrisburg, PA 17109.	Pennsylvania Beef Council, 4714 Orchard Street, Harrisburg, PA 17109.
South Carolina Cattle and Beef Board, P.O. Box 11280, Columbia, SC 29211.	South Carolina Cattle and Beef Board, c/o S.C. Dept. of Agr., P.O. Box 11280, Columbia, SC 29211.
South Dakota Beef Industry Council, 106 W. Capitol, suite #7, P.O. Box 1037, Pierre, SD 57501.	South Dakota Beef Industry Council, 106 W. Capitol, suite #7, P.O. Box 1037, Pierre, SD 57501.
Tennessee Beef Industry Council, 109 Holiday Court, suite C-6, Franklin, TN 37064.	Tennessee Beef Industry Council, c/o Sovran Bank, P.O. Box 220, Franklin, TN 37064.
Texas Beef Industry Council, 8310 Capital of Texas Hwy. N, suite 440, Austin, TX 78731.	Texas Beef Industry Council, P.O. Box 140766, Austin, TX 78714-0766.
Utah Beef Council, 150 S. 6th E. suite 10B, Salt Lake City, UT 84102.	Utah Dept. of Agr., 350 N. Redwood Road, Salt Lake City, UT 84116.
Vermont Beef Industry Council, P.O. Box 7503, Monshire Museum, suite 200, Norwich, VT 05055.	Vermont Beef Industry Council, P.O. Box 7503, Monshire Museum, suite 200, Norwich, VT 05055.
Virginia Cattle Industry Board, P.O. Box 176, U.S. Rt. 220, Daleville, VA 24083.	Virginia Cattle Industry Board, P.O. Box 176, U.S. Rt. 220, Daleville, VA 24083.
Washington State Beef Commission, suite 105, Denny Bldg., 2200 Sixth Ave., Seattle, WA 98121.	Washington State Beef Commission, Suite 105, Denny Bldg., 2200 Sixth Ave., Seattle, WA 98121.
West Virginia Beef Industry Council, Chancery Street, Buckhannon, WV 26201.	West Virginia Beef Industry Council, Chancery Street, Buckhannon, WV 26201.
Wisconsin Beef Council, 802 W. Broadway, #211, Madison, WI 53713.	Wisconsin Beef Council, P.O. Box 770, Madison, WI 53701-0770.
Wyoming Beef Council, P.O. Box 1243 (82003), 113 E. 20th Street, Cheyenne, WY 82001.	Wyoming Lvstk. Board, P.O. Box 206, Cheyenne, WY 82201.

Authority: 7 U.S.C. 2901 et. seq.

* * * * *

Done at Washington, DC, on October 10, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-24248 Filed 10-12-90; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Rocky Mountain Region: Colorado, Kansas, Nebraska, South Dakota, Eastern Wyoming, Legal Notice of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Rocky Mountain Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR part 217 shall begin April 5, 1990.

FOR FURTHER INFORMATION CONTACT: John P. Halligan, Regional Appeals and Litigation Coordinator, Rocky Mountain Region, 11177 W. 8th Ave., Box 25127, Lakewood, Colorado 80225, Area Code 303-236-9430.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Rocky Mountain Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspapers which are listed by Forest Service unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. As provided in 36 CFR 217.5(d), the timeframe for appeal shall be based on the date of publication of a notice of decision in the primary newspaper.

Decisions by the Regional Forester

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published in the Rocky Mountain News, published daily in Denver, Denver County, Colorado.

Notice of decisions affecting National Forest System lands in the State of South Dakota will also be published in The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

For those decisions affecting a particular unit, the newspaper specific to that unit will be used.

Arapaho and Roosevelt National Forests, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Redfeather and Estes-Poudre Districts: Coloradoan, published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: Greeley Tribune, published daily in Greeley, Weld County, Colorado.

Boulder District: Boulder Daily Camera, published daily in Boulder, Boulder County, Colorado.

Clear Creek District: Clear Creek Courant, published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: Sulphur Sky High News, published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahgre and Gunnison National Forests, Colorado

Forest Supervisor Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

District Ranger Decisions

Collbran and Grand Junction Districts: Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

Paonia District: North Fork Times, published weekly in Paonia, Delta County, Colorado.

Cebolla and Taylor River Districts: Gunnison Country Times, published weekly in Gunnison, Gunnison County, Colorado.

Norwood District: Telluride Times-Journal, published weekly in Telluride, San Miguel County, Colorado.

Ouray District: Montrose Daily Press, published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests

Forest Supervisor Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

District Ranger Decisions

San Carlos District: Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

Comanche District: Plainsman Herald, published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the La Junta Tribune Democrat, published daily in La Junta, Otero County, Colorado, and in the Ark Valley Journal, published weekly in La Junta, Otero County, Colorado.

Cimarron District: Tri-State News, published weekly in Elkhart, Morton County, Kansas.

South Platte District: Daily News Press, published daily in Castle Rock, Douglas County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the High Timber Times, published weekly in Conifer, Jefferson County, Colorado, and in the Fairplay Flume, published weekly in Fairplay, Park County, Colorado.

Leadville District: Herald Democrat, published weekly in Leadville, Lake County, Colorado.

Salida District: The Mountain Mail, published daily in Salida, Chaffee County, Colorado.

South Park District: Fairplay Flume, published weekly in Fairplay, Park County, Colorado.

Pikes Peak District: Gazette Telegraph, published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Forest Supervisor Decisions

Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

District Ranger Decision

Bears Ears District: Northwest Colorado Daily Press, published daily in Craig, Moffat County, Colorado. In addition, notice of decisions by the District Ranger will also be published in the Hayden Valley Press, published weekly in Hayden, Routt County, Colorado, and in the Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Yampa and Hahns Peak Districts: Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Middle Park District: Middle Park Times, published weekly in Kremmling, Grand County, Colorado.

North Park District: Jackson County Star, published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Forest Supervisor Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Post, published Monday through Friday in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen District: Aspen Times, published weekly in Aspen, Pitkin County, Colorado.

Blanco District: Meeker Herald, published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: Summit Sentinel, published twice weekly in Frisco, Summit County, Colorado.

Eagle District: Eagle Valley Enterprise, published weekly in Eagle, Eagle County, Colorado.

Holy Cross District: Vail Trail, published weekly in Minturn, Eagle County, Colorado.

Rifle District: Rifle Telegram, published weekly in Rifle, Garfield County, Colorado.

Sopris District: Valley Journal, published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bessey District: The North Platte Telegraph, published daily in North Platte, Lincoln County, Nebraska.

Samuel R. McKelvie National Forest: The Valentine Newspaper, published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts: The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Pine Ridge District: The Chadron Record, published weekly in Chadron, Dawes County, Nebraska.

Black Hills National Forest, South Dakota and eastern Wyoming

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Forest Supervisor Decisions

Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will be used (see listing below).

District Ranger Decisions

Tongue District: Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming.

Buffalo District: Buffalo Bulletin, published weekly in Buffalo, Johnson County, Wyoming.

Medicine Wheel District: Lovell Chronicle, published weekly in Lovell, Big Horn County, Wyoming.

Tensleep District: Northern Wyoming Daily News, published daily in Worland, Washakie County, Wyoming.

Paintrock District: Greybull Standard, published weekly in Greybull, Big Horn County, Wyoming.

Medicine Bow National Forest, Wyoming

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

Douglas District: Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Brush Creek and Hayden Districts: Rawlins Daily Times, published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Forest Supervisor Decisions

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork District: Powell Tribune, published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

Wind River District: The Dubois Frontier, published weekly in Dubois, Teton County, Wyoming.

Lander District: Wyoming State Journal, published twice weekly in Lander, Fremont County, Wyoming.

Dated: October 5, 1990.

Eleanor S. Towns,

Acting Regional Forester.

[FR Doc. 90-24171 Filed 10-12-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Adminstration.

Title: Report of Requests for Restrictive Trade Practice or Boycott—Single or Multiple Transactions.

Form Number: BXA-621P and BXA-6051P; OMB—0694-0012

Type of Request: Extention of the expiration date of a currently approved collection.

Burden: 2,000 respondents; 34,698 reporting/recordkeeping hours. Average hours per respondent is 1 hr. for BXA-621P and 30 hrs. for BXA-6051P.

Needs and Uses: Used to carefully and accurately monitor requests for participation in foreign boycotts against countries friendly to the U.S. which are received by U.S. persons. Used to note trends in such boycott activity and to assist in carrying out U.S. policy of opposition to such boycotts. Submitted mainly by individuals or organizations that do business in the Middle East.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: October 9, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-24190 Filed 10-12-90; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Foreign Availability Procedures and Criteria.

Form Number: Export Administration Regulations, § 791.5; OMB—0694-0004.

Type of Request: Extention of the expiration date of a currently approved collection.

Burden: 47 respondents; 4,935 reporting/recordkeeping hours. Average time per respondent is 105 hours

Needs and Uses: This information is collected in order to respond to requests by Congress and industry to make foreign availability determinations. Exporters are urged to submit data regarding the foreign product's technical characteristics and the availability of these products in foreign markets to determine if similar U.S. products should not be subject to export restrictions.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: October 9, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-24191 Filed 10-12-90; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of the Census

Census Advisory Committee (CAC) of the American Economic Association (AEA), et al.; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meeting of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and CAC on Population Statistics. The joint meeting will convene on October 18, 1990 at the Old Colony Inn, 625 First Street, Alexandria, Virginia 22313.

The CAC of the AEA is composed of nine members appointed by the president of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Census Bureau's programs; and advises on the role of analysis within the Census Bureau.

The CAC of the AMA is composed of nine members appointed by the president of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the president of the ASA. It advises the Director, Bureau of the Census, on the Census Bureau's programs as a whole and on their various parts; considers priority issues in the planning of censuses and surveys; examines guiding principles, advises on questions of policy and procedures; and responds to Census Bureau requests for opinion concerning its operations.

The CAC on Populations Statistics is composed of four members appointed by the Secretary of Commerce and five members appointed by the president of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the October 18 combined meeting that will begin at 8:45 a.m. and end at 10:15 a.m. is: (1) Introductory remarks by the Director, Bureau of the Census; (2) economic and agriculture censuses update; (3) improving the quality of economic statistics (Boskin Report); (4) 1990 census update; and (5) the Census Bureau's international programs.

The agendas for the four committees in their separate and jointly held meeting that will begin at 10:30 a.m. and adjourn at 5:15 p.m. on October 18 are as follows:

The CAC of the AEA: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of the AEA, (2) annual report on the work of the Center for Economic Studies, (3) report on the Recordkeeping Practices Survey (joint with the CAC of the AMA), (4) coping with budget cuts: the current industrial report experience (joint with the CAC of the AMA), and (5) report on the economic censuses advertising and response survey/response improvement strategy for the 1992 Economic Censuses (joint with the CAC of the AMA).

The CAC of the AMA: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of the AMA, (2) Topologically Integrated Geographic Encoding and Referencing System (TIGER) (joint with the CAC of the ASA and on Population Statistics), (3) report on the Recordkeeping Practices Survey (joint with the CAC of the AEA), (4) coping with budget cuts: the current industrial report experience (joint with the CAC of the AEA), and (5) report on the economic censuses advertising and response survey/response improvement strategy for the 1992 Economic Censuses (joint with the CAC of the AEA).

The CAC of the ASA: (1) Census Bureau responses to recommendations and activities of special interest to the CAC of the ASA, (2) Topologically Integrated Geographic Encoding and Referencing System (TIGER) (joint with the CAC of the AMA and on Population Statistics), (3) report on findings/progress of enthnographic studies (joint with the CAC on Population Statistics), (4) preliminary census counts, postcensal estimates, and demographic analysis (joint with the CAC on Population Statistics), and (5) report on adjustment and the Post-Enumeration Survey (joint with the CAC on Population Statistics).

The CAC on Population Statistics: (1) Census Bureau responses to recommendations and activities of special interest, (2) Topologically Integrated Geographic Encoding and Referencing System (TIGER) (joint with the CAC of the AMA and ASA), (3) report on findings/progress of ethnographic studies (joint with the CAC of the ASA), (4) preliminary census counts, postcensal estimates, and demographic analysis (joint with the CAC of the ASA), and (5) report on adjustment and the Post-Enumeration Survey (joint with the CAC of the ASA).

The agendas for the October 19 meetings that will begin at 8:45 a.m. and adjourn at 1 p.m. are:

The CAC of the AEA: (1) Expansion of services (joint with the CAC of the AMA), (2) survey of minority-owned business enterprises (joint with the CAC of the AMA), (3) development and discussion of recommendations, and (4) closing session including (a) Continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC of the AMA: (1) Expansion of services (joint with the CAC of the AEA), (2) survey of minority-owned business enterprises (joint with the CAC of the AEA), (3) development and discussion of recommendations, and (4) closing session including (a) Continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC of the ASA: (1) Directions and plans for the statistical standards and methodology areas (joint with the CAC on Population Statistics), (2) further information and detail on the redesign of demographic surveys, (3) development and discussion of recommendations, and (4) closing session including (a) Continued committee and staff discussions (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC on Population Statistics: (1) directions and plans for the statistical standards and methodology area (joint with the CAC of the ASA), (2) 1990 census subject and supplementary reports, (3) development and discussion of recommendations, and (4) closing session including (a) Continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

All meetings are open to the public, and a brief period is set aside on October 19 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer at least 3 days before the meeting.

Persons wishing additional information regarding these meetings or who wish to submit written statements may contact the Committee Liaison Officer, Mrs. Phyllis Van Tassel, Room 2423, Federal Building 3, Suitland, Maryland. (Mailing address: Washington DC 20233). Telephone: (301) 763–5410.

Dated: October 11, 1990.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 90–24360 Filed 10–12–90; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–570–601]

Preliminary Results of Antidumping Duty Administrative Reviews: Tapered Roller Bearings and Parts Thereof From the People's Republic of China

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In response to requests by the Timken Company, the Department of Commerce is conducting administrative reviews of the antidumping duty order on tapered roller bearings and parts thereof (TRBs) from the People's Republic of China (PRC). The reviews cover Premier Bearing and Equipment, a Hong Kong trading company and exporter of this merchandise to the United States. The first review covers the period from February 6, 1987, to May 31, 1988. The second review covers the period from June 1, 1988, to May 31, 1989. Using best information available, we preliminarily determine the dumping margin to be 0.97% for both reviews. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 15, 1990.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–4103 or (202) 377–3464, respectively.

SUPPLEMENTARY INFORMATION:

Background

The original investigation of TRBs from the PRC included two companies, the China National Machinery and Equipment Import and Export Corporation (CMEC), and Premier Bearing and Equipment (Premier). CMEC is a producer and exporter of the subject merchandise in the PRC and is unrelated to Premier. Premier is a Hong Kong trading company.

On May 27, 1987, the Department published in the **Federal Register** (52 FR 19748) the Final Determination of Sales at Less Than Fair Value on TRBs from the PRC. No margins were found on exports by CMEC. Therefore, CMEC was excluded from the determination. An Antidumping Duty Order covering Premier only was published on June 15, 1987 (52 FR 22637). Pursuant to an order by the Court of International Trade, Commerce amended the Final Determination of Sales at Less Than Fair Value and published a new order on February 26, 1990 (55 FR 6669). This new order included CMEC as well as Premier.

Administrative reviews were requested by the petitioner, Timken Company, on June 30, 1988 (1987/88 review), and June 30, 1989 (1988/89 review), in accordancee with section 353.53(a) of the Commerce Regulations (19 CFR 353.53a(a) (1988)). We published a notice of initiation for the 1987/88 review on July 28, 1988 (53 FR 28423), and for the 1988/89 review on July 25, 1989 (54 FR 30915). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act"). Since the order for CMEC was not published until February 26, 1990, CMEC has not been covered in these two administrative reviews.

Scope of review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et. seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number.

Imports covered by these reviews are shipments of tapered roller bearings and parts thereof from the PRC. During the review period such merchandise was classifiable under items 680.30, 680.39, 681.10 and 692.32 of the Tariff Schedules of the United States (TSUS). The merchandise is currently classifiable under HTS item number 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.80. The HTS and TSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover one exporter, Premier Bearing and Equipment, to the United States of tapered roller bearings and parts thereof. The first review covers the period February 6, 1987 through May 31, 1988. The second review covers the period June 1, 1988 through May 31, 1989.

Best Information Available

On August 16, 1988, the Department presented respondent with a questionnaire for the 1987/88 administrative review. On October 17, 1988, the Department received a response to this questionnaire. After reviewing the information contained in this response, the Department presented respondent with a deficiency letter on October 27, 1989. This letter included directions on model matching. The response to this letter was received on November 13, 1989. On October 10, 1989, the Department presented respondent with a questionnaire for the 1988/89 administrative reivew. The Department received a response to this questionnaire on December 19, 1989.

Since the respondent was not able to follow completely the model matching directions contained in the October 27 letter in the 1987/88 review, and no model matching directions had been provided in the questionnaire for the 1988/89 review, the Department presented a letter to respondent for each of the two administrative reviews on July 11, 1990. These letters requested clarification of certain parts of respondent's questionnaire responses and provided directions on model matching. These deficiency letters were supplemented by another Department letter presented to respondent on August 10, 1990, which provided additional instructions for model matching.

The new instructions requested that respondent match every U.S. product with the closest third country product on the basis of five matching characteristics used in past TRB cases. These characteristics included: outside diameter; inside diameter; width; dynamic load rating; and Y2 factor; all of which were explained in the August 10, 1990 letter. Respondent was required to separately list the measurements for each of these five characteristics for each U.S. and third country bearing. Respondent was then required to match every U.S. bearing with a third country bearing using the greatest single deviation method, which was fully explained in the letter. Respondent was also notified during the week of July 16, 1990, that it was to use sales to Turkey and Singapore in the first review and

sales to Taiwan in the second review as the basis for foreign market value.

On August 22, 1990, the Department received the responses to the July 11, 1990 and August 10, 1990 deficiency letters. These responses, however, did not include the list of the five matching characteristics for every U.S. and appropriate third country bearing. Furthermore, no information was provided regarding the acquisition cost of the bearings, which we indicated in our July 11, 1990 letter might be used as the basis for difference in merchandise adjustments. Therefore, it is impossible for the Department to use respondent's information for purposes of determining the most similar third country bearing with which to match every U.S. bearing and of applying a difference in merchandise adjustment. Since the information on the record is inadequate, we are using best information available (BIA) for purposes of these preliminary results.

In deciding what to use as best information available, 19 CFR 353.37(b) of the Department's regulations provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is best information available. When a company has cooperated with the Department's request for information but fails to provide the information requested in a timely manner or in the form required, the Department may assign the affected company the highest margin assigned that company in any previous review. Since these preliminary results are for the first two administrative reviews, we are using the margin rate (0.97%) calculated in the final determination of sales at less than fair value (52 FR 19748 (May 27, 1987)). We believe that this rate is the most appropriate basis for BIA because the rate from the final determination was calculated from verified information in the investigation and because respondent has attempted to cooperate with the Department.

Currency Conversion

In the original investigation we used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Tariff Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine the margin to be:

Manufacturer/ Exporter	Time period	Margin (percent)
Premier	2/06/87-05/31/89	0.97

The Department will issue appraisement instructions concerning Premier directly to the Customs Service upon completing of these administrative reviews.

Furthermore, the following deposit requirements will be effective upon publication of our final results of these administrative reviews for all shipments of Chinese TRBs entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the rate published in the final determination of sales at less than fair value, as amended, for these firms (55 FR 6669, Feb. 26, 1990); (2) the cash deposit rate for Premier will be that established in the final results of these administrative reviews; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in these administrative reviews or in the original investigation, whose first shipments occurred after May 31, 1989 and who is unrelated to the reviewed firm or any firm which was subject to the original investigation will be the same as the rate established for Premier. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with § 353.38 of the Department's regulations, case briefs or any other written comments must be submitted in at least ten copies to the Assistant Secretary for Import Administration no later than 30 days after the publication of these determinations, and rebuttal briefs no later than 37 days after publication of these determinations. In accordance with section 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Such hearing will be held 44 days after the publication of these determinations at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with section 353.38(b) of the Department's regulations, an interested party may make an affirmative oral presentation only on arguments included in its briefs.

These administrative reviews and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5) (1989).

Dated: October 9, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-24254 Filed 10-12-90; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 90-167. *Applicant:* President and Fellows of Harvard College, Harvard Medical School, Richardson Building room 411, 25 Shattuck Street, Boston, MA 02115. *Instrument:* Stopped Flow Spectrophotometer, Model SF.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of cells and vesicles, primarily human red cells, but also cells and vesicles prepared and purified from rat kidneys. The properties of the cells and vesicles investigated are those concerned with the transport of materials, primarily water, sodium, potassium and chloride

ions and sugar across the boundary membrane of the cell or vesicle. *Application Received by Commissioner of Customs* August 23, 1990.

Docket Number 90–168. *Applicant:* U.S. Environmental Protection Agency, Sabine Island, Gulf Breeze, FL 32561. *Instrument:* Electron Microscope, Model EM902/PC. *Manufacturer:* Carl Zeiss, Inc., West Germany. *Intended Use:* The instrument will be used to study biological materials including tissue samples from freshwater and marine organisms and preparations of microbial agents including viruses, bacteria, protozoans and fungi. Experiments will consist of: (1) Assessment of risk of MPCAs (natural and genetically altered) on non-target organisms and the assessment of their fate and survival in the aquatic environment, (2) bioassay exposures and tissue evaluations to determine effects of toxics and pesticides on marine organisms, (3) development of aquatic animals as carcinogen assay models and indicator species of carcinogens in the environment, (4) the study and diagnosis of disease causing organisms, and (5) studies to determine the effects of various xenobiotics and environmental stresses on host/parasite relationships. *Application Received by Commissioner of Customs:* August 23, 1990.

Docket Number: 90–169. *Applicant:* University of Maryland at Baltimore, Division of Procurement and Supply, 737 West Lombard Street, Baltimore, MD 21201–1401. *Instrument:* Electron Microscope, Model H–7000. *Manufacturer:* Hitachi, Japan. *Intended Use:* The instrument will be used for studies of organic brain tissues used in a variety of experiments aimed at identifying the morphological sequelae of neurotoxicity in the mammalian central nervous system in experimental animals. Neuroanatomical studies of schizophrenic and control brain tissue will be conducted. *Application Received by Commissioner of Customs:* August 27, 1990.

Docket Number: 90–170. *Applicant:* The Pennsylvania State University, 503 Dieke Bldg, University Park, PA 16802. *Instrument:* Radiation Detector, Model AB–5 and Accessories. *Manufacturer:* Pylon Electronic Development Co., Canada. *Intended Use:* The instrument will be used for the study of the distribution and abundance of radon in soil gas and the distribution and abundance of radium by use of radon analysis. In addition, the instrument will be used for educational purposes in the course Geosc 600/601, Thesis Research.

Docket Number: 90–171. *Applicant:* The University of Tennessee, Department of Anatomy and Neurobiology, 875 Monroe Avenue, Room 102, Memphis, TN 38163. *Instrument:* Electron Microscope, Model JEM–2000 EXII/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for experiments that include axonal tracing studies to determine the synaptic connections between neurons in various regions of the brain, intracellular staining studies to determine patterns of synaptic connections among neurons within a brain region and immunocytochemical studies of the localization of proteins and other substances within neurons of normal subjects and those with experimental or natural nervous system disorders. In addition, the instrument will be used for educational purposes in the course Anatomy and Neurobiology 824, Techniques in Neurobiology. *Application Received by Commissioner of Customs:* August 30, 1990.

Docket Number: 90–172. *Applicant:* University of California, San Diego, CA 92093. *Instrument:* Rotating Anode X-ray Generator Model FR–C. *Manufacturer:* Rigaku Corporation, Japan. *Intended Use:* The instrument will be used in a high speed data collection system for protein crystallography. The system will collect date to find the three-dimensional structure of proteins or enzymes using X-ray diffraction methods. *Application Received by Commissioner of Customs:* September 4, 1990.

Docket Number: 90–173. *Applicant:* U.S. Department of Commerce, NOAA, National Marine Fisheries Service, Northeast Fisheries Center, Woods Hole, MA 02543. *Instrument:* Water Temperature Sensor. *Manufacturer:* Scanmar A.S., Norway. *Intended Use:* The instrument is intended to be used to monitor trawl gear. Experiments will be conducted evaluating gear performance such as bottom type, currents and changes in gear configuration during vessel fishing power. Varying scopes and towing speeds and turning maneuvers will be utilized. *Application Received by Commissioner of Customs:* September 4, 1990.

Docket Number: 90–174. *Applicant:* University of Florida, Department of Chemistry, Gainesville, FL 32611–2046. *Instrument:* Mass Spectrometer, Model Magnetic Sector SIMS. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used in determinations of elemental compositions and distributions in surfaces and in studies of organic molecules adsorbed to surfaces. A wide variety of substances will be studied, including gallium arsenide, silicon, metals, polymers adsorbed to metals, plant and animal tissues. As an integral part of an undergraduate and graduate curriculum, the instrument provides example spectra for courses, a modern instrument for training of graduate students specializing in mass spectrometry, and training in the capabilities of modern mass spectrometry for students specializing in synthesis and other chemical areas. *Application Received by Commissioner of Customs:* September 9, 1990.

Docket Number: 90–176. *Applicant:* University of Tennessee-Memphis, 711 Jefferson Avenue, Ste 523, Memphis, TN 38163. *Instrument:* Automated Rapid Karyotyping for Chromosome Analysis, Model RK2. *Manufacturer:* Image Recognition Systems, Ltd., United Kingdom. *Intended Use:* The instrument will be used in experiments which related to the examination of several human disease conditions for chromosome abnormalities. These include diagnosis of genetic conditions such as Down's Syndrome. *Application Received by Commissioner of Customs:* September 7, 1990.

Docket Number: 90–177. *Applicant:* University of Medicine and Dentistry of New Jersey, 401 Haddon Avenue, Camden, NJ 08103. *Instrument:* Mass Spectrometer, SIRA Series-II. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used for measuring stable isotopes in body fluids, (urine, saliva and blood) as part of a research program to investigate protein and energy metabolism in AIDS patients. *Application Received by Commissioner of Customs:* September 10, 1990.

Docket Number: 90–178. Applicant: VA Medical Center, 4801 Linwood Boulevard, Kansas City, MO 64128. *Instrument:* Photomultiplier, Model PM–60. *Manufacturer:* Hi-Tech Ltd., United Kingdom. *Intended Use:* The instrument is an accessory to an existing stopped flow spectrophotometer which is used for the study of a group of enzymes of typical pyridine-nucleotide linked dehydrogenases, specifically focused on L-glutamate dehydrogenase from bovine liver and from Clostridium symbosium. *Application Received by Commissioner of Customs:* September 11, 1990.

Docket Number: 90–179. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, Urbana, IL 61801. *Instrument:* FTI Spectrometer System, Model DA 8.12. *Manufacturer:* Bomem, Canada. *Intended Use:* The instrument will be used in experiments to identify

those vibrational, electronic and magnetic excitations important to understand the special properties of the materials under study, e.g., the superconductivity of HTS's and the structure/property/impurity relationships in semiconductor heterostructures and in metallic or magnetic superlattices. In addition, the instrument will be used for educational purposes in the courses Physics 397 and Physics 497, Independent Study and Physics 499, Thesis Research. *Application Received by Commissioner of Customs:* September 11, 1990.

Docket Number: 90–180. *Applicant:* University of California, Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90024. *Instrument:* Mass Spectrometer, Model VG Sector 54–30. *Manufacturer:* VG Isotech, United Kingdom. *Intended Use:* The instrument will be used for the study of natural geologic whole rock and separated mineral samples via the established Rb–Sr, Sm–Nd, U–Pb and Lu–Hf systematics. The principal goals are constraining the origin of Island Arc magmas, magma chamber processes and the mechanism of formation and differentiation of the lower crust by measuring the isotopic ratios of the above characteristic trace elements. Of particular interest is the development of a (geologically) short time scale chronometer. *Application Received by Commissioner of Customs:* September 11, 1990.

Docket Number: 90–181. Applicant: University of North Dakota, Center for Aerospace Sciences, P.O. Box 8216, University Station, Grand Forks, ND 58202. *Instrument:* No_2 Analyzer and O_3 Ozone Monitor, Model LMH–3. *Manufacturer:* Scintrex Inc., Canada. *Intended Use:* The instrument will be used in conjunction with others to study the transport by cumulus clouds of pollutants such as NO, NO_2, CO, CO_3, SO_2 and particulate. Another objective is the study of the formation of acidic species in cloud droplets. *Application Received by Commissioner of Customs:* September 11, 1990.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–24252 Filed 10–12–90; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 89–177R.

Applicant: William Paterson College of New Jersey, 300 Pompton Road, Wayne, NJ 07470.

Instrument: Mass Spectrometer, Model JMS–DX303HF.

Manufacturer: JEOL, Ltd., Japan. Original notice of this resubmitted application was published in the **Federal Register** of August 1, 1989.

Docket Number: 89–191R.

Applicant: Ohio State University, Department of Physiological Chemistry, 333 West 10th Avenue, Columbus, OH 43210.

Instrument: Stopped Flow Spectrofluorimeter, Model SF.17MV.

Manufacturer: Applied Photophysics, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of August 21, 1989.

Docket Number: 89–286R.

Applicant: University of Illinois, Urbana-Champaign, Purchasing Division, 506 So. Wright Street, Urbana, IL 61801.

Instrument: Mass Spectrometer System, Model VG 70–VSE.

Manufacturer: VG Analytical Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of January 11, 1990.

Docket Number: 89–291R.

Applicant: University of Kentucky, College of Pharmacy, Rose Street Pharmacy Bldg., Lexington, KY 40536–0082.

Instrument: Mass Spectrometer, Model CONCEPT 1H.

Manufacturer: Kratos Analytical, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of January 29, 1990.

Docket Number: 90–003R.

Applicant: University of Alaska-Fairbanks, Geophysical Institute, Fairbanks, AK 99775–0800.

Instrument: Fixed Frequency HF Radar System.

Manufacturer: Department of Physics, University of Adelaide, Australia. Original notice of this resubmitted application was published in the **Federal Register** of February 1, 1990.

Docket Number: 90–009R.

Applicant: University of Washington, Chemistry Department, Bagley Hall, BG–10, Seattle, WA 98195.

Instrument: Gas Chromatograph/Mass Spectrometer System, Model HV–1.

Manufacturer: Kratos Analytical, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of February 21, 1990.

Docket Number: 90–040R.

Applicant: Pennsylvania State University, Department of Meteorology, 503 Walker Building, University Park, PA 16802.

Instrument: Two (2) Copper Lasers, Model CU15–A.

Manufacturer: Oxford Lasers, Ltd., United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of March 22, 1990.

Docket Number: 90–155.

Applicant: University of Minnesota, Department of Veterinary Biology, 1988 Fitch Avenue, St. Paul, MN 55108.

Instrument: Electron Microscope, Model JEM 1200EX.

Manufacturer: JEOL, Ltd., Japan.

Intended Use: The instrument will be used to study the ultrastructural anatomy of brain cells, cells from the retina of the eye, muscle cells, calls from the digestive tract, cells from the pancreas and various cell types from the blood. Various experiments will be conducted but the major endpoint of each will be to examine the tissue to observe the localization of certain chemicals or structures inside cells, to observe pathological changes that have occurred within the cells or in the tissue of interest or to examine the normal relationships of cells within a particular tissue. In addition, the instrument will be used on a one-to-one basis for training veterinary and graduate students and interns.

Application Received by Commissioner of Customs: August 8, 1990.

Docket Number: 90–157.

Applicant: Department of Geology, 1112 Turlington Hall, Gainesville, FL 32611.

Instrument: Upgrade of Mass Spectrometer, PRISM Series II with 10-Sample Cracker.

Manufacturer: VG Instruments, Ltd., United Kingdom.

Intended Use: The instrument will be used for the study of past changes in the Earth's climate and modern water cycle. It will also be used to introduce students to isotopic techniques in paleoclimatology and hydrology in courses in paleoceanography and hydrology.

Application Received by Commissioner of Customs: August 9, 1990.

Docket Number: 90–158. *Applicant:* Louisiana State University, Coastal Ecology Institute, Baton Rouge, LA 70803. *Instrument:* MC 100 Microcell and Model 781 Oxygen Meter. *Manufacturer:* Strathkelvin Instruments, United Kingdom. *Intended Use:* The instrument will be used to measure the oxygen evolution of phtoplankton as a by-product of photosynthesis. The photosynthesis measurements will be made at several sites monthly throughout Fourleague Bay, Louisiana in an attempt to determine the manner in which shallow waters interact with wetland to produce regions of high productivity. *Application Received by Commissioner of Customs:* August 10, 1990.

Docket Number: 90–159. *Applicant:* The Research Foundation of State University New York, Eric County Medical Center, 462 Grider Street, Buffalo, NY 14215. *Instrument:* Electron Microscope, Model H–7000. *Manufacturer:* Hitachi, Japan. *Intended Use:* The instrument will be used for studies of the following:

(a) Pathogenesis of gonococcal infections during human infection with emphasis on studies of the antigenic nature of the oligosaccharides of the lipooligosaccharide component of the organism,

(b) *Haemophilus influenzae* in secretions obtained from the middle ear during otitis media and from the cerebrospinal fluid after meningitis,

(c) Intracellular calmodulin traffic using immunoelectron microscopic analysis,

(d) Glucose transport protein in the brain of aged rats,

(e) Meningeal tissue for receptor to the meningococcal C capsular polysaccharide using anti-idiotype antibodies,

(f) Ultrastructural changes in cardiac and pulmonary tissue after experimental stress.

Application received by Commissioner of Customs: August 14, 1990.

Docket Number: 90–160. *Applicant:* Solar Energy Research Institute, 1617 Cole Blvd., Golden CO 80401. *Instrument:* Ultrasonic Anemometer, Model DAT–310. *Manufacturer:* Kaijo-Denki, Co. Ltd., Japan. *Intended Use:* The instrument will be used to study the 3–D structure of small-scale atmospheric turbulence related to the operation, efficiency and fatigue life of wind turbine generators and their component parts. *Application received by Commissioner of Customs:* August 14, 1990.

Docket Number: 90–161. *Applicant:* Oregon State University, College of Oceanography, Oceanography Administration Building 104, Corvallis, OR 97331–5503. *Instrument:* Towed Underwater Vehicle, Model SEASOR. *Manufacturer:* Chelsa Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used in conjunction with existing conductivity-temperature depth sensors for the study of ocean circulation and hydrographic characteristics in the world's oceans. Primarily, measurements of the conductivity and temperature of seawater at depths of 0 to 300 meters will be made. Studies will concentrate on rapidly sampling the large-scale circulation and temperature-salinity structure of ocean areas. The information gained through use of the instrument will become part of the research projects of a number of M.Sc. and Ph.D candidates. *Application received by Commissioner of Customs:* August 14, 1990.

Docket Number: 90–162. *Applicant:* University of California, Department of Geological Sciences, Santa Barbara, CA 93106. *Instrument:* ICP Mass Spectrometer, Model, PlasmaQuad PQ2. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* The instrument will be used for the analysis of natural waters (lake, river and ocean) and sedimentary materials (rocks, shells, ocean bottom sediments, etc.) which are collected for research purposes only or are received from nationally archived research collections. Experiments are generally of the form in which a suite of sample from a series of water bodies or sequence of rocks is analyzed to determine the natural distribution of trace elemental concentrations. *Application received by Commissioner of Customs:* August 15, 1990.

Docket Number: 90–163. *Applicant:* Texas Tech University Health Sciences Center, 3601 4th Street, Lubbock, TX 79430. *Instrument:* Electron Microscope Accessories. *Manufacturer:* Nissei Sangyo, Japan. *Intended Use:* The instruments are accessories to an existing electron microscope in a facility that provides basic research in areas of medical research and material science research. This research will involve elucidation of locating trace elements in tissue and elemental components in geological samples and the causes of failure in glass. *Application Received by Commissioner of Customs:* August 16, 1990.

Docket Number: 90–164. *Applicant:* The Pennsylvania State University, Department of Physics, 104 Davey Lab, University Park, PA 16802. *Instrument:* High-Resolution Low Energy Electron Diffraction System. *Manufacturer:* Leybold Vacuum Products, West Germany. *Intended Use:* The instrument will be used for studies of the nature of surface defects on single crystals and their effect on the ordering of adsorbed layers. *Application Received by Commissioner of Customs:* August 12, 1990.

Docket Number: 90–165. *Applicant:* The Pennsylvania State University, Aerospace Engineering Department, 233 Hammond Building, University Park, PA 16802. *Instrument:* 12-Channel Anemometer with Accessories. *Manufacturer:* AA Lab Systems, Ltd., Israel. *Intended Use:* The instrument will be used for the study of unsteady convective heat transfer in aircraft propulsion units. Detailed experiments in a turbine rig will be conducted in order to obtain a better understanding of unsteady heat transfer. The instrument will also be used for educational purposes in the course Aerospace Propulsion, Theory of Turbines Linery. *Application Received by Commissioner of Customs:* August 21, 1990.

Docket Number: 90–166. *Applicant:* University of California, Irvine, Department of Mechanical Engineering, Irvine, CA 92717. *Instrument:* Electron Microscope, Model CM 201 with Accessories. *Manufacturer:* N V Philips Electronics, The Netherlands. *Intended Use:* The instrument will be used for studies of ceramic, metals, and composite materials. Several different phenomena will be investigated including: gelation in sol-gel systems, grain boundary structure and chemistry in ceramic materials, structural characterization and chemical analyses of interfacial reactions at metal/ceramic interfaces, development of dislocation structure during creep in metallic alloys, and the development of defects in ceramics after high temperature deformation. The experiments to be conducted will involve the preparation of TEM samples during various stages of processing or after appropriate exposure to mechanical deformation or high temperature environments. In addition, the instrument will be used for educational purposes in the courses: (1)

Introduction to Electron Microscopy, (2) Advanced Transmission Electron Microscopy Techniques, (3) Materials Characterization Laboratory and (4) M.S. and Ph.D. Research. *Application Received by Commissioner of Customs:* August 21, 1990.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-24253 Filed 10-12-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of the Florida/Alabama Habitat Advisory Panel on October 24, 1990, from 9 a.m. to 4 p.m. The meeting will be held at the Holiday Inn University Center, 316 West Tennessee Street, Tallahassee, FL. The panel will discuss propeller damage to seagrass beds, the Intracoastal Waterway maintenance dredging and associated sport disposal problems, the Florida Growth Management Act/Wetland Protections, the regulatory functions Standard Operating Procedures in Jacksonville District, and the Alabama Coastal Waters Initiative.

For more information contact Wayne F. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: October 9, 1990.

David S. Crestin,

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

[FR Doc. 90-24256 Filed 10-12-90; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Shrimp and Reef Advisory Panels (AP) on October 23, 1990, from 1 p.m. to 5 p.m. The meetings will be held at the New Orleans Airport Hilton & Conference Center, 901 Airline Highway, Kenner, LA. The following will be discussed;

The review of the Council's proposed amendment to the Reef Fish Fishery Management Plan (FMP) to modify the target date of January 1, 2000, implemented in 1990 for rebuilding the reef fish stocks in the Gulf of Mexico. The target date for rebuilding red snapper must be extended beyond the year 2000. Alternative rebuilding time periods will be evaluated and recommendations will be made for Council consideration. The Shrimp Advisory Panel will meet on October 24, 1990, from 8 a.m. to 12 p.m., to review draft Amendment #5 to the Shrimp Fishery Management Plan (FMP) that specifies a definition of overfishing for the Gulf shrimp fisheries and possible management actions to prevent overfishing.

The amendment would also set the cooperative seasonal closure of the Exclusive Economic Zone off Texas to conform with a recent change in the closure of state waters.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: October 9, 1990.

David S. Crestin,

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

[FR Doc. 90-24256 Filed 10-12-90; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council Public Meeting & Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold a public meeting on October 31 and November 1, 1990. The meeting will be held at the Holiday Inn, 45 Industrial Highway, Essington, PA; telephone # (215) 521-2400. The Council will begin meeting on October 31 and 8:30 a.m., and adjourn on November 1 at approximately 12 noon.

The Council will discuss Amendment #1 to the Summer Flounder Fishery Management Plan (FMP), Amendment #3 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan (FMP), the Overfishing Definition for the Billfish Fishery Management Plan (FMP), and other fishery management matters may be discussed as deemed necessary. The Council also may hold a closed session (not open to the public) to discuss personnel and/or national security matters.

Additionally, on October 31 at 7 p.m., there will be a public hearing on Amendment #3 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan (FMP), and also on October 31 at 8 p.m., there will be another public hearing on the Overfishing Definition for the Billfish Fishery Management Plan (FMP).

For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: October 9, 1990.

David S. Crestin,

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

[FR Doc. 90-24255 Filed 10-12-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 13, 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: On August 17 and 24, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 F.R. 33746 and 34726) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 F.R. 46540). After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the service at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a

substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1990:

Commodities

Bandage, Gauze, Compressed, Camouflaged
6510-00-200-3185

Cap, Disposable
8415-00-NSH-0052
(Requirements of the Naval Supply Center, Bremerton, WA)

Coveralls, Disposable
8415-00-NSH-0049
(Requirements of the Naval Supply Center, Bremerton, WA)

Hood, Disposable
8415-00-NSH-0051
(Requirements of the Naval Supply Center, Bremerton, WA)

Shoe Cover, Disposable
8415-00-NSH-0055
(Requirements of the Naval Supply Center, Bremerton, WA)

Sleeves, Disposable
8415-00-NSH-0050
(Requirements of the Naval Supply Center, Bremerton, WA)

Trousers, Camouflage
8415-01-102-6285
8415-01-102-6286
8415-01-102-6287
8415-01-102-6288
8415-01-102-6289
8415-01-102-6290
8415-01-102-6291
8415-01-102-6292
8415-01-102-6293
8415-01-102-6294
8415-01-102-6295
8415-01-102-6296
8415-01-102-6297
8415-01-102-6298
8415-01-102-6299

Service

Assembly of Kit, Hot Food/Hot Drink
(7360-01-310-5131)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-24147 Filed 10-12-90; 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 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 13, 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: 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 commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1990, which was published on November 3, 1989 (54 F.R. 46540):

Commodity

Bottle, Urine Specimen
6640-00-165-5778

Services

Janitorial/Custodial
A.A. Ribicoff Federal Building
450 Main Street
Hartford, Connecticut

Janitorial/Custodial
Army and Air Force Exchange Service
2727 LBJ Freeway
Dallas, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-24148 Filed 10-12-90; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange: Proposed Amendments Relating to the Two-Year U.S. Treasury Note Futures Contract and the Five-Year U.S. Treasury Note Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Cotton Exchange ("NYCE" or "Exchange") has submitted proposed amendments to the Two-Year U.S. Treasury Note futures contract and the Five-Year U.S. Treasury Note futures contract. For each of the two futures contracts, the proposed amendment would convert the current book-entry physical delivery system to a cash settlement system based on the results of the U.S. Treasury Department's auction held during the contract month. The Acting Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission"), in accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that these proposals are of major economic significance. On behalf of the Commission, the Acting Division Director is requesting comment on these proposals.

DATES: Comments must be received on or before November 14, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the amendments to the NYCE Two-Year U.S. Treasury Note futures contract and/or the amendments to the NYCE Five-Year U.S. Treasury Note futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581; telephone (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Exchange submitted proposed amendments for the two-year U.S. Treasury note futures contract and the five-year U.S. Treasury note futures contract that would:

(1) For both contracts, delete all rules relating to the current book-entry physical delivery system and replace

them with rules setting up a cash settlement system based upon the results obtained in the Treasury auction held during the calendar month in which the futures contract expires. The final cash settlement value shall be equal to 100 minus the stop-out yield as reported by the U.S. Treasury or its agent. The stop-out yield is the highest accepted by the Treasury in allocating the offering among competitive bidders at the Treasury auction.

(2) Increase the size of the trading unit for the two-year U.S. Treasury note futures contract to $500,000 from $200,000. Increase the size of the trading unit for the five-year U.S. Treasury note futures contract to $250,000 from $100,000.

(3) For each contract, change the pricing basis to an index based on the annual yield in basis points with a minimum allowable price fluctuation of ½ of 1 basis point (.005 of 1 percent of yield). The index shall be 100.00 minus the yield in basis points. This would replace the current pricing system based on a percentage of par and the minimum allowable price fluctuation of ¼ of 1/32 *i.e.*, 1/128) of 1 percent of par.

(4) For each contract, change the last trading day of expiring futures contracts to correspond to the day of the Treasury auction for the relevant Treasury note. Currently, the eighth last business day of the expiring contract month is the last trading day.

(5) For each contract, modify the provision for the spot month speculative position limit to reflect the size of the Treasury auction. Currently, the spot month speculative limit is 2,500 contracts effective two business days before the first delivery day. This existing limit would remain in effect throughout the expiring contract month under the proposal. However, effective on the business day following the announcement of the Treasury auction, the spot month speculative limit would be equal to the lesser of 2,500 contracts or 10 percent of the public offering amount announced by the Department of the Treasury.

In support of the proposals, the Exchange stated that:

> The Treasury issues debt on a regular basis so that the market will have a predictable schedule which should minimize the cost of issuing debt and maximize the capacity of the market to absorb such debt. Thus the dealers know what to expect, the amount of financing the Treasury needs to do, the maturity spectrum and when the issues will come to market. This information reduces the uncertainty when the Treasury comes to market.
>
> The Treasury auctions notes on a yield basis. Competitive bidders bid yields to two decimal points for specific amounts of the issue.
>
> The stop out yield is determined by the bids the Treasury receives and the amount it needs to borrow. The average yield of those receiving an allocation is used to determine the coupon of the new note. The Treasury sets the coupon to the nearest ⅛ of 1% necessary to make the average price 100 or less. Once the coupon is set, each bidder is charged a price such that the yield to maturity on the security is equal to the bid yield. * * *
>
> * * * [I]nformation [about the auction] is widely disseminated through wire and news services. The official auction results are reliable, acceptable, publicly available and timely.

The Exchange further noted that there are several reasons why these contracts will not be subject to manipulation. In particular, the Exchange stated that:

> There is a broad participation in the auction process and there are no restrictions on who can participate in the auction. Primary dealers, banks, insurance companies, pension funds and corporations, foreign central banks and institutions as well as individuals with small amounts of money participate in the auctions * * *.
>
> There are limits on the amount of securities that any one entity can purchase through an auction. Individuals who bid noncompetitively are limited to one million dollars. Competitive bidders cannot takedown more that 35% of the public offering * * *.
>
> Primary dealers are expected to participate meaningfully in the auctions * * *. A dealer is expected to submit bids in every auction. At a minimum, the bids should be a percentage of the total being sold that is comparable to the dealer's share of total customer transaction volume reported to the Federal Reserve. A dealer is not required to be awarded a particular amount of securities, but the minimum amount of bids a dealer is expected to submit should be in a realistic price range relative to current market conditions * * *.
>
> The Federal Reserve does monitor positions of the primary dealers. Primary dealers must show the Federal Reserve Bank of New York a breakdown of their trading by type * * *.
>
> The stop-out yield is determined at the margin since it is the last accepted yield. There are no guarantees that a submitted bid will be the last bid accepted. Knowledge of the distribution and sizes of the bids for the total auction is not sufficient to guarantee that a bid will be the last accepted bid. This cash settlement procedure is not based on an average, where an abnormally low yield bid for a small amount of the issue could affect the computed average.
>
> To effectively manipulate the settlement procedure, it is necessary to take down the whole auction amount to guarantee setting the stop-out yield and to benefit from the manipulation it is necessary to have a long futures position in excess of the offering amount. This long futures positions, must be some multiple of the cash position to make the risk reward ratio worthwhile * * *.

On behalf of the Commission, the Division is seeking comment on the proposed amendments. In particular, the Division is seeking comment on the suitability of the proposed cash settlement of the subject Treasury note futures contracts based on the results of the stop-out yield at the U.S. Treasury auction, and whether this settlement procedure would be susceptible to price distortion or price manipulation.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions of the Two-Year U.S. Treasury Note futures contract and the Five-Year U.S. Treasury Note futures contact can be obtained from the Office of Secretariat by mail at the above address, or by telephone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR 145 (1987)). Requests for copies of such materials should be made to FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such material to Jean A Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on October 9, 1990.

Paul M. Architzel,

Acting Director.

[FR Doc. 90–24175 Filed 10–12–90; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number:

Police Record Check; DD Form 369; OMB Control Number 0704–0007.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: .033 hours.

Responses per Respondent: 1.

Number of Respondents: 141,400.

Annual Burden Hours: 4,666.

Annual Responses: 141,400.

Needs and Uses: Per sections 504, 505, and 520(a), title 10, U.S.C., applicants for enlistment must be screened to identify any discreditable involvement with police or other legal officials. Form is sent to FBI as part of the entrance National Agency Check. Results are used to determine general enlistment eligibility and job skill placement.

Affected Public: State and/or local governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Office: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: October 9, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90–24196 Filed 10–12–90; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Meetings: DIA Advisory Board

AGENCY: Defense Intelligence Agency Advisory Board, Defense.

ACTION: Notice of cancellation of closed meeting.

SUMMARY: Notice is hereby given that the closed meeting of the DIA Advisory Board's DIA Modernization Panel scheduled for October 11, 1990, announced in the Federal Register on Tuesday, April 10, has been cancelled.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board Office, Washington, DC 20340–1328 (202/373–4930).

Dated: October 9, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–24195 Filed 10–12–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Privacy Act of 1974; New Record Systems

AGENCY: Department of the Army, DOD.

ACTION: Addition of Record Systems.

SUMMARY: The Department of the Army proposes to add two record systems to its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The system notices for the new systems are set forth below.

DATES: The proposed actions will be effective without further notice on November 14, 1990, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Ms. Alma Lopez, Office of Systems Management Branch (ASOP–MP) Ft. Huachuca, AZ 85613–5000.

SUPPLEMENTARY INFORMATION: The Department of the Army record system notices subject to the Privacy Act of 1974, as amended, have been published in the Federal Register as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
51 FR 23576, Jun. 30, 1986
51 FR 30900, Aug. 29, 1986
51 FR 40479, Nov. 7, 1986
51 FR 44361, Dec. 9, 1986
52 FR 11847, Apr. 13, 1987
52 FR 18798, May 19, 1987
52 FR 25905, Jul. 9, 1987
52 FR 32329, Aug. 27, 1987
52 FR 43932, Nov. 17, 1987
53 FR 12971, Apr. 20, 1988
53 FR 16575, May 10, 1988
53 FR 21509, Jun. 8, 1988
53 FR 28247, Jul. 27, 1988
53 FR 28249, Jul. 27, 1988
53 FR 28430, Jul. 28, 1988
53 FR 34576, Sep. 7, 1988
53 FR 49586, Dec. 8, 1988
53 FR 51580, Dec. 22, 1988
54 FR 10034, Mar. 9, 1989
54 FR 11790, Mar. 22, 1989
54 FR 14835, Apr. 13, 1989
54 FR 46965, Nov. 8, 1989
54 FR 50268, Dec. 5, 1989
55 FR 13935, Apr. 13, 1990
55 FR 21897, May 30, 1990 (Army Address Directory)

The new systems reports, as required by 5 U.S.C. 522a(r), of the Privacy Act was submitted on October 2, 1990, 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).

Dated: October 9, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0690–400CE

SYSTEM NAME:

Corps of Engineers Automated Legal System (CEALS) Training Information Program.

SYSTEM LOCATION:

Main data base is the Corps of Engineers Automated Legal System computer, Army Engineer Automation Support Activity, 2500 First Street NW, Washington, DC 20001–1022, with input and access locations at Corps of Engineers field operating offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Corps of Engineers legal services employees in the headquarters and field operating offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to training courses completed by employees of the Corps of Engineers legal services offices. The system will provide a variety of data, training courses, conference or seminar subjects, training sources, costs and attendee's views and comments. Data stored within the system will include, but not be limited to, employee's name, office, office telephone number, and job series; training vendor's name, training location, training subject matter; course title and number; tuition cost; training dates; course evaluation and course referral.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4101, et seq., Government Employees Training Act of 1958; and Executive Order 9397.

PURPOSE(S):

To provide an automated system that will allow the Corps of Engineers legal services office to identify worthwhile, relevant and cost effective training opportunities; to assist in budget preparation and execution; to plan training; and to assist in developing and tracking budgets.

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

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes/disks and printouts.

RETRIEVABILITY:

By individual's name, telephone number, office symbol, and job series; training vendor and location; training course title; subject area; tuition; referral and value.

SAFEGUARDS:

Access is restricted to authorized users in Corps of Engineers legal field operating offices. Computer records are maintained in a building protected by security guards. Printed records in field operating offices will be kept in locked offices.

RETENTION AND DISPOSAL.

Records will be retained for 5 years from the time they are entered into the data base, and then purged from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Chief Counsel, U.S. Army Corps of Engineers, ATTN: CECC–C, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief Counsel, U.S. Army Corps of Engineers, ATTN: CECC–C, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

CONTESTING RECORD PROCEDURE:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Corps of Engineers Legal Services employees who have completed training.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1105CE

SYSTEM NAME:

Recreational Use and Expenditure Survey on or Adjacent to Navigable Waters.

SYSTEM LOCATION:

Office of the Chief of Engineers, Headquarters, Department of the Army, 20 Massachusetts Avenue NW, Washington, DC 20314–1000 and the Engineer Division and District Offices. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary participants in recreational use and expenditure surveys on or adjacent to navigable waters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, address, telephone number, county, survey ID, recreation activities, quantities of and expenditures for durable goods such as boating, fishing, hunting, and camping equipment, and ancillary support facilities such as boat lifts; expenditures for nondurable goods such as food, lodging, fishing, boating, hunting services and other expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 460d, 33 U.S.C. 652 and 42 U.S.C. 1962.

PURPOSE(S):

To identify and evaluate recreation use and expenditures for impact assessment in environmental assessments, and environmental impact statements. Evaluations will be made for both existing and proposed projects.

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

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets and on magnetic tape or optical systems.

RETRIEVABILITY:

Records are retrieved by response number or by the participant's name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized persons having official need therefor. Records are housed in buildings protected by security guards or locked when not in use. Information in automated media is further protected by physical security devices: Access to or update of information in the system is protected through a system of passwords thereby preserving integrity of data.

RETENTION AND DISPOSAL:

Records are destroyed two years after termination of the study.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Chief of Engineers, Headquarters, Department of the Army, 20 Massachusetts Avenue NW., Washington, DC 20314–1000. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Office of the Chief of Engineers, Headquarters, Department of the Army, 20 Massachusetts Avenue NW., Washington, DC 20314–1000.

Individual must provide full name, present address and telephone number, response number, specifics concerning the type of survey, if known, and the request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should write to the Office of the Chief of Engineers, Headquarters, Department of the Army, 20 Massachusetts Avenue NW., Washington, DC 20314–1000.

Individual must provide full name, present address and telephone number, response number, specifics concerning the type of survey, if known, and the request must be signed.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCES CATEGORIES:

Information is obtained from the individual and Army records and/or reports.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 90–24197 Filed 10–12–90; 8:45 am]
BILLING CODE 3810–01–M

DELAWARE RIVER BASIN COMMISSION

Proposed Amendment of Project Review Filing Fee Schedule

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing in accordance with this notice to receive comments on proposed amendments to its schedule of project review filing fees for review of water resources projects.

DATES: The public hearing will be held on December 12, 1990 at 1:00 p.m.

ADDRESSES: The hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. Written comments should be submitted to Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION: On June 28, 1972, the Commission adopted a regulation requiring that a filing fee be paid to the Commission at the time of filing applications pursuant to Section 3.8 of the Delaware River Basin Compact. Staff time and other costs incurred by the Commission in reviewing water resources projects proposed by other public agencies, private entities and individuals had become substantial and it was deemed timely and in the public interest to initiate a program of allocating a portion of the project review costs to the applicant or project sponsor. On April 23, 1975, the Commission amended the filing fee regulation by increasing the level of filing fees in recognition of the fact that revenues obtained from the filing fees since 1972 amounted to considerably less than the cost of administering the Commission's project review program. Although fee levels were increased, government agencies continued to be exempt from such filing fees.

At this time, the Commission is proposing amendments to its schedule of project review filing fees to make the project review program more self-sustaining. Proposed revision would: require filing fees for project review pursuant to Section 3.8 and Article 10 of the Delaware River Basin Compact; no longer exempt government agencies from such filing fees; and establish a new fee schedule, increasing the minimum fee to $1,000 for any project requiring Commission action. In addition, each substantial project modification following Commission action would require an additional filing fee.

The subject of the hearing will be as follows:

Amendment of Project Review Filing Fee Schedule

The proposed amendment would read as follows:

1. A filing fee shall be paid to the Commission, according to the schedule herein, at the time of filing each application for project review, pursuant to Section 3.8 and Article 10 of the Delaware River Basin Compact.

2. The project review filing fee is the greater of (a) or (b) as follows:

(a) minimum fee: $1,000 for any project that requires Commission action;

(b) alternative fee:

(1) 1/10 of 1% of project cost to $10,000,000;

(2) 1/25 of 1% of remaining cost above $10,000,000 but not to exceed a maximum fee of $50,000 as to any one project.

3. The project cost shall include the estimated costs of design, supervision of construction, legal services, contract administration, land, materials, equipment, construction and fabrication.

4. Revenues received pursuant to this regulation shall go into the Commission's general fund and be subject to specific appropriation by the Commission.

5. Each substantial project revision or modification following Commission action requires an additional filing fee.

6. These amendments become effective January 1, 1991.

Authority: Delaware River Basin Compact, 75 Stat. 688.

Dated: October 3, 1990.

Susan M. Weisman,

Secretary.

[FR Doc. 90–24170 Filed 10–12–90; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Meeting

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility, Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of a meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend and to extend an invitation to interested third parties to present comments on petitions for recognition of accrediting and state approval bodies.

DATES AND TIMES: November 13, 14, and 15—8:30 a.m. until 5 p.m.

LOCATION: To be announced in a further notice.

FOR FURTHER INFORMATION CONTACT: Steven G. Pappas, Executive Director, National Advisory Committee on Accreditation and Institutional Eligibility, U.S. Department of Education, 400 Maryland Avenue, SW., room 3915, ROB–3, Washington, DC 20202–5151, (202) 708–5656.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is established under section 1205 of the Higher Education Act as amended by Public Law 96–374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education. The Committee also advises the Secretary of Education on policy matters concerning recognition of accrediting and State approval bodies and institutional eligibility for participation in Federally funded programs.

AGENDA: The meeting on November 13–15 is open to the public. The Advisory Committee will review petitions and interim reports of accrediting agencies and State approval bodies related to continued recognition by the Secretary of Education. The Committee also will hear presentations by representatives of these following petitions and interims reports are scheduled to be reviewed:

1. Petitions for Renewal of Recognition as Nationally Recognized Accrediting Agencies and Associations

Accrediting Bureau of Health Education Schools.

Accrediting Council for Continuing for Education and Training, Accrediting Commission.

American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Therapy Education.

American Medical Association, CAHEA: in cooperation with—Accreditation Review Committee for Educational Programs in Surgical Technology.

American Council for Construction Education.

American Speech-Language-Hearing Association, Educational Standards Board.

Association of Independent Colleges and Schools, Accrediting Commission.

Computing Sciences Accreditation Board, Inc., Computer Sciences Accreditation Commission.

Liaison Committee on Medical Education of the Council on Medical Education of the American Medical Association and the Executive Council of the Association of American Medical Colleges.

Middle States Association of Colleges and Schools, Commission on Higher Education.

Middle States Association of Colleges and Schools, Commission on Secondary Schools.

National Association of Schools of Theatre.

National Association of Trade and Technical Schools, Accrediting Commission.

National Home Study Council, Accrediting Commission.

New York State Board of Regents.

Southern Association of Colleges and Schools, Commission on Colleges.

Straight Chiropractic Academic Standards Association, Inc., Commission on Accreditation

U.S. Catholic Conference, Commission on Certification and Accreditation.

Western Association of Schools and Colleges, Accrediting Commission for Schools.

2. Interim Reports from National Recognized Accrediting Agencies and Associations

Accrediting Council on Education in Journalism and Mass Communications, Accrediting Committee.

American Assembly of Collegiate Schools of Business, Accreditation Council.

American Association of Bible Colleges, Commission on Accrediting.

American Bar Association, Council of the Section of Legal Education and Admission to the Bar.

American Medical Association, CAHEA: in cooperation with—Committee on Accreditation of Specialist in Blood Bank Technology Schools, American Association of Blood Banks.

Curriculum Review Board, American Association of Medical Assistants' Endowment.

Cytotechnology Programs Review Committee, American Society of Cytology.

Joint Review Committee on Education Programs for the EMT-Paramedic.

Joint Review Committee on Education in Diagnostic Medical Sonography.

Joint Review Committee on Education in Radiologic Technology.

National Accrediting Agency for Clinical Laboratory Sciences.

American Optometric Association, Council on Optometric Education.

American Podiatric Medical Association, Council on Podiatric Medical Education.

American Psychological Association, Committee on Accreditation.

National Architectural Accrediting Board.

Southern Association of Colleges and Schools, Commission on Occupational Education Institutions.

Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

3. Petitions for Renewal of Recognition as State Agencies for the Approval of Public Postsecondary Vocational Education

Minnesota State Board of Vocational-Technical Education.

Missouri State Board of Education.

New York State Board of Regents.

Utah State Board for Vocational Education.

Office of the Superintendent of Public Instruction, State of Washington.

4. Interim Reports From State Agencies For the Approval of Public Postsecondary Vocational Education

Arkansas State Board of Education.

5. Petitions for Renewal of Recognition as a State Agencies for the Approval of Nurse Education

Maryland State Board of Examiners of Nurses.

Missouri State Board of Nursing.

New York State Board of Regents, Nursing Education Unit.

Note: The Department urges third parties interested in commenting on any of the agencies and associations scheduled for review to submit their comments in writing by November 1, to Mr. Pappas at the above address.

While the Committee is required to accept all written materials up through the date of its meeting, the Committee strongly urges that written comments be submitted by November 1, to facilitate the work of the Committee by providing for advance review and analysis of third party positions. All petitions, interim reports, and those third party comments received in advance of the meeting will be available for public inspection in room 3036, ROB–3, 7th & D Street SW., Washington, DC between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Also, requests for oral presentations before the Advisory Committee should be submitted in writing to Mr. Pappas by November 1, 1990. Requests should include names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested. Time constraints may limit oral presentations.

The acceptance of written and oral third party comments is limited to issues relevant to an accrediting or State agency's compliance with the Secretary's recognition regulations (Criteria for Recognition).

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3036, ROB–3) Washington, DC between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

Authority: 5 U.S.C.A. Appendix 2.

Dated: October 9, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–24192 Filed 10–12–90; 8:45 am]

BILLING CODE 4000–01–M

Subject Area Committees #1 and #2; Teleconference

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming teleconference meetings of the Subject Area Committee #1, and the Subject Area Committee #2 of the National Assessment Governing Board. Notice of these meetings are required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: October 17, 1990, Subject Area Committee #1. October 18, 1990, Subject Area Committee #2.

TIME: 11 a.m. (e.d.t.), both dates.

PLACE: National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC, 20005–4013, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION:

CONTACT: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Education Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 USC 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Subject Area Committees of the National Assessment Governing Board will meet via teleconference on October 17, and October 18, 1990. Subject Area Committee #1 will meet on October 17, 1990 from 11 a.m. (e.d.t.) until the completion of business. Subject Area Committee #2 will meet on October 18, 1990 from 11 a.m. (e.d.t.) until the completion of business. Because these are teleconference meetings, facilities will be provided so the public will have access to the Committees' deliberations. The purpose of each meeting is to act on the Board's behalf to approve the final test items to be included in the 1991 field tests of the 1992 reading, writing, and mathematics assessments. Subject Area Committee #1 will review and approve the reading and writing items. Subject Area Committee #2 will review and approve the mathematics items. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L. Street, NW., Washington, DC., from 8:30 a.m. to 5 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90–24363 Filed 10–12–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting for the Proposed Hopkins CFB Repowering Project

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS), and to conduct a public scoping meeting to assess the environmental effects of the construction and operation of the proposed Circulating Fluidized Bed (CFB) Boiler at the Arvah B. Hopkins Station, Tallahassee, Florida.

SUMMARY: DOE announces its intent to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the environmental impacts of the proposed construction and operation of a project proposed by the City of Tallahassee (CoT) in Florida. The proposed project involves repowering the Arvah B. Hopkins Generating Station Unit 2, a nominal 250-megawatt electric (MWe), natural gas-fired or oil-fired, boiler with a coal-fired atmosphere CFB boiler to provide steam to an existing turbine generator.

Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR 1500–1508), and the DOE NEPA guidelines (52 FR 47662, December 15, 1987). The purpose of this Notice is to invite public participation in the process that DOE will follow to comply with NEPA and to solicit public comments on the proposed scope and content of the EIS.

INVITATION TO COMMENT AND DATES: To ensure that the full range of issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS will be considered in preparing the draft EIS and should be postmarked by November 14, 1990. Written comments postmarked after that date will be considered to the degree practicable.

DOE will also hold a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions. The location, date, and time for the scoping meeting are provided in the section of this Notice entitled Scoping Meeting. Written and oral comments will be given equal weight and will be considered in determining the scope of the draft EIS. When the draft EIS is completed, its availability will be announced in the Federal Register, and public comments will again be solicited. Comments on the draft EIS will be considered in preparing the final EIS. Requests for copies of the draft and/or final EIS, or questions concerning the project, should be sent to Mr. Bruce J. Buvinger at the address noted below.

ADDRESS: Written comments or suggestions on the scope of the EIS, requests to speak at the scoping meeting, or questions concerning the project, should be directed to:

Bruce J. Buvinger, Environmental Specialist D04, U.S. Department of Energy, Morgantown Energy Technology Center (METC), P.O. Box 880, Morgantown, WV 26505, Telephone: (304) 291–4379. Envelopes should be labeled "Scoping for COT EIS."

FOR FURTHER INFORMATION CONTACT: For general information on the EIS Process, please contact:

Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, Tel. (202) 586–4600.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Action

Under terms of Public Law No. 99–190, Congress provided approximatley $400 million to DOE to support the construction and operation of demonstration facilities selected for funding as part of DOE's CCT Demonstration Program. The CCT projects cover a broad spectrum of technologies having the following things in common: (1) all are intended to increase the use of coal in an environmentally acceptable manner and (2) all are ready to be proven at the demonstration level.

On February 17, 1986, DOE issued Program Opportunity Notice (PON) Number DE–PS01–86FE60966 for Round I of the CCT program, soliciting proposals to conduct cost-shared projects to demonstrate both "new" and "retrofit" applications of clean coal technologies, whether intended to displace oil and natural gas or to utilize coal more cleanly, efficiently, and/or economically than presently available (at the time of issuance of the PON) technology. In response to the solicitation, 51 proposals were received, including the City of Tallahassee's Hopkins CFB Repowering Project Nine projects were selected by

DOE for negotiation in July 1986. In addition, a list of alternate candidates was established from which replacement selections could be made, should any of the original nine projects not proceed. On June 23, 1989, the aforementioned proposal by the CoT was selected for negotiation from the list of alternate candidates.

The CoT requested financial assistance from DOE to construct and operate the Hopkins CFB Repowering Project, which involves the repowering of the Unit 2 nominal 250-MWe natural gas-fired or oil-fired boiler with a coal-fired atmospheric CFB boiler to provide steam to an existing turbine generator. The boiler will be the largest of its type in the world. After construction and shakedown, Hopkins Unit 2 with its CFB boiler will be operated for a 24-month demonstration period, burning three or more different eastern coals. Final coal selection will be based on a fuels selection study to be completed early in the project. Cost, environmental, and technical data from the Hopkins CFB Project will be developed for use by the utility industry in evaluating this technology as a commercially viable power generation alternative.

Proposed Action

The DOE proposes to provide cost-shared funding to the City of Tallahassee for the construction and operation of the Hopkins CFB Repowering Project. The objective of the Hopkins CFB Repowering Project is to demonstrate the feasibility of using a CFB boiler for generating electricity from coal and to evaluate the technology with regard to performance that is efficient, economical, and environmentally acceptable. The work to be performed under the Cooperative Agreement between the CoT and DOE includes the design, construction, and operation of the demonstration project. The total cost of the project scope to be shared by the Government is estimated at $277 million, with DOE's share being approximately $75 million, or 27 percent of the total. Construction of the project is scheduled to begin in June 1992. Operation of the project during the 24-month demonstration period, scheduled to begin in November 1995, would provide the information and experience needed for future applications of the CFB technology at large scale commercial operations.

The existing 2-unit Hopkins power plant is located on a 230-acre site in Leon County, approximately 7.5 miles (12 km) west of the city of Tallahassee and approximately 1 mile north of the community of Norfleet. The plant consists of two oil/gas dual fuel steam boilers that each drives a steam turbine electric generator. There are also two combustion gas turbine electric generators that are used for peaking operations during high load periods. Combustion Gas Turbine 1 was installed in 1970 and can generate 16 MWe, and Combustion Gas Turbine 2 was installed in 1977 and has a 27-MWe capacity. The Hopkins plant also includes two evaporative cooling towers, fuel oil storage tanks, two exhaust stacks, an electrical switchyard, water supply wells, water treatment ponds, storage areas, and offices. Unit 1 has a 76-MWe capacity and was installed in 1971. Unit 2, which was installed in 1977 with a nominal 250-MWe capacity, will be repowered with a CFB boiler of the same nominal capacity.

The site is located atop a low east-west trending ridge in an area of low rolling terrain that once was shoreline sand dunes. The elevation differences in the area are small. Higher elevations tend to have sandy soil and are generally well drained, while lowland areas may be seasonally wet and/or subject to occasional flooding. The terrain supports various vegetation communities, depending on the elevation and soil type. Much of the surrounding area is forested with mature stands of deciduous and coniferous trees. The site property is bordered to the north and south by two small stream channels. The area around the site is primarily rural land, with some low density residential development approximately 1 mile east and south of the plant. A main branch of the Seaboard Coast Line Railroad borders the site on the northeast.

The Hopkins CFB Repowering Project will occupy approximately 118 acres of the existing 230-acre site and will include the following additions to the existing power plant:

- A coal handling system to receive, store, crush, and convey coal.
- Limestone handling and sizing equipment.
- Repowering of the gas/oil-fueled steam generator with a CFB boiler.
- A baghouse to collect particulates.
- A stack to handle an increased volume of exhaust gas from burning coal.
- An ash storage and disposal system.
- A clay-lined coal pile and ash disposal runoff control system.
- Installation of new plant instrumentation and control system.

Alternatives

Under its authority pursuant to Pub. L. 99–190, DOE is presented with only two alternatives: (1) To cooperatively fund the proposed project; and (2) to decline to fund it (the "no action" alternative). In the latter case, the project would not contribute to the objective of the CCT program, which is to make available to the U.S. energy marketplace a number of advanced, more efficient, economically feasible, and environmentally acceptable, coal technologies. The facility probably would not be constructed and operated; therefore, potential environmental impacts resulting from the project would not occur.

DOE acknowledges the obligation to examine reasonable alternatives which are beyond its immediate authority to implement, but which could also meet the objectives of the CCT Program. DOE is requesting public comment on reasonable alternatives to the Hopkins CFB Repowering Project.

A Final Programmatic Environmental Impact Study (PEIS) for the CCT program was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) The "no action" alternative, which assumed that the CCT program was not continued and that conventional coal-fired technologies with flue gas desulfurization and NO_x controls to meet New Source Performance Standards would continue to be used; and (2) the proposed action, which assumed that CCT projects were selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

Identification of Environmental Issues

The following issues associated with the construction and operation of the Hopkins CFB Repowering Project will be considered in detail by DOE during its evaluation. This list is neither intended to be all inclusive, nor is it a predetermination of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

(1) Air Quality: The effects of air emissions within the region surrounding the site.

(2) Water Resources and Water Quality: The qualitative and quantitative effects on water resources and other water users in the region.

(3) Socioeconomics: Potential bearing on communities that might be affected by the project.

(4) Land use: The potential consequences to land, utilities, transportation routes, and traffic patterns resulting from the project.

(5) Solid Waste: The environmental effects of generation, treatment, transport, storage, and disposal of solid wastes.

(6) Biological Resources: Potential disturbance or destruction of species, including the potential effects on threatened or endangered species of flora and fauna.

(7) Cultural Resources: Potential effects on historical, archaeological, scientific, or culturally important sites.

(8) Cumulative Impacts: NEPA requires that the EIS evaluate the potential cumulative effects of the various alternatives in relation to the past, present, and foreseeable future development (of any kind), both on-site and off-site. Cumulative impacts will be evaluated within the EIS for all important issues in the vicinity of the site.

Issues that are not considered significant will be discussed in less detail, or as appropriate to clarify and distinguish impacts among alternatives.

NEPA and the Scoping Process

DOE will comply with the NEPA process as outlined in the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1500–1508) and DOE's Guidelines for Compliance with the National Environmental Policy Act (52 FR 47662, December 15, 1987).

Scoping, which is an integral part of the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume time and effort; (3) the draft EIS is thorough and balanced; and (4) delays occasioned by an inadequate draft EIS are avoided (40 CFR 1501.7). The scope of issues to be addressed in a Draft EIS will be determined from written comments submitted by mail, or comments presented orally or in writing at the public scoping meeting. The results of the scoping process will be incorporated into a document called an Implementation Plan, which provides guidance for the preparation of an EIS.

The above preliminary identification of reasonable alternatives and environmental topics is not meant to be exhaustive or final. There will be some reasonable alternatives and potential environmental topics that, although not specified above, will be evaluated as part of the NEPA analysis and will be discussed in the EIS. DOE identified the reasonable alternatives and potential environmental topics shown above based on its experience with similar subjects that have been raised for other comparable DOE projects. DOE considers the scoping process to be open and dynamic in the sense that alternatives other than those given above may warrant examination, and new matters may be identified for potential evaluation. Interested parties are invited to participate in the scoping process to both refine the preliminary alternatives and environmental topics to arrive at significant issues to be analyzed in depth, and to eliminate from detailed study those alternatives and environmental matters that are not significant or pertinent.

The scoping process will involve all interested agencies (Federal, State, County, and local) groups, and members of the public. Comments are invited on both the alternatives and the topics to be considered in the EIS. A public scoping meeting will be held at the location on the date and at the time indicated below. This scoping meeting will be informal, with a presiding officer designated by DOE who will establish procedures governing the conduct of the meeting.

Scoping Meeting

In addition to receiving written comments, DOE will conduct a public scoping meeting to assist DOE in determining the appropriate scope of the EIS and the significant environmental issues to be addressed. The meeting is scheduled as follows:

Date: Tuesday, October 30, 1990
Time: 7:00 P.M.
Place: City Hall Commissioners Chambers, 300 South Adams Street, Tallahassee, Florida

The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements may not be cross-examined by other speakers. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations. Persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting. They will be called on to present their comments as time permits. Both oral and written comments will be considered and will be given equal weight by DOE.

A complete transcript of the public scoping meeting will be retained by DOE and made available for inspection during business hours, Monday through Friday, at the Department of Energy Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, and at the Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, West Virginia 26505. Additional copies of the public scoping meeting transcript will also be made available during normal business hours at the following location:

City of Tallahassee, Electric Department, City Hall, 300 South Adams Street, Tallahassee, Florida.

In addition, copies of the public scoping meeting transcript will be made available for purchase. Those interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Draft EIS when it is prepared, should notify Bruce J. Buvinger, Environmental Specialist, Morgantown Energy Technology Center, at the address given in the INVITATION TO COMMENT AND DATES section of this Notice.

Signed in Washington, DC, this 11th day of October 1990, for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90–24395 Filed 10–12–90; 8:45 am]

BILLING CODE 6450–01–M

[Number DE–PS07–90ID13022]

Amendment No. 1 to Solicitation for Financial Assistance; Participation in the Department of Energy Electric and Hybrid Vehicle Site Operator Program

The U.S. Department of Energy (DOE), Idaho Operations Office, published a complete solicitation in the **Federal Register** (Vol. 55, No. 180, Page Numbers 38134 through 38137) on September 17, 1990, which requested applications on the basis of open competition, for cost sharing the test and evaluation of electric hybrid vehicles in support of its Electric and Hybrid Vehicle (EVH) Program. The purpose of Amendment No. 1 is to change the due dates contained therein (on Page No. 38137), as follows:

1. Applications are now due, 4 p.m., Mountain Daylight Time, November 16, 1990. Late applications will still be handled in accordance with 10 CFR 600.13.

2. Written questions regarding the solicitation are now due on October 19, 1990.

3. Selection is now expected to be made November 29, 1990.

4. Award(s) (earliest) is now expected to be made January 11, 1990.

Contact: Dallas L. Hoffer, Contracts Management Division, U.S. Department of Energy, Idaho Operations Office, 785

DOE Place, Idaho Falls, Idaho 83402–1129.

R. Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 90–24240 Filed 10–12–90; 8:45 am]

BILLING CODE 6450–01–M

Voluntary Agreement and Plan of Action to Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act [42 U.S.C. 6272(c)(1)(A)(i)], the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Monday, October 22, 1990, at the offices of the Organization for Econonmic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the aforesaid location on that date.

The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

Agenda

1. Adoption of the agenda.
2. Summary Record of SEQ Meeting of September 24, 1990.
3. IAB Meeting of October 18, 1990.
4. The Emergency Response Potential of IEA/OECD Countries (Draft Report by the SEQ to the IEA Government Board Meeting of October 31, 1990).
5. Emergency Reserve and Net Import Situation of IEA Countries.

—Emergency Reserve and Net Import Situation of IEA Member countries on July 1, 1990.

6. Emergency Data Systems.

—Simplification of Questionnaire C.
—Questionnaire B Data Quality.
—Base Period Final Consumption 2Q89–1Q90; Base Period Final Consumption 3Q89–2Q90.
—Monthly Oil Statistics to June 1990; Monthly Oil Statistics to July 1990.

7. Quarterly Oil Forecast 4Q90/3Q90.
8. Any of other business.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of members of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of members of the SEQ, representatives of the Commission of the European Communities, and invitees of the IAB, or the IEA.

Issued in Washington, DC, October 9, 1990.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 90–24242 Filed 10–12–90; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on Nuclear Facility Safety; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date and Time: Tuesday, October 30, 1990, 8 a.m. to 6 p.m. Wednesday, October 31, 1990, 8 a.m. to 1 p.m.

Place: U.S. Department of Energy, Forrestal Building, room 1E–257, 1000 Independence Ave., SW., Washington, DC 20585.

Contact: Wallace R. Kornack, Executive Director, ACNFS, AC–21, 1000 Independence Ave., SW., Washington, DC 20585, 202/586-1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

October 30, 1990

8 a.m.: Chairman John F. Ahearne Opens Meeting; Review of selected technical issues.
Noon: Lunch.
1 p.m.: Review of facility safety issues.
5:30 p.m.: Public comments.
6 p.m.: Meeting adjourned until next day.

October 31, 1990

8 a.m.: Review of selected technical issues; Committee Business; Subcommittee Reports.
1 p.m.: Meeting ends.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading room, 1E–190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 10, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90–24244 Filed 10–12–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. EL90–6–000, et al.]

Illinois Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 4, 1990.

Take notice that the following filings have been made with the Commission:

1. Illinois Power Co.

[Docket No. EL90–6–000]

Take notice that on October 1, 1990, Illinois Power Company tendered for filing its revised refund report in the above referenced docket.

Comment date: October 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Gulf States Utilities Co.

[Docket No. ER90–578–000]

Take notice that Gulf States Utilities Company (Gulf States) on September 26, 1990, tendered for filing a description of an oral agreement between Gulf States and Alabama Electric Cooperative, Inc. (AEC) for the short-term sale of up to 200 MW of replacement energy at a rate of 21.54 mills/kwh beginning September 8, 1990. On September 26, 1990, Gulf States supplemented this filing by tendering for filing a copy of a letter agreement between Gulf States and AEC memorializing the term of the oral agreement.

Gulf States states that it and AEC are currently negotiating an Interchange Agreement which, among other things, would provide for the sale and purchase of replacement energy. However, the negotiation of the Interchange Agreement will not be completed in time to allow for the short-term transaction beginning September 8, 1990.

Pursuant to § 35.11 of the Commission's regulations, Gulf States requests an effective date for the letter agreement of September 8, 1990, the date on which the short-term sale began. Gulf States requests a waiver of the notice requirements of the Federal Power Act

and the Commission's regulations to allow this effective date.

Copies of the filing were served on Alabama Electric Cooperative, Inc.

Comment date: October 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Multitrade Limited Partnership

[Docket No. ER90-485-000]

Take notice that on September 24, 1990, Multitrade Limited Partnership tendered for filing its response to Staff's request for additional information in the above referenced docket.

Comment date: October 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Co.

[Docket No. ER90-558-000]

Take notice that on September 26, 1990, Northeast Utilities Company (NUSCO) tendered for filing supplemental information regarding a proposed rate schedule, a System Energy Sales—Exchange Agreement between NUSCO and Green Mountain Power Corporation.

NUSCO states that the amendment was filed in response to a request from the Commission for additional information regarding maximum capacity charge rate.

NUSCO states that copies of this information have been mailed or delivered to each of the parties.

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule to become effective February 1, 1988.

Comment date: October 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Cajun Electric Power Cooperative, Inc. v. Louisiana Power & Light Co.; Louisiana Energy and Power Authority v. Louisiana Power & Light Co.

[Docket Nos. EL90-12-001, EL90-15-001]

Take notice that on September 5, 1990, Louisiana Power & Light Company filed pursuant to the Federal Energy Regulatory Commission's May 3, 1990 order in these consolidated proceedings a plan for distribution to wholesale customers of appropriate proportional amounts of judgment proceeds which it had received from United Gas Pipe Line Company.

Comment date: October 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Gulf States Utilities Co.

[Docket No. ER90-583-000]

Take notice that Gulf States Utilities Company on September 25, 1990, tendered for filing (1) an Agreement For Wholesale Electric Service bwtween Gulf States Utilities Company (Gulf States) and Tex-La Electric Cooperative of Texas, Inc. (Tex-La) (Agreement), (2) Exhibit A to the Agreement, (3) Rate Schedule WPS—Wholesale Power Service, (4) Rider A to the Agreement, and (5) Service Schedule EP Emergency Power.

Gulf States states that Tex-La will become a new wholesale customers of Gulf States. The rates for the wholesale service to be provided to Tex-La as set forth in Rate Schedule WPS are the same as Gulf States' rates for wholesale service to other customers.

Gulf States requests an effective date for the Agreement and rate and service schedule so that service may begin on December 3, 1990.

Copies of the filing were served on Tex-La and each wholesale customer of Gulf States which purchases service under Rate Schedule WPS or a comparable rate schedule.

Comment date: October 18, 1990, in accordance with Standard Paragraph E at the end of the 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 determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission are are available for public inspection.

Lois D. Cashell,

Secretary.

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[Docket Nos. CP91-3-000, et al.]

Florida Gas Transmission Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

[Docket Nos. CP91-3-000, CP91-4-000, CP91-5-000]

October 4, 1990.

Take notice that on October 1, 1990, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, 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 certificate issued in Docket No. CP89-555-000 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.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under Section 284.223 of the Commission's Regulations, has been provided by FGT and is summarized in the attached appendix.

Comment date: November 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3-000 (10-1-90)	Texaco Gas Marketing Inc. (marketer).	200,000 150,000 73,000,000	OTX, AL, FL, TX, LA, MS.	TX, LA, MS, AL, FL.....	2-23-90, ITS-1, Interruptible.	ST90-4618-000, 8-10-90

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-4-000 (10-1-90)	Exxon Corporation (producer).	250,000 187,500 91,250,000	OTX, AL, FL, TX, LA, MS.	LA, MS, FL	2-23-90, ITS-1, Interruptible.	ST90-4623-000, 8-10-90
CP91-5-000 (10-1-90)	Tex/Con Gas Marketing Company (marketer).	250,000 187,500 91,250,000	OTX, AL, FL, TX, LA, MS.	TX, LA, MS, AL, FL	2-23-90, ITS-1, Interruptible.	ST90-4617-000, 8-10-90

[1] Offshore Texas is shown as OTX.

2. Southern Natural Gas Company

[Docket No. CP90-2310-000]

October 5, 1990.

Take notice that on September 26, 1990, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-2310-000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a field compressor and all appurtenances thereto, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it requests authority to abandon its 600 horsepower No. 2 field compressor located at Southern's Corinne Compressor Station, Monroe County, Mississippi. Southern further states that the compressor it seeks to abandon was rented and installed, in November 1979, by Black Warrior Pipeline Company (BWP), a Mississippi intrastate pipeline owned by Southern, to effectuate the transportation of natural gas from the Corinne field to a local distribution company. Subsequently, Southern indicates that it acquired the rights to purchase such natural gas, liquidated BWP and acquired all of BWP's gathering and transmission facilities, including assignment of the commercial lease under which the subject compressor was rented and operated. The Commission approved Southern's acquisition and operation of BWP's facilities by order issued in Docket No. CP82-102-000 on February 22, 1982, 18 FERC ¶ 62,293 (1982), it is stated.

Southern states that on December 1, 1982, it purchased the rental compressor from the vendor under the authority of its blanket certificate of public convenience and necessity issued in Docket No. CP82-406-000, as reported in its annual blanket report. Southern further states that the compressor was installed and operated to receive natural gas supplies purchased by Southern from various wells in the Corinne Field, Monroe County, Mississippi and is no longer needed as a result of steadily decreasing deliverability in the Corrine Field. Furthermore, Southern indicates that it does not anticipate its need in the foreseeable future. Southern further indicates that in order to save maintenance expenses and to simplify the operation of the Corinne Compressor Station, it proposes to remove the compressor and sell it at book value to Sonat Intrastate-Alabama Inc. for use in its intrastate pipeline system in Alabama. The book value, calculated as of December 31, 1990, is approximately $115,610. It is stated that the proposed abandonment would not affect the capacity of Southern's pipeline system or require termination of any service to Southern's customers.

Comment date: October 26, 1990, in accordance with Standard Paragraph F at the end of this notice.

3. El Paso Natural Gas Company

[Docket No. CP91-6-000]

October 5, 1990.

Take notice that on October 1, 1990, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission pursuant to Section 157.205 the Commission's Regulations under the Natural Gas Act (NGA), to provide an interruptible transportation service for Mar Oil and Gas Corporation (Mar Oil), under its blanket certificate issued in Docket No. CP88-433-000, all as more fully set forth in the request which is open for public inspection.

El Paso proposes an interruptible natural gas transportation service, under its FERC Rate Schedule T-1, of 1,030 MMBtu on peak days, 258 MMBtu on average days, and 94,170 MMBtu annually for Mar Oil. El Paso would transport the gas for Mar Oil's account from various receipt points on its system to two Jal, Lea County, New Mexico, delivery points. El Paso further states it commenced transporting natural gas for Mar Oil's account under Section 284.223(a) of the Regulations on August 24, 1990, as reported in Docket No. ST90-4727.

Comment date: November 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Florida Gas Transmission Company, U-T Offshore System, United Gas Pipeline Company

[Docket Nos. CP90-2336-000, CP90-2337-000, CP90-2338-000, CP90-2339-000, CP90-2340-000, and CP90-2341-000]

October 5, 1990.

Take notice that Applicants filed in the respective dockets prior notice requests pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related 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.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abive by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Applicant: Florida Gas Transmission Company, 1400 Smith Street, Houston, TX 77002

Blanket Certificate Issued in Docket No.: CP89-555-000

Docket No. (date filed)	Shipper name	Peak day,[1] average annual	Points of		Start up date rate schedule	Related dockets [2]
			Receipt	Delivery		
CP90-2336-000 (09-28-90)	Coast Energy Group, Inc.	75,000 56,250 27,375,000	TX, LA, MI, AL, FL, Offshore TX.	TX, LA, MI, FL	08-10-90, ITS-1	ST90-4614-000
CP90-2337-000 (09-28-90)	Sonat Marketing Co	250,000 187,500 91,250,000	TX, LA, MI, AL, FL, Offshore TX.	TX, LA, MI	08-08-90, ITS-1	ST90-4620-000
CP90-2338-000 (09-28-90)	End Users Supply System.	100,000 75,000 36,500,000	TX, LA, MI, AL, FL, Offshore TX.	TX, LA, MI, AL, FL	08-10-90, ITS-1	ST90-4624-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation services was reported in it.

Applicant: U-T Offshore System, P.O. Box 1396, Houston, TX 77251

Blanket Certificate Issued in Docket No.: RP89-99-000

Docket No. (date filed)	Shipper name	Peak day, average annual [3]	Points of		Start up date, rate schedule	Related dockets [3]
			Receipt	Delivery		
CP90-2339-000 (09-28-90)	Union Pacific Resources, Company.	100,000 100,000 36,500,000	Offshore LA	LA	08-01-90, IT	ST90-4489-000

[3] Quantities are shown in Mcf unless otherwise indicated.

Applicant: United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478

Blanket Certificate Issued in Docket No.: CP88-6-000

Docket No. (date filed)	Shipper name	Peak day, average annual [4]	Points of		Start up date, rate schedule	Related dockets [3]
			Receipt	Delivery		
CP90-2340-000 (09-28-90)	Ashton Energy Company.	20,600 20,600 7,519,000	MS, LA	MI	08-10-90, ITS	ST90-4463-000
CP90-2341-000 (09-28-90)	Exxon Corporation Corp.	10,300 10,300 3,759,500	LA, TX	LA, TX	08-01-90, ITS	ST90-4335-000

[4] Quantities are shown in MMBtu unless otherwise indicated.

5. U-T Offshore System

[Docket Nos. CP90-2342-000, CP91-18-000, CP91-19-000]

October 5, 1990.

Take notice that on September 28, 1990, U-T Offshore System (UTOS), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-2342-000 and that on October 2, 1990, UTOS filed in Docket Nos. CP91-18-000 and CP91-19-000 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 an interruptible basis pursuant to UTOS's Rate Schedule IT on behalf of various shippers under UTOS's blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by UTOS and is summarized in the attached appendix. It is explained that the gas would be received by UTOS at existing points located in West Cameron Blocks 116 and 167, offshore Louisiana and would be redelivered for the various accounts at existing interconnections at the Johnson's Bayou Plant in Cameron Parish, Louisiana.

[3] These prior notice requests are not consolidated.

Docket No.	Shipper	Volumes—Mcf, peak day, Average Annual	Related Docket [1]	Commencement date
CP90-2342-000	Mid Con Marketing Corp	250,000 250,000 91,250,000	ST90-4728	Aug. 10, 1990.
CP91-18-000	TXG Gas Marketing Corp	120,000 120,000 43,800,000	ST90-4737	Aug. 14, 1990.
CP91-19-000	Consolidated Edison Company of New York	1,400,000 1,400,000 511,000,000	ST90-4743	Aug. 15, 1990.

[1] UTOS reported the 120-day transportation service in the referenced ST dockets.

6. Natural Gas Pipeline Company of America, ANR Pipeline Company, ANR Pipeline Company, ANR Pipeline Company, ANR Pipeline Company, Colorado Interstate Gas Company, Colorado Interstate Gas Company

[Docket Nos. CP90-2300-000,[4] CP90-2301-000, CP90-2302-000, CP90-2303-000, CP90-2304-000, CP90-2332-000, CP90-2333-000.

October 5, 1990.

Take notice that on September 26, 1990, and September 28, 1990, the Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their respective blanket certificate's issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the Applicant's address, the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants allege that they would provide the proposed service for each shipper under an executed transportation agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,avg., annual [1]	Points of		Start up date, rate schedule, service type	RelatedDockets [2]
				Receipt	Delivery		
CP90-2300-000 (9-26-90)	Natural Gas Pipeline Co. of America, 701 East 22nd Street, Lombard, IL 60148.	Coastal Gas Marketing Company.	50,000 20,000 7,300,000	Various existing points.	Various existing points.	7-20-90, ITS, Interruptible.	CP86-582-000, ST90-4961-000
CP90-2301-000 (9-26-90)	ANR Pipeline Company, 500 Renaissance Center, Detroit, MI 48243.	Centran Corp	50,000 Dth 50,000 Dth 18,250,000 Dth	Various existing points.	Various existing points.	6-1-90, ITS Interruptible.	CP86-523-000, ST90-4397-000
CP90-2302-000 (9-26-90)	ANR Pipeline Company.	Beatreme Foods, Inc.	490 Dth 490 Dth 178,850 Dth	LA and offshore, LA.	WI	8-1-90, FTS-1, Firm.	CP86-532-000, ST90-4400-000
CP90-2303-000 (9-26-90)	ANR Pipeline Company.	Kohler Co	2,500 Dth	LA and	WI	6-1-90	CP86-532-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to Applicant's blanket transportation certificate. The ST docket indicates that 120-day transportation service was initiated under Section 284.223(a) of the Commission's Regulations.

7. Pontchartrain Natural Gas System

[Docket No. CP90-2281-000]

October 5, 1990.

Take notice that on September 24, 1990, Pontchartrain Natural Gas System (Pontchartrain), 1600 Smith, Suite 4775, Houston, Texas 77062, filed in Docket No. CP90-2281-000 an (NGA) application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing: 1) the continued exchange of up to 100,000 Mcf of natural gas per day between ANR Pipeline Company (ANR) and Pontchartrain, as successor to Bayou Interstate Pipeline System (Bayou), originally authorized in Docket No. CP84-68-001; and 2) Pontchartrain to be subject to the jurisdiction of the Federal Energy Regulatory Commission (Commission) pursuant to the NGA only with respect to the exchange transaction for which certificate authority is requested in this proceeding, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Pontchartrain states that it is a Hinshaw pipeline and that its facilities and operations are located wholly within the State of Louisiana. While this proposal would potentially allow 36,500,000 Mcf per year to be exchanged between Pontchartrain and ANR, Pontchartrain asserts that only 1,020,761

Mcf (1.1 percent of Pontchartrain's total throughput in 1989) was exchanged between Bayou and ANR during 1989. Accordingly, Pontchartrain requests that it be subject to the jurisdiction of the Commission under the Natural Gas Act only with respect to this proposal.

Pontchartrain states that Bayou, an affiliated company, proposes to abandon its exchange service with the ANR by assignment to Pontchartrain (Docket No. CP90–2282–000). Pontchartrain explains that Bayou currently sells its exchange volumes to Pontchartrain; however, if Bayou's requested abandonment is granted, Bayou would assign the purchase contracts for its total gas supply to Pontchartrain. Finally, because Bayou also proposes to abandon the requisite facilities for the exchange by selling to Acadian Gas Pipeline System (Acadian), an affiliated intrastate pipeline providing transportation pursuant to section 311 of the Natural Gas Act and subpart C of part 284 of the Commission's Regulations, Pontchartrain states that it would have to secure transportation services from Acadian to accomplish the continued delivery of the exchange volumes to itself.

Comment date: October 26, 1990, in accordance with Standard Paragraph F at the end of the notice.

8. United Gas Pipe Line Company

[Docket No. CP91–14–000]

October 5, 1990.

Take notice that on October 2, 1990, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP91–14–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport gas on an interruptible basis for Coast Energy Group (Coast), a marketer, under United's blanket certificate issued in Docket No. CP88–6–000 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.

United states that pursuant to a transportation service agreement dated October 24, 1989, it proposes to transport up to 30,000 Mcf per day for Coast. United states that it would receive the gas at specified points located in Louisiana and redeliver the gas at other specified points located in Louisiana. United estimates that the maximum day and average day volumes would be 30,900 million Btu and that the annual volumes would be 11,278,500 million Btu. It is stated that on September 1, 1990, United initiated a 120-day transportation service for Coast under § 284.223(a), as reported in Docket No. ST90–4750–000.

United further states that no facilities need be constructed to implement the service. United indicates that the service would continue on a month-to-month basis until terminated. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: November 19, 1990, in accordance with Standard Paragraph G at this end of this notice.

9. Bayou Interstate Pipeline System

[Docket No. CP90–2282–000]

October 5, 1990.

Take notice that on September 24, 1990, Bayou Interstate Pipeline System (Bayou), 1600 Smith, Suite 4775, Houston, Texas 77002, filed in Docket No. CP90–2282–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for authority to abandon the certificated facilities, authorizations and services granted in Docket No. CP84–68–001, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Bayou states that with the grant of this abandonment, it would wind up all of its activities and cease to be a "natural gas company" as defined in the NGA. Bayou requested that the effective date of such abandonment authorization be issued as expeditiously as possible in order to allow for Bayou's cessation of all its services by the end of calendar year 1990.

Bayou proposes to accomplish its abandonment, in part, by selling its facilities to Acadian Gas Pipeline System, an affiliated intrastate pipeline, and to Pelican Interstate Gas System, an affiliated interstate pipeline and by assigning its exchange service with ANR Pipeline Company to Pontchartrain Natural Gas System, an affiliated Hinshaw pipeline. Bayou states that other services and authorizations would be terminated, without assignment, on the date of the authorization requested herein. Lastly, Bayou asserts that the proposed abandonment would have no adverse impact on its customers.

Comment date: October 26, 1990, in accordance with Standard Paragraph F at the end of this notice.

10. Georgia-Pacific Corporation

[Docket No. CP90–2288–000]

October 5, 1990.

Take notice that on September 25, 1990, Georgia-Pacific Corporation (G–P), P.O. Box 105605, Atlanta Georgia 30348, filed in Docket No. CP90–2288–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities which have previously been certificated for the transportation of natural gas for G–P's own use in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

G–P states that its certificated system is comprised of: (i) Approximately 2.5 miles of 24-inch pipeline extending from gathering facilities in the Monroe Field, Louisiana to compression facilities that are utilized to boost the pressure of gas purchases in the area to a level necessary to accommodate further transmission to G–P's pulp and paper plant at Crossett, Arkansas; (ii) three 350 horsepower (HP) compressors and one 750 HP compressor; (iii) approximately 2.6 miles of 12¾ inch pipeline from the outlet of the compression facilities extending generally northward; and (iv) 19.5 miles of 8⅝ inch pipeline extending from the 12-inch pipeline to G–P's plant. G–P states that these facilities are interconnected and have historically been utilized to provide natural gas to G–P's plant from G–P's own reserves as well as gas supplies purchased from producers in the Monroe Field.

G–P requests that it be authorized: (i) To abandon in place the approximately 2.6 miles of 12¾ inch pipeline; and (ii) to abandon by sale its 24-inch pipeline and the three 350 HP and one 750 HP compressors.

G–P further states that its pipeline facilities were constructed exclusively to bring gas for consumption at its plant to offset curtailments from its historical supplier, Mississippi River Transmission Corporation (MRT) in the early 1970's. G–P states that it has never utilized any of these facilities for the purchase and resale of natural gas or for the transportation of natural gas for others. Except for the fact that a state border was crossed in bringing these gas supplies to G–P's plant, G–P submits that no certificate authority would ever have been required.

G–P states that its solution to the MRT curtailments was to construct the 19.5 mile 8⅝ inch pipeline to bring its own production to its plant, 46 FPC 1209 (1971). In 1972, G–P concluded that the natural gas supply attached by its 8⅝ inch line was inadequte to provide the curtailment protection necessary to operate its plant. G–P states that it therefore developed additional reserves of its own in the Monroe Field as will as purchasing natural gas from an

unaffiliated producer in the same field. In order to attach the additional reserves, G–P states that it filed an application in Docket No. CP72–274 to extend the existing 8⅝ inch line by the construction of approximately 2.6 miles of 12-inch pipeline. G–P states that it also planned to construct and operate a 24-inch gathering line and compressor facilities to attach the available natural gas supplies and boost the pressure of the natural gas to allow entry into the proposed 12-inch line.

G–P submits that it did not originally seek certificated authority to construct and operate the 24-inch line and the compressor believing that such facilities were non-jurisdictional gathering facilities. However, during the course of the certificate proceeding involving the construction of the 12-inch line, G–P states that it agreed to amend its application to include these facilities.

G–P states that the certificate in Docket No. CP72–274, was granted, Opinion No. 689, 51 FPC 627 (1974), however, as a consequence of the natural gas supply shortage at the time, the Commission imposed certain volumetric limitations on G–P's use of its own supply line and also imposed certain restrictions on the end use to which G–P could put the gas at its plant.

In 1987, G–P states that it requested that the Commission remove the volumetric and end use restrictions imposed in Opinion No. 689 suggesting that the such controls were no longer required and were totally contrary to the competitive economic environment that the Commission was trying to create for natural gas nationwide. According to G–P, the Commission agreed and removed the restrictions, 41 FERC ¶61,248 (1987).

As a result of the elimination of the restrictions, G–P states that it diversified its natural gas supply. As a result of the diversification, G–P states that it no longer requires the continued use of all of its certificated facilities. G–P states that it now has an interconnection with Texas Gas Transmission Corporation (Texas Gas) on G–P's 8⅝ inch line, which has allowed G–P to contract for gas supplies from a number of sources and have the gas transported by Texas Gas. G–P states that it also has executed an interruptible transportation agreement with MRT and has reached agreement with an intrastate pipeline company in Louisiana to interconnect with G–P's facilities.

G–P states that it no longer requires, nor can it effectively utilize, those certificated facilities it owns south of the interconnections with Texas Gas and the intrastate pipeline. Those facilities consist of the 2.6 miles of 12-inch pipeline, the 24-inch pipeline and the compressor units between the two pipelines. G–P states that these portions of its facilities were only useful so long as the exclusive source of gas available to it was the low pressure gas from the Monroe Field. G–P states that it no longer produces its own gas nor contracts for the purchase of gas from that area. G–P further states that the gas supplies now transported by Texas Gas and the intrastate pipeline is high pressure gas which would prevent any of the Monroe Field gas to enter its system. Since it has never utilized these facilities to transport or sell gas to any other party, G–P states the abandonment will not adversely effect any other party.

While it can no longer utilize these facilities, G–P states that certain of them, namely the 24-inch line and the compressors, can be effectively utilized by producers in the Monroe Field to gather and compress natural gas for intrastate use. Once abandonment is granted, G–P proposes to abandon in place and put out of service the 2.6 miles of 12-inch pipeline. G–P states, however, that it has reached agreement with an independent producer operating in the Monroe Field, Mr. Jimmy Berry, to sell to him the 24-inch line and the compressors, as well as various small diameter gathering lines connected to the 24-inch line. G–P avers that the sale to Mr. Berry will afford him the opportunity to move his production, and that of other producers in the field, through these facilities to intrastate markets, without having to construct new facilities.

G–P states that at the west end of the 24-inch line is a gathering system owned and operated by Wintershall Pipeline Corporation which feeds into Wintershall's intrastate pipeline system in northern Louisiana. At the east end of the 24-inch line and compressors, G–P states there lies the intrastate pipeline facilities of Gulf States Pipeline Corporation. Thus, with very little operational adjustments, G–P states that the 24-inch line and compressor facilities can be put to efficient use by small producers in the area, allowing them to extract the maximum recoverable reserves from their wells in the Monroe Field.

According to G–P, these uses would clearly be intrastate in nature. Once abandoned, G–P avers that these facilities would not be used in interstate commerce since the 24-inch line and the compressors would no longer be connected with any certificated facilities, would not be used for sale or transportation in interstate commerce, and would be located entirely in the state of Louisiana. G–P submits that once the facilities are abandoned and sold to Mr. Berry, the 24-inch line and the compression facilities will no longer be jurisdictional under the Natural Gas Act, and G–P request that the Commission confirm this conclusion in an order granting abandonment in this proceeding.

Comment date: October 26, 1990, in accordance with Standard Paragraph F at the end of the notice.

11. Transwestern Pipeline Company, Transwestern Pipeline Company, Transwestern Pipeline Company, Arkla Energy Resources, a division of Arkla, Inc.

[Docket Nos. CP91–30–000, CP91–31–000, CP91–32–000, and CP91–40–000]

October 5, 1990.

Take notice that on October 3, 1990, Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, and Arkla Energy Resources, a division of Arkla, Inc., 525 Milam Street, Shreveport, Louisiana 71151, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88–133–000 and Docket No. CP88–820–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identify 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 section 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-30-000 (10-3-90)	Mesa Operating Limited Partnership (producer).	10,000 7,500 3,650,000	AZ, NM, OK, TX	AZ, NM, OK, TX	8-23-90, ITS-1, Interruptible.	ST90-4969-000, 8-25-90.
CP91-31-000 (10-3-90)	Access Energy Corporation (marketer).	100,000 75,000 36,500,000	AZ, NM, OK, TX	NM, OK, TX	7-17-90, ITS-1, Interruptible.	ST90-4967-000, 9-1-90.
CP91-32-000 (10-3-90)	Continental Natural Gas, Inc. (marketer).	50,000 37,500 18,250,000	AZ, NM, OK, TX	AZ, NM, OK, TX	7-3-90, ITS-1, Interruptible.	ST90-4968-000, 8-25-90.
CP91-40-000 (10-3-90)	Marathon Oil Company (producer).	40,000 40,000 14,600,000	OLA	OLA	8-1-90, IT-Gathering, Interruptible.	ST90-5407-000, 10-1-90.

[1] Offshore Louisiana is shown as OLA.

12. Transwestern Pipeline Company

[Docket No. CP91-29-000]

October 5, 1990.

Take notice that on October 5, 1990,[6] Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-29-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Hadson Gas Systems, Inc. (Hadson), a marketer, under the blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern states that pursuant to an agreement dated September 15, 1989, under its Rate Schedule ITS-1, it proposed to transport up to 100,000 MMBtu per day equivalent of natural gas for Hadson. Transwestern indicates that the gas would be transported from receipt points located in Arizona, New Mexico, Oklahoma, and Texas, and would be redelivered at delivery points located in New Mexico, Oklahoma, and Texas.

Transwestern advises that service under § 284.223(a) commenced May 5, 1990, as reported in Docket No. ST90-5345-000. Transwestern indicates that it would transport 75,000 MMBtu on an average day and 36,500 MMBtu annually.

Comment date: November 19, 1990, in accordance with Standard Paragraph G 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 Commisison, 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 CR 157.20) 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. 90-24189 Filed 10-12-90; 8:45 am]

BILLING CODE 6717-01-M

[6] Although the filing was received on October 3, 1990, the filing date corresponds with the date the filing fee was received, pursuant to Section 381.103(b)(2)(iii) of the Commission's Rules.

[Docket Nos. RP91-3-000, RP90-152-002, TM91-1-22-001, and TA90-1-22-004]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1990.

Take notice that on October 3, 1990, CNG Transmission Corporation (CNG) pursuant to section 4 of the Natural Gas Act, and part 154 of the Commission's Regulations (18 CFR part 154) files six (6) copies of the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Alternate Second Revised First Revised Sheet No. 31
Second Substitute First Revised Sheet No. 31
First Revised Original Sheet No. 31
First Revised Original Sheet No. 32
First Revised First Revised Sheet No. 31
Second Revised Original Sheet No. 32

The filing is a limited general rate increase application made for the purposes of changing CNG's base tariff rates: (1) To include the costs of converting a portion of CNG's firm sales agreement with Texas Eastern Transmission Corporation ("Texas Eastern") and Texas Gas Transmission

Corporation ("Texas Gas") to firm transportation; and, (2) to repaginate certain tariff sheets as described in detail in the filing. The effective date of the tariff sheets is November 1, 1990, the same date that the conversion of the Texas Eastern and Texas Gas agreements will become effective. It is proposed that the limited rate increase remain in effect until January 10, 1991, at which time the base rates in CNG's Docket No. RP90-143 will become effective.

CNG has also filed repaginated tariff sheets to conform to the Commission's new pagination convention adopted as part of its electronic filing requirements.

CNG states that copies of the filing were served upon affected customers and interested State commissions.

Any person desiring to be heard or to protest such filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before October 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24186 Filed 10-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER90-522-000 and ER90-388-000]

Metropolitan Edison Co.; Initiation of Proceeding and Refund Effective Date

October 4, 1990.

Take notice that on September 20, 1990, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

Refund effective date for proposed rates to Allegheny: December 14, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24194 Filed 10-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER90-355-000 and EL89-34-000]

Pacific Gas and Electric Co., Northern California Power Agency v. Pacific Gas and Electric Co.; Initiation of Proceeding and Refund Effective Date

October 4, 1990.

Take notice that on September 28, 1990, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

Refund effective date for proposed rates: December 14, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24193 Filed 10-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT91-1-000]

Texas Eastern Transmission Corp.; Proposed Changes In FERC Gas Tariff

October 5, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 1, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed in appendix A of the filing.

Texas Eastern states that the purpose of this filing is to update Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1 to reflect new levels of service for Algonquin Gas Transmission Company, CNG Transmission Corporation, and National Fuel Gas Supply Corporation as provided in their CD-1, CD-2, and FT-1 Service Agreements and to reflect the execution of a new Service Agreement between Texas Gas Transmission Corporation and Texas Eastern under Rate Schedule FT-1.

The proposed effective date of the tariff sheets listed in Appendix A of the filing is November 1, 1990.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 16, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-24187 Filed 10-12-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-87-NG]

ENSA Corporation; Application To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 1, 1990, of an application filed by Ensa Corporation (ENSA) for authorization to export up to 500 MMcf per day of natural gas to Mexico up to an aggregate of 912 Bcf over a five-year period beginning with the date of first export. ENSA proposes to export the natural gas through a new pipeline facility at the international border in Zapata County, Texas, and to sell the gas exported to Petroleos Mexicanos ("PEMEX"), the Mexican national oil and gas corporation, for resale to PEMEX' industrial customers in the region of Monterey, Mexico. As payment, ENSA will receive from PEMEX volumes of residual fuel oil, which the exported gas will displace in Mexican industrial applications.

The application is filed pursuant to 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 comments are invited.

DATES: Protests, motions to intervene, 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.s.t., November 14, 1990.

ADDRESSES: Office of Fuels Programs, Office of 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, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 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, GC–32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: ENSA is a Texas corporation with its principal place of business in Dallas, Texas. The company, which will build and operate the new pipeline facility, the Laredo Pipeline, is applying to the Federal Energy Regulatory Commission (FERC) for authorization to construct the proposed new pipeline, which will consist of approximately 250 feet of thirty-six inch diameter pipeline, which then will interconnect with a new PEMEX pipeline to be constructed in Mexico.

The gas to be exported will originate in the South Texas area. Under the export proposal, ENSA will exchange the natural gas with PEMEX in return for residual fuel oil, which ENSA maintains is in high demand in U.S. markets. In support of its application, ENSA asserts that this exchange transaction will not reduce the net energy available to the United States because the exports of gas will be offset by the imports of residual oil. Also, the company holds that this exchange will improve the overall security of energy supply by reducing U.S. dependence on Persian Gulf oil. In addition, the company states that the gas to be exported is incremental to current market needs, and that its export will benefit domestic producers, who have suffered from the ongoing natural gas oversupply and depressed prices.

Discussions toward finalization of an export sales/exchange agreement between ENSA and PEMEX are currently proceeding. The export sales/exchange agreement with PEMEX will be filed with DOE when it is finalized. ENSA foresees entering into a long-term contract with PEMEX at an exchange value to be determined, but less than the BTU equivalent price of residual fuel oil. In exchange, ENSA will receive volumes of residual fuel oil in kind for import into the United States. ENSA contends that the intended agreement will provide for market-sensitive and competitive pricing for the natural gas to be exported, because those prices will be intrinsically related to the price on the international market of residual fuel oil, a competing energy source to natural gas. The precise exchange relationship of exported natural gas for residual fuel oil remains subject to final negotiation between ENSA and PEMEX, but ENSA attests that it, and not U.S. suppliers or consumers, will assume all risks should the contract terms diverge from market trends. According to the company, the five-year term of the requested authorization is the minimum sufficient to assure the security of the investment required in related pipeline facilities.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In reviewing natural gas export applications, domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. ENSA asserts that there is no regional or national need for the gas, particularly since the gas to be exported currently is in oversupply, any market need is fully expressed and satisfied without constraint within the same competitive market to which ENSA must itself turn for its supplies of gas, and, in light of the proposed U.S.-Mexican Free Trade Agreement, there are significant economic and international benefits to be obtained from the transaction. Parties opposing this arrangement bear the burden of overcoming this assertion.

ENSA indicates in its application that it will file quarterly reports detailing each export transaction.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. 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 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 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 trail-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 ENSA'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, October 9, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–24245 Filed 10–12–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90-67-NG]

ICG Utilities (Manitoba) Ltd., Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notices of receipt on July 30, 1990, of an application filed by ICG Utilities (Manitoba) Ltd. ("ICG") for blanket authorization to import and export natural gas from and to Canada. ICG seeks DOE authority to import up to 8 Bcf of natural gas from Canada and to export up to 8 Bcf of natural gas to Canada over a two-year term beginning on the date of first delivery.

ICG intends to use existing facilities in the United States for both imports and exports of natural gas. The application is filed udner 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.s.t., November 14, 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 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-7249.

Diana 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: ICG, a corporation organized and existing under the laws of the Province of Manitoba, Canada, has its principal place of business in Winnipeg, Manitoba. ICG's ultimate parent corporation is Westcoast Energy Inc., a company incorporated pursuant to the laws of Canada. The company inends to import or export natural gas under short-term or spot-market sales arrangements for its own account or as agent for other parties. The terms of each transaction, including price and volume, will depend on the market demand for natural gas and will be structured to meet competition in the market place. There will be no fixed purchase obligations in ICG's import/export contracts.

The decision on the 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). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the proposed import authority would be in the public interest because it will allow ICG to store its system supplies in U.S. storage facilities and to increase the supply of competitively-priced Canadian natural gas for U.S. purchasers. Further, the company states that the export proposal will advance U.S. goals to reduce trade barriers and to encourage the operation of market forces to achieve a more competitive and efficient distribution of goods between the United States and Canada. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import/export is approved, the authorization would be conditioned on the filing of quarterly reports detailing each transaction.

NEPA Compliance

The National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. 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 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 by 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 ICG'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, October 9, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-24246 Filed 10-12-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-78-NG]

Ocean State Power; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 31, 1990, of an application filed by Ocean State Power (Ocean State) for blanket authorization to import from and export to Canada up to 36.5 Bcf of natural gas for a two-year term beginning on the date of first import or export delivery. Ocean State requests authority to import and export the natural gas at any point on the U.S./Canadian border where existing pipeline facilities are located. No new construction would be involved. Ocean State also states it will submit quarterly reports to FE detailing each transaction.

The application is 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.s.t., November 14, 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:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9394

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: Ocean State is a Rhode Island general partnership with its principal place of business in Boston, Massachusetts. Ocean State has authority to import from ProGas Limited (ProGas) up to 50,000 Mcf per day of Canadian natural gas for a 20-year term for use as fuel in Ocean State's 250 megawatt combined-cycle congeneration facility located in Burrillville, Rhode Island. (1 ERA Para. 70,778 (1988); 1 ERA Para. 70,810 (1988); and 1 FE Para. 70,242 (1989)). According to Ocean State, during the winter months, very low temperatures can cause the cogeneration facilities fuel requirement to increase above the full volumes for which Ocean State has contracted from ProGas. The import authority sought by Ocean State would give it the flexibility to purchase supplemental Canadian supplies to provide the fuel requirements for transporting the 50,000 Mcf per day of natural gas from the international border to the facility, and any temporary increase in the facility's normal fuel requirement needs.

Ocean State anticipates that all or most of its natural gas supply will be utilized in the cogeneration facility, but seeks authority to export natural gas when the contracted Canadian supplies are in excess of the facility's requirements due primarily to changing climate conditions or maintenance activities. Ocean State also mentions that it will not require the full contracted-for ProGas volumes of natural gas scheduled for purchase and import beginning November 1, 1990; the full volumes will not be required until the congeneration facility begins commercial operation at the end of the year. The proposed export authority would give Ocean State the flexibility to market its surplus natural gas. The natural gas Ocean State proposes to export would be sold on a spot basis to various entities in Canada including, but not limited, to pipelines, local distribution companies, electric utilities and industrial customers. The specific terms of each import and export arrangement would be negotiated on an individual basis at market responsive prices.

The decision on the 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). In reviewing natural gas export applications, the DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate in a particular case. However, since the source of the natural gas proposed to be exported involves only Canadian production and not sales of domestic gas to Canada, it is unnecessary to consider domestic need in connection with the export portion of Ocean State's proposal. Parties opposing the arrangement bear the burden of overcoming these assertions.

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 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 Ocean State'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, October 9, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–24243 Filed 10–12–90; 8:45 am]

BILLING CODE 6450–01–M

[Fe Docket No. 90–64–NG]

Tennessee Gas Pipeline Company; Order Granting Blanket Authorization To Export Natural Gas From the United States to Mexico or Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to Mexico or Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tennessee Gas Pipeline Company (Tennessee) blanket authorization to export up to 200 Bcf of natural gas to Mexico or Canada over a two year period commencing on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. 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, October 9, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–24241 Filed 10–12–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3852–4]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant case-by-case extension.

SUMMARY: EPA is proposing to grant the request from Celanese Engineering Resins, Inc., in Bishop, Texas, for a three-month extension of the November 8, 1990, effective date of the hazardous waste injection restrictions applicable to injected wastewaters with the hazardous waste codes: U001, U002, U019, U031, U056, U072, U080, U112, U115, U122, U123, U133, U134, U140, U154, U159, U161, U188, U226, D001, and F039. This action responds to a petition submitted under 40 CFR 148.4 according to procedures set out in 40 CFR 268.5, which allows any person to request that the Administrator grant, on a case-by-case basis, an extension of the applicable effective date based on a showing that the petitioner has entered into a binding contractual commitment to construct or otherwise provide adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste. If this proposed action is finalized, Celanese Engineering Resins, Inc., can continue to inject the wastestream described above at the Bishop facility until February 8, 1991, but not later than this date without being subject to the prohibitions applicable to such wastes.

DATES: Comments on this notice must be received on or before November 13, 1990.

ADDRESSES: The public must send an original and two copies of their comments to: EPA, 1445 Ross Avenue, Dallas, Texas, 75202–2733. The docket for this action is located at EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, and is open during normal business hours from 8 a.m.–4 p.m. The public can review all docket materials by calling (214) 655–7160 to make an appointment.

FOR FURTHER INFORMATION CONTACT: For information contact Oscar Cabra, Jr. at (214) 655–7110 or Ronnie Crossland at (214) 655–7160.

Petition

A. Facility Summary

Celanese Engineer Resins, Inc., in Bishop, Texas, has petitioned EPA to grant them a three-month extension of the effective date of the hazardous waste injection restrictions applicable to the following wastes:

The specific hazardous liquid waste for which this case-by-case extension of the November 8, 1990 injection ban date is being sought include: U001, U002, U019, U031, U056, U072, U080, U112, U115, U122, U123, U133, U134, U140, U154, U159, U161, U188, U226, D001, and F039.

EPA is proposing to grant an extension of the effective date of the applicable restrictions for three months from the hazardous waste injection restrictions effective date of November 8, 1990 for this facility. The Celanese Engineering Resins, Inc., request and supporting documentation was available in the public docket for this rulemaking. Interested persons are invited to submit comments or written data on this petition. All Comments will be considered by EPA and addressed in a **Federal Register** notice stating the Agency's final decision to grant or deny the petition.

B. Description of Petitioning Facility

Celanese Engineering Resins, Inc., is a chemical manufacturing company which operates three hazardous waste injection wells in Bishop, Texas. Celanese manufactures industrial organic chemicals by the conversion of methane to methanol and further reacting the methanol and other aliphatic organics to produce formaldehyde, methylal, esters (n-butyl, n-propyl and ethyl acetates) pentaerythritol, trimethylolpropane, paraformaldehyde, Formcel formaldehyde, alcohols, aldehydes and glycols. Additionally, Celanese produces Celcon, Nylon, and Celanex engineering resins and bulk pharmaceuticals.

C. Case-by-Case Extension Petition Demonstrations

Celanese Engineering Resins, Inc.'s application for an extension of the effective date includes the following demonstrations:

40 CFR 268.5(a)(1) Celanese—Bishop has made a good-faith effort on a nationwide basis to locate and contract for adequate alternative treatment, recovery, or disposal

capacity, or to establish such capacity by the effective data of the applicable restrictions.

40 CFR 268.5(a)(2) Celanese—Bishop has entered into a binding contractual commitment to provide alternative treatment, recovery, or disposal capacity.

40 CFR 268.5(a)(3) Celanese—Bishop has shown that lack of alternative capacity is beyond its control.

40 CFR 268.5(a)(4) Celanese—Bishop has shown that there will be adequate alternative treatment, recovery, or disposal capacity for all the waste after the effective date established by the extension.

40 CFR 268.5(a)(5) Celanese—Bishop has provided a detailed schedule for obtaining alternative capacity, including dates.

40 CFR 268.5(a)(6) Celanese—Bishop has arranged for adequate capacity to manage the waste during the extension period.

40 CFR 268.5(a)(7) The surface impoundments or landfills used by Celanese—Bishop to manage the waste during the extension period will meet the requirements of 40 CFR 268.5(h)(2).

III. *EPA's Proposed Action*

For the reasons discussed above, the Agency believes that Celanese—Bishop's demonstrations have satisfied all the requirements for a case-by-case extension of the effective date of the hazardous waste injection restrictions applicable to U001, U002, U019, U031, U056, U072, U080, U112, U115, U122, U123, U133, U134, U140, U154, U159, U161, U188, U226, D001, and F039. Therefore, EPA is proposing to grant an extension of the November 8, 1990, effective date of the restrictions on U001, U002, U019, U031, U056, U072, U080, U112, U115, U122, U123, U133, U134, U140, U154, U159, U161, U188, U226, D001, and F039 for Celanese—Bishop. If the extension is granted, these wastes, which would not be prohibited from land disposal, could be injected over a three month period, starting from the effective date of November 8, 1990, but not later than February 8, 1991.

If Celanese—Bishop obtains a case-by-case extension, it would have to submit a progress report every two weeks after the date the extension is granted, addressing the progress being made to obtain alternative disposal capacity. The Agency must be notified of any change in the conditions specified in the petition. The extension would remain in effect unless Celanese—Bishop fails to make a good faith effort to meet the schedule for completion, the Agency denies or revokes any required permit, conditions certified in the application change, or if Celanese—Bishop violates any law or regulations implemented by EPA.

(Sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924)).

Dated: October 5, 1990.

Myron O. Knudson,

Director, Water Management Division (6W), EPA Region 6.

[FR Doc. 90-24211 Filed 10-12-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66144; FRL 3803-8]

Amitrole; Receipt of Request to Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: This Notice, pursuant to section 6 (f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, announces: (1) EPA's receipt of a request from Rhone-Poulenc, a registrant of amitrole pesticide products, to voluntarily cancel four of its registrations, (2) EPA's intention to approve and give effect to this request and (3) EPA's determination regarding the disposition of existing stocks of the affected products.

EPA's approval will be effective October 25, 1990. As of that date, all future sales or distribution of these amitrole products shall be in accordance with the terms and conditions described herein.

DATES: The cancellation of registration shall be effective October 25, 1990.

FOR FURTHER INFORMATION CONTACT: Philip J. Poli, Review Manager, Special Review Branch, Special Review and Registration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Third floor, Westfield Bldg., 2805 Jefferson Davis Highway, Arlington, VA, (202) 308-8038.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated July 5, 1990, and received by EPA July 9, 1990, Rhone-Poulenc Ag Company, a registrant of the herbicide amitrole, submitted a request to EPA asking that four of its amitrole product registrations be cancelled. The products are EPA Registration No. 264-68 Weedazol® herbicide, 264-124 Amizine® herbicide, 264-196 Liquid Amizine® herbicide, and 264-226 Amitrol T® (Lawn and Garden). Rhone-Poulenc also submitted revised labels for two other amitrole products, Amitrol T® (Liquid Herbicide) and Amizol® (Industrial Herbicide), which would permit application by ground boom method only. The request to modify allowable application methods is being considered separately by the EPA and is not a part of this notice.

In another letter dated August 3, 1990, and received by EPA August 6, 1990, the registrant submitted a request seeking a provision for the disposition of existing stocks along with its voluntary cancellation request. Rhone-Poulenc requested a 1-year inventory disposal period for all four product registrations. Specifically, Rhone-Poulenc requested permission to distribute and/or sell existing stocks of the products for a period of 1-year. A copy of the registrant's letter requesting cancellation of these amitrole products, has been included in the public docket for the Amitrole Special Review.

II. Existing Stocks Determination

The EPA has reviewed the registrant's existing stocks request and has considered the amounts of stock represented to be in existence and under the control of the registrant. The Agency has determined that continued sale and use of existing stocks is not inconsistent with the purposes of the statute and will not have unreasonable adverse effects on the environment. Therefore, the registrant and its dealers may proceed according to the plan described in its request for cancellation, and that existing stocks may not be sold or distributed except as provided for in this notice. No affected amitrole product subject to this notice may be sold, distributed, or released for shipment by the registrant or its agents after September 1, 1991. Amitrole products, subject to this notice may be sold or distributed by a retailer, dealer, or others excluding the registrant or its agents after September 1, 1991. End-users may use supplies of these amitrole products until exhausted.

III. Conclusion

EPA has received and expects to approve the request described above effective October 25, 1990, incorporating the requested action and the decision governing the existing stocks provision as described above.

List of Affected Registrations

Active Ingredient	Registrant	Product Numbers
Amitrole	Rhone-Poulenc	264-68 264-124 264-196 264-226

Dated: October 2, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-24206 Filed 10-12-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-150003B; FRL 3798-3]

Dinoseb Pesticide Products; Continuation of Response Period for Submission of Claims for Indemnification

AGENCY: Environmental Protection Agency (EPA, the Agency).

ACTION: Final notice.

SUMMARY: This Notice amends a February 17, 1989 **Federal Register** Notice by announcing that EPA is continuing to accept claims for indemnification and/or requests for disposal for all suspended and cancelled dinoseb-containing pesticides under sections 15 and 19 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136m and 136q (prior to the FIFRA amendments of 1988). This Notice announces a new time frame for submitting claims for indemnification.

DATES: EPA is continuing to accept claims for indemnification. However, in order to expedite processing, claims for indemnification filed in response to this notice should be submitted by January 31, 1991, 2 months before the expiration date of the Agency's contract supporting the processing of claims.

ADDRESSES: All claims and requests filed in response to this Notice should be mailed to: Resource Management and Evaluation Branch (H-7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attention: Ms. Guynin Myers.

FOR FURTHER INFORMATION CONTACT: By mail: Ms. Guynin Myers, Resource Management and Evaluation Branch (H-7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1002, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557-5047

SUPPLEMENTARY INFORMATION: On February 17, 1989, EPA published in the **Federal Register** a notice announcing procedures for the submission of claims for indemnification and requests for disposal of dinoseb-containing pesticide products. In that notice, EPA stated that it was accepting claims for indemnification until August 15, 1989. In connection with the publication of the February 17, 1989 Notice, EPA conducted an extensive outreach effort to inform all dinoseb holders of the availability of this program. Despite EPA's efforts, a number of holders did not learn about the response period in time to submit claims by August 15, 1989. Further, publicity about the start of the dinoseb disposal operations has generated a number of inquiries from other holders about the availability of indemnification. Due to the unforeseen delay in initiating disposal operations, and to encourage owners of dinoseb products to dispose of dinoseb properly, EPA is issuing this **Federal Register** Notice announcing that it will continue to accept indemnification claims. In order to receive expedited processing, claims should be submitted before the expiration date of EPA's contract supporting the processing of claims.

Persons owning dinoseb who have not already submitted claims for indemnification are urged to contact EPA at the number listed above for copies of the necessary claim form and the **Federal Register** Notice of February 17, 1989. These persons should submit claims as soon as possible. Please note that the Agency has contracted with a firm to assist in processing of claims through March, 1991. Persons submitting new claims prior to the date established in this **Federal Register** notice will receive expedited consideration of their claims, up to the end of the support contract period. Claims received after March 31, 1991, will be processed by EPA staff only, and therefore, in such instances, claimants may experience delays in completion of the indemnification procedures.

Claimants also should be aware of the Federal statute of limitations for claims against the United States. Title 28 U.S.C. 2401(a) provides generally that any action concerning a claim against the United States shall be barred unless filed within 6 years of the date when the claim arose. This provision would bar a claimant from instituting any action to enforce a claim arising out of suspension and cancellation of any dinoseb product 6 years after the registration of the pesticide product was cancelled.

These dates apply only to the submission of claims for indemnification. Requests for disposal will continue to be accepted by the Agency until disposal operations are completed. Therefore, dinoseb holders who have not yet requested disposal should make every effort to do so immediately. Dinoseb holders also are reminded that they have a continuing responsibility to store the product safely and in accordance with all applicable Federal, State and local laws. For guidance on safe storage, holders are referred to the **Federal Register** Notice of February 17, 1989, (54 FR 7372). Copies are available from the address listed above. Additional guidance on storing dinoseb in accordance with the requirements of the Emergency Preparedness and Community Right to Know Act is available from the address listed above.

Dated: October 3, 1990.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 90-24206 Filed 10-12-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3852-5]

Listing Decisions for Virginia Under Section 304(1) of the Clean Water Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of amendment of final listing decisions for the Commonwealth of Virginia under § 304(1) of the Clean Water Act.

SUMMARY: Notice is hereby given of the United States Environmental Protection Agency's (U.S. EPA) decision to amend the final listing decisions for the Commonwealth of Virginia under section 304(1) of the Clean Water Act as amended by the Water Quality Act of 1987. This decision deletes the Westvaco Corporation's Covington Mill from the 304(l)(1)(C) list and the Jackson River, its receiving stream, from the 304(l)(1)(B) list. Several comments were received and considered in reaching this decision on or before the end of the comment period following the proposed decision published June 12, 1990.

DATES: Comments were due on or before July 12, 1990.

ADDRESSES: The administrative record containing the U.S. EPA's documentation supporting its amendment to the final lists will be on file and may be inspected at the U.S. EPA Region III office between the hours of 9 a.m. and 4 p.m., Monday through Friday except holidays. To make arrangements to examine the

administrative record contact Thomas Henry (3WM53), Permits Enforcement Branch, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA 19107, telephone (215) 597–8243, [FTS] 597–8243.

SUPPLEMENTARY INFORMATION: Following the close of the comment period on the proposed listing decisions pursuant to section 304(1) of the CWA, 33 U.S.C. 1314, the Regional Administrator considered the comments and petitions and issued a response to those comments and petitions regarding the Commonwealth of Virginia. The notice of final decision and notice of availability of response was published in the **Federal Register** on March 28, 1990.

Today's decision amends the final list by deleting Westvaco's Covington Mill from the 304(l)(1)(C) list ("C" list) and the receiving stream, the Jackson River, from the 304(l)(1)(B) list ("B" list). This decision is based on EPA Region III's discovery subsequent to March 20, 1990, that Westvaco had submitted sampling data to an EPA Headquarters Office prior to the end of the comment period which was not considered in the March 20th decision. This information indicated that the discharge for the period covered by the sampling from the Westvaco Covington Mill did not and would not cause the receiving stream, the Jackson River, to exceed the applicable water quality standard for dioxin. Since this information was available during the comment period and the Agency believes that it supports a determination that Westvaco's discharge will not cause the receiving stream to exceed the applicable water quality standard for dioxin, EPA Region III is removing Westvaco's Covington Mill and the Jackson River from the "C" and "B" lists, respectively.

EPA accepted comments concerning this decision for thirty days from the date of publication of the proposed decision in the **Federal Register** on June 12, 1990. Comments to the proposed delisting did not oppose the decision. EPA's response to those comments is available in the administrative record noted above.

Since EPA determined that Westvaco's Covington Mill should be removed from the "C" list, no individual control strategy pursuant to section 304(l)(1)(D) of CWA will be required for the mill. EPA notes favorably, however, that Westvaco has requested from the Commonwealth of Virginia a modification to its National Pollutant Discharge Elimination System permit to include a numeric limitation for dioxin. This modification is presently being developed by Virginia. Effluent limitations are established to protect the ambient water quality of the receiving stream.

Dated: September 27, 1990.

Edwin B. Erickson,

Regional Administrator, EPA Region III.

[FR Doc. 90–24210 Filed 10–12–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 4, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Bruce McConnell, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0435

Title: Section 80.361, Frequencies for narrow-band direct-printing (NB–DP) and data transmissions

Action: New collection

Respondents: Individuals or households, state or local governments, nonprofit institutions and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 2 responses, 2 hours average burden per response; 4 hours total annual burden

Needs and Uses: The reporting requirement contained in Section 80.361 is necessary to require applicants to submit a showing of need to obtain new or additional narrow-band direct-printing (NB–DP) frequencies. Applicants for new or additional NB–DP frequencies are required to show the schedule of service of each currently licensed or proposed series of NB–DP frequencies and to show a need for additional frequencies based on at least a 40% usage of existing NB–DP frequencies.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–24156 Filed 10–12–90; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 5, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Bruce McConnell, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0054

Title: Application for Exemption From Ship Radio Station Requirements

Form Number: FCC Form 820

Action: Revision

Respondents: Individuals or households, and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 100 responses, 2.06 hours average burden per response; 206 hours total annual burden

Needs and Uses: In accordance with FCC Rules, applicants are required to complete FCC Form 820 to apply for exemption from radio provisions of statute, Treaty, or international agreement. The data is used by examiners to determine the applicants qualifications for the requested exemption. The revision of this information collection includes the fee processing data on the form and a slight increase in burden.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–24157 Filed 10–12–90; 8:45 am]

BILLING CODE 6712–01–M

Comments Invited on New York Metropolitan Area Regional Public Safety Plan Amendment

October 5, 1990.

The Commission has received a proposed amendment to the public safety radio communications plan for the New York Metropolitan Area (Region 8). Specifically, the Region 8 Tri-State Radio Planning Committee voted at its September 27, 1990, meeting to approve the following changes to their channel allotment plan:

Channel	Freq.	Change from	Change to
611	821/866.1500	Orange County, NY [3]	Belleville Township, NJ.
634	821/866.4375	Unassigned	New York City PD, NY.
672	821/866.9375	Unassigned	Danbury Police Dept., CT.
697	822/867.2750	Unassigned	Old Bridge Township, NJ.
710	822/867.4375	Unassigned	Belleville Township, NJ.
721	822/867.6000	Unassigned	Essex County Police, NJ.
722	822/867.6125	Leonia PD, NJ [4]	Scarsdale Fire Dept., NY.
723	822/867.6250	Orange County, NY [3]	New York City PD, NY.
748	822/867.9375	Unassigned	Old Bridge Township, NJ.
760	823/868.3625	Mercer County, NJ [3] and Dutchess County, NY [3]	Fairfield Township, NJ.
814	823/868.7875	Orange County, NY [3]	Belleville Township, NJ.
816	823/868.8125	Orange County, NY [3]	Newark Housing Auth., NJ.
819	823/868.8500	Unassigned	Essex County Police, NJ.
820	823/868.8625	Unassigned	Town of Fairfield, CT.
821	823/868.8750	Unassigned	Jersey City Police, NJ and Secaucus Police, NJ.

[3] This assignment was previously a pool assignment. See Notes 1 and 2, page 34 of the currently approved plan for FCC Region 8. These changes were coordinated and approved by the affected adjacent FCC region.
[4] Leonia Police Department notified FCC Region 8 that it wished to withdraw its assignment. The FCC Region 8 approved the withdrawal without prejudice.

Channel	Freq.	Current allotment	Additional allotment
608	821/866.1125	Mercer County, NJ [3] and Stamford, CT	Howell Township, NJ.
620	821/866.2625	Essex/Passaic Red Cross, NJ	Eastern Union County Red Cross, NJ
666	821/866.8625	CT State Police, CT	Old Bridge Township, NJ.
686	822/867.1375	CT State Police, CT	Old Bridge Township, NJ.
718	822/867.5625	Port Authority, NY	Danbury Police Dept., CT.
724	822/867.6375	Norwalk PD, CT	Maywood Police Dept., NJ.
756	823/868.0625	Babylon, NY and Orange County, NY [3]	Danbury Police Dept., CT.

[3] This assignment was previously a pool assignment. See Notes 1 and 2, page 34 of the currently approved plan for FCC Region 8. These changes were coordinated and approved by the affected adjacent FCC region.
[4] Leonia Police Department notified FCC Region 8 that it wished to withdraw its assignment. The FCC Region 8 approved the withdrawal without prejudice.

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of Federal Register publication of this public notice to file comments and fifteen days to reply to any comments filed. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Region 8 consists of: Fairfield, Litchfield, New Haven, and Middlesex Counties, Connecticut; Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Dutchess, and Westchester Counties, New York; Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union, Warren, Middlesex, Somerset, Hunterdon, Mercer, and Monmouth Counties, New Jersey. (General Docket No. 87-112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to General Docket No. 88-476, New York Metropolitan Area—Region 8, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Concurrent with this notice and comment period, Region 8 has opened a third window application period beginning October 1, 1990, and ending November 1, 1990. Any applications submitted after November 1, 1990, will be rejected.

Questions regarding this public notice may be directed to Maureen Cesaitis, Private Radio Bureau, (202) 632-6497.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-24158 Filed 10-12-90; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for four new FM stations:

Applicant, City/State	File No.	MM docket No.
I		
A. Alice M. and Henry M. Ellenbogen d/b/a Simply Broadcasting, New Paltz, NY	BPH-880629MI	90-415
B. Creative Broadcasters, Inc., New Paltz, NY	BPH-880630MI	
C. Jeffery Busch, New Paltz, NY	BPH-880630MS	
D. Skytop Telecom, Inc., New Paltz, NY	BPH-880630MT	
E. Larry E. Snyder t/a Don Kelly Radio, New Paltz, NY	BPH-880630MX	
F. Hermine A. Segal, New Paltz, NY	BPH-880630NC	

Applicant, City/State	File No.	MM docket No.
G. New Paltz Broadcasting, Inc., New Paltz, NY	BPH-880630NS	
Issue Heading and *Applicants* 1. Site Availability, A,B,D,G 2. Comparative, A-G 3. Ultimate, A-G		
II		
A. Viera & Lloyd, Los Banos, CA	BH-890502MC	90-417
B. Amador & Rosalie Bustos, Los Banos, CA	BH-890503ME	
C. Los Banos Educational Services, Los Banos, CA	BH-890503MI	
Issue Heading and *Applicants* 1. Noncommercial Educational Qualifications, C 2. Environmental, A,B 3. Air Hazard, C 4. City Coverage, C 5. Comparative, A,B,C 6. Ultimate, A,B,C		
III		
A. Rising Sun Enterprises, Inc. c/o Helen Garrett, Reidland, KY	BPH-890117MD	90-414
B. Ladon Broadcasting Company, Inc., Reidland, KY	BPH-890117ML	
C. Whiting Enterprises, Inc., Reidland, KY	BPH-890118MC	
D. Marvin and Gentry, A Partnership, Reidland, KY	BPH-890118ME	
E. Jimmy Ray and Shelby Jean Baggett, Reidland, KY	BPH-890118MO	
Issue Heading and *Applicants* 1. Comparative, A through E 2. Ultimate, A through E		
IV		
A. The Pacific FM Limited Partnership, Oxnard, CA	BPH-880505MJ	90-416
B. Arthur S. Liu, Oxnard, CA	BPH-880505MM	
C. KEXT Broadcasters, Inc., Oxnard, CA	BPH-880505NB	
D. Spanglish Communications, Inc., Oxnard, CA	BPH-880505NG	
E. Partricia J. Jacobsen d/b/a Peacock Broadcasting, Oxnard, CA	BPH-880505NL	
F. Vince Lee Broadcasting Ltd., Oxnard, CA	BPH-880505NW	
G. B.F.J. Timm, Oxnard, CA	BPH-880505OE	
H. Raymond W. Clanton, Oxnard, CA	BPH-880505OG	
I. Radio Oxnard, Limited Partnership, Oxnard, CA	BPH-880505OO	
J. Townsend Broadcasting, Inc., Oxnard, CA	BPH-880505OW	
K. Charles S. Nelson, Oxnard, CA	BPH-880505PK	
L. Oxnard Broadcasting, Inc., Oxnard, CA	BPH-880504MG	
M. Sherri Lynn McKinnon, Oxnard, CA	BPH-880505OV (Previously Returned)	
N. Borchard FM Broadcasting Co., Inc., Oxnard, CA	BPH-880505PA (Previously Returned)	
O. 1ST Broadcasting, Inc., Oxnard, CA	BPH-880505PF (Previously Returned)	
Issue Heading and *Applicants* 1. Financial Qualifications, I 2. Environmental, C,E,I 3. Air Hazard, A,D,F,H,J,K 4. Comparative, A-K 5. Ultimate, A-K		

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 issue 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 any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix 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 duplicating 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. 90-24149 Filed 10-12-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Fidelity Bancorporation, Inc., et al; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 5, 1990.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Fidelity Bancorporation, Inc.*, Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Fidelity Bank, Fort Worth, Texas.

2. *First National Bank of New Boston ESOP*, New Boston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of New Boston Bancshares, Inc., New Boston, Texas, and thereby indirectly acquire First National Bank of New Boston, New Boston, Texas.

3. *Plains Bancorp Delaware, Inc.*, Wilmington, Delaware; to become a banking holding company by acquiring 100 percent of the voting shares of The First State Bank of Dimmitt, Texas.

4. *Plains Bancorp, Inc.*, Dimitt, Texas; to merge with Seagraves Bancshares, Inc., Seagraves, Texas, and thereby indirectly The First State Bank in Seagraves, Seagraves, Texas.

Board of Governors of the Federal Reserve System, October 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-24230 Filed 10-12-90; 8:45 am]

BILLING CODE 6210-01-M

Central Bancshares of the South, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 U.S.C. 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 5, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Central Bancshares of the South, Inc.*, Birmingham, Alabama, and Compass Bancshares, Inc., Houston, Texas; to acquire 100 percent of the voting shares of Plaza National Bank, Dallas, Texas.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Michigan Bank Corporation*, Holland, Michigan; to acquire 100 percent of the voting shares of FMB-Trust and Financial Services, National Association, Holland, Michigan.

2. *Readlyn Bancshares, Inc.*, St. Paul, Minnesota; to acquire 13.85 percent of the common stock and 12.5 percent of the preferred stock; Britt Bancshares, Inc., St. Paul, Minnesota; to acquire 17.85 percent of the common stock; and Tripoli Bancshares, Inc., St. Paul, Minnesota; to acquire 16.62 percent of the common stock and 20.0 percent of the preferred stock of Ashton Bancshares, Inc., Ashton, Iowa, and thereby indirectly acquire Ashton State Bank, Ashton, Iowa.

In connection with this application, Douglas Newman, Ashton, Iowa; Frank Tschida, St. Paul, Minnesota; Rex Eno, Cedar Rapids, Iowa; Mark Kravik, Osceola, Wisconsin; and James McMahill, Minnetonka, Minnesota, have applied to acquire 24.3 percent of the common stock and 67.5 percent of the preferred stock of Ashton Bancshares, Inc., Ashton, Iowa, and thereby indirectly acquire Ashton State Bank, Ashton, Iowa, pursuant to the Change in Bank Control Act, 12 U.S.C. 1817(g).

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Bank Corp.*, Fort Smith, Arkansas; to acquire 100 percent of the voting shares of Sequoyah County Bankshares, Inc., Sallisaw, Oklahoma, and thereby indirectly acquire National Bank of Sallisaw, Sallisaw, Oklahoma.

2. *First of Searcy, Inc.*, Searcy, Arkansas; to acquire at least 74.6 percent of the voting shares of Citizens Bancshares of Beebe, Inc., Beebe, Arkansas, and thereby indirectly acquire Citizens Bank, Beebe, Arkansas.

3. *First State Bancshares, Inc.*, Farmington, Missouri; to acquire 100 percent of the voting shares of First State Bank of St. Francois County, Bonne Terre, Missouri.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *F&M Bank Services, Inc.*, Derby, Kansas, to acquire Farmers and Merchants State Bank, Derby, Kansas.

Board of Governors of the Federal Reserve System, October 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-24228 Filed 10-12-90; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 5, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to enter into a lease agreement and option to purchase a general insurance agency business from Gilco Leasing, Inc., Omaha, Nebraska, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8) of the Board's Regulation Y. Comments on this application must be received by October 19, 1990.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *Banque Nationale de Paris,* Paris, France; to acquire BAII Capital Markets, Inc., New York, New York, and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-24227 Filed 10-12-90; 8:45 am]

BILLING CODE 6210-01-M

Signet Banking Corporation; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 5, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Signet Banking Corporation, Richmond, Virginia; to engage *de novo* through its subsidiary, Signet Trust Company, Richmond, Virginia, in serving as investment adviser to investment companies registered under the Investment Company Act of 1940 pursuant to § 225.25(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-24231 Filed 10-12-90; 8:45 am]

BILLING CODE 6210-01-M

John W. Troxell, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 29, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. John W. Troxell, Jr., Allentown, Pennsylvania; to acquire an additional 3.7 percent of the voting shares of First Bath Corporation, Bath, Pennsylvania, for a total of 15.0 percent, and thereby indirectly acquire First National Bank of Bath, Bath, Pennsylvania.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Centra, Inc., Warren, Michigan; to acquire at least 10 percent but less than 25 percent of the voting shares of Citizens Banking Corporation, Flint, Michigan, and thereby indirectly acquire Commercial National Bank of Berwyn, Berwyn, Illinois; Citizens Commercial & Savings Bank, Flint, Michigan Second National Bank of Bay City, Bay City, Michigan; Grayling State Bank, Grayling, Michigan; Second National Bank of Saginaw, Saginaw, Michigan; and State Bank of Standish, Standish, Michigan.

2. Nels Lindquist, and Judith Lindquist; to each acquire 45.49 percent of the voting shares of Libanco, Inc., Gowrie, Iowa, and thereby indirectly acquire The First State Bank of Gowrie, Gowrie, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 441 Locust Street, St. Louis, Missouri 63166:

1. Raymond C. Burroughs, Murphysboro, Illinois; to acquire 18.65 percent of the voting shares of City Bancorp, Inc., Murphysboro, Illinois, and thereby indirectly acquire The City National Bank of Murphysboro, Murphysboro, Illinois, as the result of a stock redemption.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Kent Harrington, Plainview, Minnesota; to acquire 0.68 percent of the voting shares of Plainview Bankshares, Inc., Plainview, Minnesota, and thereby

indirectly acquire First National Bank of Plainview, Plainview, Minnesota.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. James O. Haas, Berwyn, Pennsylvania; to acquire up to 100 percent of the voting shares of Pioneer Bank of Longmont, Longmont, Colorado.

2. William J. (Bill) Pasek, Kansas CIty, Missouri; to acquire 63.19 percent of the voting shares of ASB Bancshares, Inc., Archie, Missouri, and thereby indirectly acquire Archie State Bank, Archie, Missouri.

Board of Governors of the Federal Reserve System, October 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-24229 Filed 10-12-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Personnel Administration; Statement of Organization, Functions, and Delegations of Authority

Part A (Office of the Secretary) of the Statement of Organization, and Delegations of Authority for the Department of Health and Human Services (DHHS) is amended to reflect a realignment of functions in the Office of the Assistant Secretary for Personnel Administration. The change integrates the functions of the "Technical Services Center" into the "Personnel and Pay Systems Division", Office of Human Resource Information Management.

Specifically, chapter AH, Office of the Assistant Secretary for Personnel Administration, as last published at 53 FR 4720, February 17, 1988, is revised as follows:

In chapter AH, section AH.20 Functions, paragraph B.9 "Technical Services Center", remove the following: "9. Technical Services Center."

Dated: September 28, 1990.

Kevin E. Moley,

Assistant Secretary for Management and Budget.

[FR Doc. 90-24174 Filed 10-12-90; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration; HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, chaired by Donald W. Aird, Consumer Affairs Officer. The topic to be discussed is food labeling proposals.

DATES: Tuesday, October 16, 1990, 11 a.m. to 1 p.m.

ADDRESSES: 108 Washburn Hall, 2305 East Fifth St., Duluth, MN 55812.

FOR FURTHER INFORMATION CONTACT: Donald P. Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-334-4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 9, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-24218 Filed 10-12-90; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Dallas District Office, chaired by Gerald Sands, District Director. The topic to be discussed is food labeling proposals.

DATES: Monday, October 22, 1990, 10 a.m.

ADDRESSES: Food and Drug Administration, 1445 North Loop West, Suite 420, Houston, TX 77008.

FOR FURTHER INFORMATION CONTACT: Sheryl Lunnon-Baylor, Consumer Affairs Officer, Food and Drug Administration, 1445 North Loop West, Suite 420, Houston, TX 77008, 713-220-2322.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 9, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-24217 Filed 10-12-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 54, No. 12, p. 2229, dated Thursday January 19, 1989) is amended to reflect the establishment of the Physician Payment Reform Implementation Task Force in the Office of Program Operations Procedures, Bureau of Program Operations in the Office of the Associate Administrator for Operations. This task force will: (1) Design and oversee the operational activities related to the implementation of the Medicare Physician Payment Reform (PPR); (2) analyze, develop procedures and validate contractor data related to PPR; (3) test carrier instructional changes and conducts regional office and carrier training on PPR.

The specific amendment to part F. is described below:

- Section FP.20.A.3.e, Physician Payment Reform Implementation Task Force (FPA8-2) is added to reflect the establishment of a focal coordinating point for the development of new operational requirements. The new section reads as follows:

e. Physician Payment Reform Implementation Task Force (FPA8-2)

1. Designs and develops the activities related to the operational implementation of the Medicare Physician Payments Reform (PPR) provision of OBRA 89 (Section 6102).

2. Develops procedures and contractor operational instructions necessary to implement the January 1, 1992 PPR provisions.

3. Analyzes and validates contractor data to develop and monitor Physician Payment Reform.

4. Coordinates activities with Technical Advisory Groups, carriers and

other HCFA components for developing data analysis plans and instructions for Payment Policy Standardization implementation.

5. Develops the necessary test protocols and conducts tests of carrier instructional changes to determine accuracy of change and clarity of instructions.

6. Conducts regional office and carrier training on PPR. Develops guidelines and monitors carriers implementation of and compliance with educational activities.

This is a temporary organization that is expected to be in operation for approximately 2 years when its activities will be incorporated into other Office of Program Operations Procedures components.

Dated: October 2, 1990.

Robert A. Streimer,

Associate Administrator for Management.

[FR Doc. 90-24204 Filed 10-12-90; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Cancer Institute; Meeting (Division of Cancer Treatment Board of Scientific Counselors)

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, October 22-23, 1990, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on October 22 from 8:30 a.m. to approximately 5:30 p.m., and again on October 23 from 8 a.m. until adjournment, to review program plans, concepts of contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on October 22 from 5:30 p.m. to approximately 6:30 p.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, room 3A52, National Institutes of Health, Bethesda, Maryland 20892 (301/496-4291) will furnish substantive program information.

Dated: October 3, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-24201 Filed 10-12-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 7, 1990, in Building 31, room 2A52.

This meeting will be open to the public from 9 a.m. to 12 noon on December 7 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on December 7 from 1 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, Executive Plaza North, room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request.

Dated: October 3, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-24202 Filed 10-12-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences: Meeting of Advisory Council on Hazardous Substances Research and Training

Pursuant to Public Law 92-463, notice is hereby given on a meeting to be held at the National Institutes of Health, Building 31-C, Conference Room 6, Bethesda, Maryland on October 25, 1990. The meeting will be open to the public and will begin at 8:30 a.m. and end at 5 p.m.

The Superfund Amendments and Reauthorization Act of 1986 (SARA) established a university-based, basic research and education program within NIEHS. The purpose of the meeting is to provide the Advisory Council on Hazardous Substances Research and Training the opportunity to learn the status of these programs, which were previously described in the Federal Register of November 28, 1986 (51 FR 43089-43092) and March 9, 1987 (52 FR 7218-7223).

Topics to be discussed at the meeting may include, but are not limited to, recent research findings from the 12 universities receiving NIEHS Superfund Hazardous Substances and Training grants and summaries of four Superfund research conferences convened by NIEHS in 1990: Biomarkers of Human Exposure; Biodegradation of Hazardous Substances; Measuring Pathways of Human Exposure at Superfund Sites; and Health Effects of Hazardous Waste Incineration By-Products. In addition, representatives from the Agency for Toxic Substances and Disease Registry, the Department of Defense, the Department of Energy, and the Environmental Protection Agency will brief the Advisory Council on the status of Superfund research programs managed by those agencies.

Attendance is limited only by space available. For futher information, please contact Mr. Daniel C. VanderMeer, Executive Secretary, NIEHS, P.O. Box 12233, Research Triangle Park, NC, 27709 or telephone (919) 541-3484. The government representative for this meeting will be Dr. Anne P. Sassaman.

(Catalog of Federal Domestic Assistance Program No. 13.143, NIEHS Superfund Hazardous Substances Basic Research and Training Program, NIH)

Dated: October 9, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-24203 Filed 10-12-90; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Supplemental Security Income Modernization Project; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

The Social Security Administration (SSA) announces a meeting of the Supplemental Security Income (SSI) Modernization Project (the Project). This notice also describes the proposed agenda, purpose, and structure of the Project.

DATES: November 7–8, 1990, 9 a.m. to 5 p.m.

ADDRESSES: Federal Building, room 305, 26 Federal Plaza, New York, NY 10278. (Use the Duane Street entrance to the building.)

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 300, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3571.

SUPPLEMENTARY INFORMATION: SSA is undertaking a comprehensive examination of the SSI program, reviewing its fundamental structure and purpose. The SSI program has been in operation over 16 years. The purpose of the Project is to determine if the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The first phase of this Project is intended to create a dialogue that provides a full examination of how well the SSI program serves the needy, aged, blind, and disabled.

To begin this dialogue, the Commissioner has involved 25 people who are experts in the SSI program and/or related public policy areas. The experts include a wide range of representatives of the aged, blind, and disabled from private and nonprofit organizations and Federal and State government as well as former SSA staff. Like members of the public attending this meeting, the experts will be able to express their individual views and concerns about the SSI program. Dr. Arthur S. Fleming, former Secretary of Health, Education and Welfare, will chair the meeting. The purpose of this initial dialogue is to exchange ideas and existing information about the program. This exchange will facilitate the sharing of ideas among attendees' constituencies, including advocacy groups, state and local government and academicians. The outcome will be a more informed public that has an interest in bringing individually produced innovative ideas for change in the SSI program to the Modernization Project.

The meeting is open to the public to the extent that space is available. Public officials, representatives of professional and advocacy organizations, concerned citizens, and SSI applicants and recipients may speak and submit written comments on the issues to be discussed. (This is the fourth in a series of meetings to be held throughout the country. Each of these meetings will also be open to the public. All meetings will be announced in the **Federal Register**. If you are interested in the Project but cannot attend the meeting on November 7–8, 1990, please call the Project staff at (301) 965–3571 so we may notify you of future meetings.)

There will be a public comment portion of the meeting beginning in the afternoon of November 7, 1990. A second public comment session will be held on November 8, 1990, in the morning. In order to ensure that as many individuals as possible are given the opportunity to speak in the time allotted for public comment, each individual will be limited to a maximum of 10 minutes. Because of the time limitation, individuals are requested to present comments in their order of importance. A written copy of comments should be prepared and presented to us, preferably in advance of the meeting. To ensure our full understanding and consideration of all of each speaker's concerns, we welcome written comments that provide a detailed and elaborative discussion of the subjects presented orally, as well as further written comments on other issues not presented orally. Individuals unable to attend the meeting also may submit written comments. Written comments will receive the same consideration as oral comments.

To request to speak, please telephone the Project Staff, at (301) 965–3571, and provide the following: (1) Name; (2) business or residence address; (3) telephone number (including area code) during normal working hours; (4) capacity in which presentation will be made; e.g., public official, representative of an organization, or citizen; and (5) time of day desired. To guarantee an opportunity to speak, requests must be received by November 1, 1990. Late requests to speak will be honored, if time permits.

A transcript of the meeting will be available at an at-cost basis. Transcripts may be ordered from the Project Staff. The transcript and all written submissions will become part of the record of these meetings.

Dated: October 9, 1990.

Peter Spencer,

Director, SSI Modernization Project Staff.

[FR Doc. 90–24232 Filed 10–12–90; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–00–4210–02; NV–930–00–00154]

Las Vegas District Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior Notice is hereby given in accordance with Public Law 920463 that a meeting of the Bureau of Land Management, Las Vegas District Advisory Council will be held October 31, and November 1, 1990, at 9 a.m. to 1 p.m. (10/31), 9 a.m. to 4 p.m. (11/1) in the Las Vegas BLM District Office, Las Vegas, Nevada.

The meeting agenda will include:

1. Tortoise Habitat Conservation Plan—Update and Progress.
2. Wild Horse and Burro Program—Status Report.
3. Las Vegas District Sand and Gravel Program—Status Report.
4. Council Resolution on Sanitary Landfills.
5. Rocky Gap Road (Red Rock Canyon Recreation Area)—Status Report.
6. Public Comments.

Thursday, November 1, 1990. 9 a.m.–4 p.m.—Field trip and tour of the Red Rock Recreation Lands and Desert Tortoise Conservation Center in conjunction with the National Public Lands Advisory Council.

Advisory Council meetings are open to the public. Persons wishing to make oral statements to the Council must notify the District Manager, Bureau of Land Management, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89125, prior to October 26, 1990.

Minutes of the meeting will be available, upon request, at the Las Vegas District Office on November 31, 1990.

Gary Ryan,

Associate District Manager, Las Vegas, Nevada.

[FR Doc. 90–24159 Filed 10–12–90; 8:45 am]

BILLING CODE 4310–HC–M

Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Susanville District Grazing Advisory Board, Susanville, CA.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of Interior's discretionary authority on May 14, 1986, will meet on November 7, 1990.

The November 7 meeting will begin at 10 a.m. at the Surprise Resource Area Office, Bureau of Land Management, 602 Cressler Street, Cedarville, California.

Subjects to be covered during the meeting will include a report of progress on range improvements for FY 1990, proposed range improvements for FY 1991, a report on new and revised Allotment Management Plans (AMPs) for FY 1990, a discussion of cattleguard maintenance problems, a discussion of the proposed helicopter gathering of wild horses and burros for FY 1991, and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 p.m. to 4:30 p.m. on November 7, 1990 or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130 by November 1, 1990. Depending upon the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Associate District Manager.

[FR Doc. 90-24161 Filed 10-12-90; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-00-4111-15; CACA 16346]

California: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease CACA 16346 for lands in Kern County, California, was timely filed and was accompanied by all required rentals and royalties accruing from May 1, 1990, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective May 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Dated: October 1, 1990.

Fred O'Ferrall,

Chief, Leasable Minerals Section

[FR Doc. 90-24164 Filed 10-12-90; 8:45 am]

BILLING CODE 4310-40-M

[NM-910-91-GPO-4111-15-403; NMNM 39120]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provision of 43 CFR 3108.2-3, Yates Petroleum Corporation, petitioned for reinstatement of oil and gas lease NMNM 39210, covering the following described land located in Eddy County, New Mexico:

T. 20 S., R. 24 E.
Sec. 6, lots 3, 4, 5, 6, and 7, SE¼NW¼, E½SW¼;
Sec. 7, lots 1, 2, and 3;
Sec. 17, NE¼.
Containing 594.36 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, December 1, 1989.

Dated: October 3, 1990.

Dolores L. Vigil,

Chief, Adjudication Section.

[FR Doc. 90-24165 Filed 10-12-90; 8:45 am]

BILLING CODE 4310-FB-M

[CA-065-91-3110-10-DTNA]

Realty Action—Exchange, California

AGENCY: United States, Department of the Interior, Bureau of Land Management.

ACTION: Notice of Realty Action, Exchange of Public and Private Lands in San Bernadino and Kern Counties, CA 27415.

SUMMARY: The following public lands in San Bernadino County have been examined and determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). Selected lands:

San Bernadino Meridian, California

T.11N., R.6W.
Section 30, Lot 5
Containing 21.88 acres of public land, more less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from The Nature Conservancy. Offered lands:

Mount Diablo Meridian, California

T. 31S., R. 38E.
Section 15: SE¼NW¼
Containing 40 acres of non-Federal lands, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire private land in the designated Desert Tortoise Research Natural Area. The designated area encompasses lands which have historically supported the highest and most stable population of tortoise within its range. The desert tortoise has been listed as a threatened species under the Endangered Species Act of 1973. Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchange will be on an equal value basis. Full equalization of value will be achieved by acreage adjustment or by cash payment in the amount not to exceed 25 percent of the fair market value of the selected lands.

Lands transferred out of Federal ownership will be subject to the following reservations terms and conditions.

1. A reservation of right-of-way to the United States for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. A right-of-way for solar-electric generation facilities, Serial Number CA-18774, held by Luz Solar Partners, Ltd.

3. A right-of-way for electric power transmission facilities, Serial Number LA-0145482, held by Southern California Edison Company.

FOR FURTHER INFORMATION CONTACT: Tom Gey, Ridgecrest Resource Area (619) 375–7125. Information relating to this exchange is available for review at the Ridgecrest Resource Area Office, 300 South Richmond Road, Ridgecrest, California 93555.

DATES: For a period of 45 days from the date of first publication of this notice interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, in care of the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: October 3, 1990.

H.W. Riecken,

Acting District Manager.

[FR Doc. 90–24163 Filed 10–12–90; 8:45 am]

BILLING CODE 4310–40–M

[CO–942–91–4730–12]

Colorado: Filing of Plats of Survey

October 4, 1990.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., October 4, 1990.

The plat representing the dependent resurvey of a portion of the east boundary and subdivisional lines and the subdivision of section 1, T. 36 N., R. 17 W., New Mexico Principal Meridian, Colorado, Group No 717, was accepted September 25, 1990.

The plat representing the dependent resurvey of portions of the west boundary of the Ute Ceded Lands, the Ninth Standard Parallel North (south boundary), the Second Guide Meridian West (east boundary), and subdivisional lines and the subdivision of certain sections, T. 37 N., R. 17 W., New Mexico Principal Meridian, Colorado, Group No 717, was accepted September 25, 1990.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

The plat representing the dependent resurvey of portions of the Eighth Standard parallel North (south boundary) and the subdivisional lines and the subdivision of certain sections, T. 33 N., R. 2 W., New Mexico Principal Meridian, Colorado, Group No. 764, was accepted September 25, 1990.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of portions of the subdivisional lines, subdivision of section 23, and the metes-and-bounds survey in this section, and the further subdivision of section 23, T. 2 N., R. 75 W., Sixth Principal Meridian, Colorado, Group No. 884, was accepted September 25, 1990.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines and subdivision of sections 25 and 36, the metes-and-bounds survey of lot 2, section 36, and an informative traverse of a portion of the Government Highline Canal, T. 2 N., R. 2 W., Ute Meridian, Colorado, Group No. 914, was accepted September 25, 1990.

This survey was executed to meet certain administrative needs of the Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Gary L. Gibson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 90–24166 Filed 10–12–90; 8:45 am]

BILLING CODE 4310–JB–M

[CO–942–91–4730–12]

Colorado: Filing of Plats of Survey

October 4, 1990.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., October 4, 1990.

The plat representing the dependent resurvey of portions of the north boundary and the subdivisional lines and the subdivision of sections 6 and 7, T. 7 N., R. 96 W., Sixth Principal Meridian, Colorado, Group No. 828, was accepted September 11, 1990.

The plat representing the dependent resurvey of portions of the Twelfth Guide Meridian West (east boundary), north boundary and the subdivisional lines, and the subdivision of certain sections, T. 7 N., R. 97 W., Sixth Principal Meridian, Colorado, Group No. 828, was accepted September 11, 1990.

The plat (in two sheets) representing the dependent resurvey of portions of the east and north boundaries and subdivisional lines, the subdivision of certain sections, and the metes-and-bounds surveys in sections 10, 11, and 13, T. 41 N., R. 6 E., New Mexico Principal Meridian, Colorado, Group No. 891, was accepted September 11, 1990.

The plat representing the dependent resurvey of the west one half mile of the Sectional Correction Line between sections 30 and 31 and old Tract 46 (now designated as Tract 46B) and the metes-and-bounds survey of Tract 46A and a portion of Tract 46B, T. 19 S., R. 72 W., Sixth Principal Meridian, Colorado, Group No. 943, was accepted September 20, 1990.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines and the subdivision of section 3, T. 3 N., R. 88 W., Sixth Principal Meridian, Colorado, Group No. 844, was accepted September 19, 1990.

The plat representing the dependent resurvey of Tract 44 and a portion of Tract 45 and Tract 48, T. 9 N., R. 87 W., Sixth Principal Meridian, Colorado, Group No. 908, was accepted September 19, 1990.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of the south boundary, T. 34 N., R. 5 W. (South of the Ute Line), New Mexico Principal Meridian, Colorado, Group No. 861, was accepted August 20, 1990.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Gary L. Gibson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 90–24167 Filed 10–12–90; 8:45 am]

BILLING CODE 4310–JB–M

[CO–942–91–4730–12]

Colorado: Filing of Plats of Survey

October 4, 1990.

The plat representing the dependent resurvey of a portion of the east boundary and subdivisional lines and the subdivision of section 1, T. 36 N., R. 17 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted September 25, 1990.

The plat representing the dependent resurvey of portions of the west boundary of the Ute Ceded Lands, the Ninth Standard Parallel North (south

boundary), the Second Guide Meridian West (east boundary), and subdivisional lines and the subdivision of certain sections, T. 37 S., R. 17 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted September 25, 1990.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

The plat representing the dependent resurvey of portions of the Eighth Standard Parallel North (south boundary) and the subdivisional lines and the subdivision of certain sections, T. 33 N., R. 2 W., New Mexico Principal Meridian, Colorado, Group No. 764, was accepted September 25, 1990.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of portions of the subdivisional lines, subdivision of section 23, and the metes-and-bounds survey in this section, and the further subdivision of section 23, T. 2 N., R. 75 W., Sixth Principal Meridian, Colorado, Group No. 884, was accepted September 25, 1990.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines and subdivision of sections 25 and 36, the metes-and-bounds survey of lot 2, section 36, and an informative traverse of a portion of the Government Highline Canal, T. 2 N., R. 2 W., Ute Meridian, Colorado, Group No. 914, was accepted September 25, 1990.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Cary L. Gibson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 90-24168 Filed 10-12-90; 8:45 am]

BILLING CODE 4310-JB-M

[OR-942-00-4730-12: GP1-005]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 2 N., R. 3 W., accepted 9/14/90
T. 22 S., R. 3 W., accepted 9/28/90
T. 16 S., R. 6 W., accepted 9/28/90
T. 7 S., R. 3 E., accepted 9/14/90
T. 1 S., R. 47 E., accepted 8/31/90
T. 2 S., R. 47 E., accepted 8/31/90
T. 3 S., R. 47 E., accepted 8/31/90
T. 1 N., R. 48 E., accepted 8/31/90
T. 2 S., R. 48 E., accepted 8/31/90

If protests against a survey, as shown on any of the above plats, are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plats will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plats may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 N.E. 44th Avenue, P.O. Box 2965, Portland Oregon 97208.

Dated: September 28, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-24169 Filed 10-12-90; 8:45 am]

BILLING CODE 4310-33-M

[MT-920-00-4332-03]

Public Review of Mineral Survey Reports on Wilderness Study Areas (WSAs), Montana

ACTION: Notice of the availability of a Mineral Survey Report produced by the U.S. Geological Survey (USGS)/U.S. Bureau of Mines (USBM), on Bureau of Land Management (BLM) WSA in Montana. Announcement of a 60-day comment period to obtain previously unknown mineral information on the area.

SUMMARY: The Montana BLM is requesting the public to review a combined USGS and USBM "Mineral Survey Report" which has been completed for this preliminarily suitable WSA. If the public identifies significant differences in interpretation of the data presented in this report, or submits significant new minerals data for consideration, the BLM will request that USGS/USBM evaluate these comments in relation to their final Mineral Survey Report. The BLM will consider the USGS/USBM evaluations as well as the Mineral Survey Report in developing final wilderness suitability recommendations. A copy of the WSA report can be reviewed in BLM offices in Bilings and Butte, Montana.

DATES: New information will be accepted on the report until December 10, 1990.

ADDRESSES: Send information on report to the Deputy State Director, Division of Mineral Resources, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Jerry Klem, Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Telephone (406) 255-2825.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or nonsuitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas.

To ensure that all available minerals data are considered by the BLM prior to making its final wilderness suitability recommendations to the Secretary of the Interior, the Montana State Director is providing this public review and comment period. Usually, there is a 1- to 2-year lag time between actual field work and final printing of a Mineral Survey Report. New information may have been collected by the public during this lag time, or the public may have a

new interpretation of the data presented in the Mineral Survey Report. Any new data or new interpretations of data in the report will be screened for its significance and validity by the BLM. Significant new minerals data or new interpretations of the minerals data will be forwarded to the USGS and USBM for further consideration. Evaluations received by the BLM from the USGS and USBM will be considered by the State Director in the final wilderness suitability recommendations.

Information requested from the public via this invitation is not limited to any specific energy or mineral resource. Information can be in the form of a letter and should be as specific as possible, and include:

1. The name and number of the subject WSA and Mineral Survey Report.

2. Mineral(s) of interest.

3. A map or land description by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject WSA.

4. Information and documents that depict the new data or reinterpretation of data.

5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Geologic maps, cross-sections, drill hole records and sample analyses, etc., should be included. Public literature and reports may be cited. All information submitted and marked confidential will be treated as proprietary data, and will not be released to the public without consent.

New information will be accepted on the following Mineral Survey Report:

Mineral Resources of the Sleeping Giant Wilderness Study Area, Lewis and Clark County, Montana (Open File Report 90-0410).

This report is available for review in BLM offices, but is not available for sale or removal from the office. Copies of the report may be purchased from: U.S. Geological Survey, Books and Open File Reports, P.O. Box 25425, Federal Center, Denver, CO 80225.

Dated: October 3, 1990.

Robert W. Faithful,

Acting State Director.

[FR Doc. 90-24160 Filed 10-12-90; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF THE INTERIOR

[WY-930-D1-4214-10; WYW 121895]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Services, has filed an application to withdraw 275.84 acres of National Forest System land for protection of the proposed Burgess Visitor Information Center Site while in the final development stages.

DATES: Comments and requests for a meeting should be received on or before January 14, 1990.

ADDRESSES: Comments and meeting requests should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307-775-6115.

SUPPLEMENTARY INFORMATION: On September 17, 1990, the U.S. Department of Agriculture filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Sixth Principal Meridian

Bighorn National Forest

T. 55 N., R. 88 W.,
Sec. 6, lots 1 and 2.
T. 56 N., R. 88 W.,
Sec. 31, SE¼;
Sec. 32, SW¼SW¼.

The areas described contain 275.84 acres in Sheridan County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those uses within the statutory authorities pertinent to National Forest System land and subject to discretionary approval.

The temporary segregation of the land in connection with this withdrawal application shall not affect the administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Department of Agriculture.

Dated: September 27, 1990.

James K. Murkin,

Deputy State Director, Wyoming State Office.

[FR Doc. 90-24162 Filed 10-12-90; 8:45 am]

BILLING CODE 4310-22-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Arenol Chemical Corp.

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 23, 1990, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylacetone (8501)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20357, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 14, 1990.

Dated: October 4, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administrator.

[FR Doc. 90-24208 Filed 10-12-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances, Registration; M.D. Pharmaceutical

By Notice dated January 30, 1990, and published in the Federal Register on February 9, 1990, (55 FR 4728), M.D. Pharmaceutical Inc., 3501 West Garry Avenue, Santa Ana, California 92704, 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
Diphenoxylate (9170)	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 Asssistant 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: October 4, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-24207 Filed 10-12-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated July 23, 1990, and published in the Federal Register on August 1, 1990, (55FR 31240), Radian Corporation, P.O. Box 201088, 8501 Mopac Boulevard, Austin, Texas 78759, 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
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-methylenedioxyamphetamine (MDA)(7400).	I
3,4-methlenedioxymethamphetamine (MDMA)(7405).	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methaphetamine, its salts, isomers and salts of its isomers (1105).	II
Phencyclidine (7471)	II
Methadone (9250)	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, § 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: October 5, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 24209 Filed 10-12-90; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities 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 November 14, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, room 310, 1100 Pennsylvania Avenue, NW., 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, National Endowment for the Humanities, Grants Office, room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions, or reinstatements. 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) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeepig burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revision

Title: NEH Teacher-Scholar Program for Elementary and Secondary School Teachers.

Form Number: 3136-0122.

Frequency of Collection: Annual.

Respondents: Individuals or households Academic scholars—teachers, administrators.

Use: The application instructions provide direction for preparing narrative and budgetary parts of applications for grant funds.

Estimated Number of Respondents: 500.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 10 per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 5,250 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 90-24235 Filed 10-12-90; 8:45 am]

BILLING CODE 7536-01-M

Music Advisory Panel: Meeting

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 Music Advisory Panel (Chorus Section) to the National Council on the Arts will be held on October 23, 1990 from 9 a.m.-6 p.m., October 24 from 8:30 a.m.-6 p.m. and October 25 from 8:30 a.m.-5 p.m. in room M14 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 25 from 3 p.m.-5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on October 23 from 9 a.m.-6 p.m., October 24 from 8:30 a.m.-6 p.m. and October 25 from 8:30 a.m.-3 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 are 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 28, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–24172 Filed 10–12–90; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

DASC Committee of Visitors: Meeting

The National Science Foundation announces the following meeting:

Name: DASC Committee of Visitors.

Date and Time: October 22–9 a.m.–5 p.m. October 23–9 a.m.–5 p.m.

Place: Room 417, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Thomas Weber, Director, Division of Advanced Scientific Computing, room 417, National Science Foundation, 202/357–7558.

Purpose of Meeting: Committee of Visitors triennial review, conduct and progress of the DASC Supercomputing Centers Program.

Reason for Closing: Reviewing proposals awarded and declined. The Committee of Visitors will have access to the ASC proposal jackets which contain priviliged information. These matters are within exemptions (4) and (6) of U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–24179 Filed 10–12–90; 8:45 am]

BILLING CODE 7555-01-M

Decision, Risk, and Management Science Advisory Panel: Meetings

The National Science Foundation announces the following, meeting:

Name: Advisory Panel for Decision, Risk, and Management Science.

Date/Time: October 26–27, 1990; 8:30 a.m. to 6:30 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., room 523, Washington, DC 20550.

Type of Meeting: Part Open—October 26, 5:30–6:30 p.m. Closed remainder.

Contact Persons: Dr. Robert Bordley, Program Director, (202) 357–7417, or Dr. L. Robin Keller, Program Director, (202) 357–7569, Decision, Risk, and Management Science, Division of Social and Economic National Science Foundation, Washington, DC 20550, room 336.

Purpose of Meeting: To provide advice and recommendations concerning support for research in decision, risk, and, management science.

Agenda: Open—general discussion of trends and opportunities in decision, risk, and management science. Closed portion—To review and evaluate research proposals.

Reason for Closing: The proposals being reviewed include technical information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 522b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–24176 Filed 10–12–90; 8:45 am]

BILLING CODE 7555-01-M

Developmental Biology Advisory Panel: Meeting

Name: Advisory Panel for Development Biology.

Date and Time: October 31, November 1–2, 1990—8:30 am to 5.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20017.

Type of Meeting: Closed.

Contact Person: Dr. Thomas Brady, Program Director, Developmental Biology, room 321, National Science Foundation, Washington, DC 20550.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Developmental Biology.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data; such as salaries and personal with the proposals.

These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–24177 Filed 10–12–90; 8:45 am]

BILLING CODE 7555-01-M

Economics Advisory Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics.

Date/Time: Thursday November 1, 1990; 9: a.m. to 5 p.m.; Friday, November 2, 1990; 9 a.m. to 5 p.m.; Saturday, November 3, 1990; 8:30 a.m. to 1:30 p.m.

Place: National Science Foundation, room 540, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Part Open—November 2, 1990, 12–1 p.m. Closed remainder.

Contact Person: Dr. Daniel H. Newlon, Program Director, Dr. Lynn A. Pollnow, Program Director, Dr. Ivy Broder, Program Director, Division of Social and Economic, room 336, National Science Foundation, Washington, DC 20550, telephone (202) 357–9674.

Purpose of Meeting: To provide advice and recommendations concerning support for research in economics.

Agenda: Open—general discussion of trends and opportunities. Closed portion—To review and evaluate research proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 522b(c), Government in Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–24180 Filed 10–12–90; 8:45 am]

BILLING CODE 7555-01-M

Ethics and Values Studies Advisory Panel; Meeting

The National Science Foundation announces the following:

Name: Advisory Panel for Ethics & Values Studies.

Date/Time: November 1, 1990, 8:30 a.m. to 5 p.m., November 2, 1990, 8:30 a.m. to 5 p.m.

Place: One Washington Circle Hotel, One Washington Circle, NW., The Board Room.

Type of Meeting: Part Open—Open November 2, 8:30 a.m. to 10:30 a.m. Closed remainder.

Contact: Vivian Weil, Program Director, Ethics and Values Studies, National Science Foundation, Washington, DC 20550, telephone (202) 357–9894, room 312.

Purpose of Panel Meeting: To provide advice and recommendations concerning support for research in Ethics and Values Studies in Science, Technology, and Society.

Agenda: Open—General discussion of approaches to "ethics" and "values" in the discourse of the physical and natural sciences, social sciences, and humanities disciplines.

Closed—To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-24181 Filed 10-12-90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for International Programs; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for International Programs.

Date: October 30, 1990, 8:30 a.m. to 5 p.m., October 31, 1990, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 540, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Eduardo L. Feller, Executive Secretary, Division of International Programs, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7613.

Summary of Mintues: May be obtained from contact person.

Purpose of Meeting: To provide advice, recommendations, and oversight related to support for international cooperation in science and engineering.

Tentative Agenda: *October 30:*

- Status report on international programs.
- Update on Europe initiatives.
- Update on Pacific Rim initiatives.
- Proposal to evaluate NSF contribution to ICSU.
- Programs with Latin America—Discussion.

October 31:

- International Human Resources—Discussion.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-24178 Filed 10-12-90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Scientific, Technological, and International Affairs, Amdt.; Meeting

Agenda of meeting has changed and is being reprinted in its entirety. Original notice appeared in Federal Register on—

Date and Time: October 17—1 p.m. to 6 p.m.; October 18—8 a.m. to 3 p.m.

Place: National Science Foundation, room 540, 1800 G Street NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Dr. Marta Cehelsky, Directorate for Scientific, Technological, and International Affairs, National Science Foundation—room 1214, 1800 G Street NW., Washington, DC 20550, Telephone Number: 202-357-7613.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Meeting of the Directorate-wide Advisory Committee.

Agenda:

(1) Reports: Organizational Changes (October 17: 1:00-3:35)
(2) Small Business Innovation and Research (SBIR) (October 17: 3:45-5:00)
(3) NSF and Industry: Current Activities, Possible Roles (October 17: 5:00-6:00)
(4) NSF and Industry, continued: (October 18: 8:00-10:00)
(5) Experimental Program to Stimulate Cooperative Research (EPSCoR) (October 18: 10:15-11:45)
(6) International Programs: USSR and Eastern Europe (October 18: 12:45-3)

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-24182 Filed 10-12-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-3005 (which should be mentioned in all correspondence concerning this draft guide), is titled "Standard Format and Content for Emergency Plans for Fuel Cycle and Materials Facilities" and is intended for Division 3, "Fuels and Materials Facilities." This regulatory guide is being developed to provide guidance acceptable to the NRC staff on the information to be included in emergency plans for fuel cycle and materials facilities. The guide also would establish a format for presenting the information.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by November 30, 1990.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)

Dated at Rockville, Maryland, this 26th day of September 1990.

For the Nuclear Regulatory Commission.

Warren Minners,

Director, Division of Safety Issues Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 90-24222 Filed 10-12-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co. Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-30, issued to the Union Electric Company (the licensee), for operation of the Callaway Plant located in Callaway County, Missouri.

The amendment would revise Technical Specification 3/4.7.1.7 to allow an exception to Technical Specification 4.0.4. The proposed amendment would allow sufficient plant conditions to be established for steam generator atmospheric steam dump valve surveillance after entry into a mode (Mode 3) for which the surveillance requirements apply.

The proposed amendment is required prior to entry into Mode 3 at the conclusion of the current refueling outage. Mode 3 is currently scheduled to be entered on November 4, 1990.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has porovided an evaluation indicating that the proposed change does not involve a significant hazards consideration under the Commission's regulations in 10 CFR 50.92 as follows:

The proposed change does not invlove a significant hazards consideration because operation of Callaway Plant with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The change allows the surveillances for the ASD [Atmospheric Steam Dump] valves to be performed at conditions similar to those in which the valves would be required to function in the event of a SGTR [Steam Generator Tube Rupture]. Since no design change is being made the probability of an accident previously evaluated has not increased. The testing of valves at conditions similar to those anticipated when the valves are required to function provides assurance that the consequences of an accident and probability or consequences of a malfunction are not increased over those evaluated in the FSAR [Final Safety Analysis Report].

2. Create the possibility of a new or different kind of accident from any previously evaluated. This is based on the fact that no design changes are involved. The change provides assurance that the ASD valves will perform as designed.

3. Involve a significant reduction in a margin of safety. This change provides assurance that the ASD valves will perform as designed to mitigate the consequences of a postulated SGTR event. The margin of safety is not reduced.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 31, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the basis of the contention and a concise statement of the alleged facts or expert

opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidience and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves a no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325-6000 (in Missouri 1 (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Regiser notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and the Gerald Charnoff, Esq. and Thomas A. Baxter, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC, 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.174(d).

For further details with respect to this action, see the application for amendment dated September 26, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, the Callaway County Public Library, 710 Court St., Fulton, Missouri, 65251.

Dated at Rockville, Maryland, this 9th day of October 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. 90-24221 Filed 10-12-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-72]

Notice of Proposed Determination Under Section 304 of the Trade Act of 1974, as Amended, Regarding Thailand's Restrictions on Access to its Cigarette Market; Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of, and request for written comments on, proposed determination under section 304 of the Trade Act of 1974 (the "Trade Act"), as amended, 19 U.S.C. 2414.

SUMMARY: Pursuant to section 304(a)(2) of the Trade Act, 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the United States Trade Representative ("USTR") is required to determine on or before November 25, 1990, whether United States' rights under a trade agreement are being denied by the Royal Thai Government's policies and practices with respect to the importation, distribution and sale of cigarettes and whether the Royal Thai Government practices at issue are unreasonable, and burden or restrict U.S. commerce, within the meaning of section 301(a)(1)(A) or 301(b)(1), 19 U.S.C. 2411(a)(1)(A) and 19 U.S.C. 2411(b)(1), respectively. The Trade Representative is also considering appropriate action (subject to the specific direction, if any, of the President) in response to the Royal Thai Government's practices. The USTR welcomes written comments regarding such determination or responsive action with respect to the subject Thai government practices.

DATES: Written comments from interested persons are due November 14, 1990.

ADDRESSES: Comments should be addressed to the Acting Chairman, section 301 Committee, Office of the United States Trade Representative, room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian Affairs, (202) 395-6813, or Catherine Field, Associate General Counsel, (202) 395-3432.

SUPPLEMENTARY INFORMATION: On April 10, 1989, the United States Cigarette Export Association (CEA) filed a petition under section 302(a) of the Trade Act of 1974, as amended, 19 U.S.C. 2412(a), alleging that the Royal

Thai Government and its instrumentality, the Thailand Tobacco Monopoly (TTM), engaged in acts, policies and practices that are unreasonable or discriminate against imports and burden and restrict U.S. commerce. The Thai government maintains an effective ban on the importation of foreign cigarettes and prohibits foreign investment in cigarette manufacture. The petitioner alleged that these bans on importation and investment, combined with high tariffs, discriminatory domestic taxes and TTM distribution practices, deny U.S. firms fair and equitable market opportunities. Finally, the CEA alleged that Thai government restrictions on cigarette advertising are intended to put foreign cigarette brands at a competitive disadvantage.

On May 25, 1989, the Trade Representative initiated an investigation of the Thai government's policies and practices affecting fair and equitable access to the Thai cigarette market (54 FR 23724, June 2, 1989). On April 3, 1990, the GATT Council of Representatives ("GATT Council") authorized establishment of a dispute settlement panel, under GATT Article XXIII:2, to examine the United States' complaint regarding the effective ban on importation and discriminatory domestic taxes maintained by the Thai government. During the course of the panel proceedings, the Thai government issued ministerial regulations amending its tax policy with respect to cigarettes.

On September 21, 1990, the GATT dispute settlement panel issued a report concluding that Thailand's import restrictions on cigarettes are contrary to the provisions of GATT Article XI:1 and are not justified by Article XI:2(c)(i), Article XX(b), or paragraph 1(b) of Thailand's Protocol of Accession.

The panel recommended that the GATT Contracting Parties request Thailand to bring its import restrictions into conformity with its obligations under the GATT. These recommendations and the panel's report will be discussed at the GATT Council meeting on November 7, 1990.

Pursuant to section 304 of the Trade Act, the USTR is required to determine whether Thailand's policies and practices affecting access to the Thai cigarette market deny "rights to which the United States is entitled" under the GATT and whether such policies and practices are unreasonable and burden or restrict U.S. commerce. This determination must be made no later than November 25, 1990, which is 18 months after the date of initiation of this investigation.

In light of the GATT panel report on this matter, the Trade Representative proposes to determine that rights to which the United States is entitled under a trade agreement are violated by Thailand's restrictions on imports of cigarettes and that other policies and practices of the Thai government adversely affecting access to the Thai cigarette market, are unreasonable and constitute a burden or restriction on U.S. commerce.

PUBLIC COMMENT: The public is invited to comment on this proposed determination and on appropriate action that should be taken in response to Thailand's policies and practices. The comments submitted will be considered in determining actionability under section 301 and in recommending any action under section 301 to the USTR. All written submissions must be filed in accordance with 15 CFR 2006.8. Submissions are to be made in twenty (20) copies, in English, by noon on November 14, 1990 to Acting Chairman, Section 301 Committee, Office of the U.S. Trade Representative, room 223, 600 17th Street, NW., Washington, DC 20506.

Catherine R. Field,

Acting Chairman, Section 301 Committee.

[FR Doc. 90-24236 Filed 10-12-90; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[International Series Release No. 166; File No. 265-15]

Emerging Markets Advisory Committee: Meetings

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Security and Exchange Commission Emerging Markets Advisory Commitee.

SUMMARY: This is to give notice that the Securities and Exchange Commission Emerging Markets Advisory Committee will conduct a meeting on October 23, 1990 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 10 a.m. The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Thomas L. Riesenberg, Office of General Counsel, (202) 272-3088, or Joseph G. Mari, Office of International Affairs, (202) 272-2306, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 10a, the Securities and Exchange Commission Emerging Markets Advisory Committee hereby gives notice that it will conduct a meeting on October 23, 1990 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 10 a.m. The meeting will consider and discuss requests for Commission technical assistance to emerging securities markets in Eastern Europe and elsewhere. There will also be a discussion regarding financial sector technical assistance being provided by U.S. government agencies to Eastern European countries. The meeting will be the second meeting of the Advisory Committee, and will be open to the public.

The Chairman has determined that this meeting should be held sooner than fifteen days after publication of this notice in the **Federal Register** in order to obtain the assistance of the Advisory Committee on areas in which Commission assistance has been requested and in view of prior scheduling commitments of the Committee members.

Dated: October 9, 1990.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 90-24184 Filed 10-12-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Meeting To Discuss Rulemaking, Research and Enforcement Programs; Correction

AGENCY: National Highway Traffic Safety Administration.

ACTION: Notice; Correction.

SUMMARY: The National Highway Traffic Safety Administration is correcting the dates on an announcement of a NHTSA quarterly public meeting and a meeting on child safety seats, published on Friday, October 5, 1990, on page 40977 of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Carnes, Office of Rulemaking, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Carnes telephone number is (202) 366-1810.

SUPPLEMENTARY INFORMATION: The following dates have been changed. The agency's quarterly public meeting will be held on November 16, 1990. Questions relating to the agency's rulemaking, research and enforcement programs, must be submitted in writing

by November 7, 1990. If sufficient time is available, questions received after the November 7, date may be answered at the meeting. A consolidated list of the questions submitted by November 7, 1990, and the issues to be discussed will be mailed to interested persons by November 9, 1990, and will also be available at the meeting. The meeting on child safety seats will also be held on November 16, 1990.

Issued on: October 10, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-24238 Filed 10-12-90; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 199
Monday, October 15, 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).

NUCLEAR REGULATORY COMMISSION

DATE: Wednesday, October 17, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Wednesday, October 17

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Petitions to Intervene and Requests for Hearing on Shorehan Operating License Amendment Proceeding
b. Kerr-McGee's Motion for a Hearing Under Section 274o

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492–1661.

Dated: October 10, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–24340 Filed 10–11–90; 2:14 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 55, No. 199
Monday, October 15, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24344; Amdt. No. 25-72]

RIN 2120-AA47

Special Review: Transport Category Airplane Airworthiness Standards

Correction

In rule document 90-16852 beginning on page 29756 in the issue of Friday, July 20, 1990, make the following correction:

§ 25.629 [Corrected]

On page 29777, in the first column, in § 25.629(b)(1), in the next-to-last line, the expression "M" should read "M_D".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Chapter I

[T.D. 90-78]

RIN 1515-AA61

Customs Regulations Amendments to Conform With the Harmonized System of Tariff Classification

Correction

In rule document 90-23246 beginning on page 40162 in the issue of Tuesday, October 2, 1990, make the following corrections:

1. On page 40163, in the first column, in the 27th line "Article" was misspelled.

2. On the same page, in the same column, in the first full paragraph, in the third line "Harmonized" should be capitalized.

3. In the same paragraph, in the ninth line, "purposed" should read "proposed".

4. On page 40164, in the first column, in the fourth line, "subheadings" should read "subheading" (singular not plural).

5. On the same page, in the second column, under the heading "*Part 134*", in the last line of the second paragraph, "correct" should read "corrected".

6. On page 40167, in the table, in the first entry in the second column "Benzene" should be followed by a comma.

7. In the same table, in the last entry of the third column, in the third-from-last line, "spectroscopy" should be followed by a comma.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-3]

RIN 2120-AD61

Proposed Alteration of the St. Louis Terminal Control Area; Missouri

Correction

In proposed rule document 90-21555 beginning on page 37834 in the issue of Thursday, September 13, 1990, make the following corrections:

1. On page 37834, in the first column, under **SUMMARY**, in the ninth line, "TGA" should read "TCA"; and in the tenth line, "air" should read "aim".

2. On page 37836, in the second column, in the fifth paragraph, in the second line, "3,000" should read "3,500",

BILLING CODE 1505-01-D

federal register

Monday
October 15, 1990

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 27 and 52
Federal Acquisition Regulation (FAR); Rights in Technical Data

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 27 and 52

Federal Acquisition Regulation (FAR); Rights in Technical Data

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The objective of this advanced notice of proposed rulemaking is to:

1. Establish a rule on technical data for use by all government agencies to replace the current Department of Defense FAR Supplement Interim Rule in subpart 227.4 and the current FAR rule in subpart 27.4; and

2. Implement section 1(b)(6) of Executive Order 12951. This section requires the development of a uniform policy which will permit contractors to retain rights to software, engineering drawings, and other technical data generated under government contracts awarded to them, in exchange for a royalty-free use of the data by or on behalf of the government.

It is the government's intent to develop regulations on rights in technical data that are fair and equitable to both the government and industry. This is a difficult task not only because of the complexity of the subject but also because the interests of the government and of industry on this subject may not always be compatible. Accordingly, this advanced notice of proposed rulemaking is being published in a preliminary form to encourage comments, suggestions, recommendations and rewrites. We will also conduct at least six public meetings to allow additional comments, discussions and presentations on this rule and on the subject of rights in technical data.

DATES: *Public Hearings*: Hearings will be conducted from 9 a.m. to 4:30 p.m. local time as indicated below:

Date	Room
Friday, October 26	Hall of Flags.
Monday, November 19	Hall of Flags.
Friday, December 7	Herman Lay Room.
Friday, December 21	Herman Lay Room.
Friday, January 11	Herman Lay Room.

Should additonal hearings be required, the dates, times and location will be published in a subsequent Federal Register.

Comment Date: Comments concerning this advanced notice of proposed rulemaking should be submitted to the address shown below on or before January 31, 1991.

ADDRESSES:

Public Hearings: U.S. Chamber of Commerce, 1615 "H" Street, NW, Washington DC 20062.

Comments: Interested parties should submit written comments to: Linda W. Neilson, Procurement Analyst, ODASD(P)/DARS, c/o OUSD(A)(M&RS), room 3D139, Pentagon, Washington, DC 20301-3062.

Please cite FAR/DAR Case 90-438 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Linda W. Neilson, telephone (703) 697-7266.

SUPPLEMENTARY INFORMATION:

I. Background

The objective of this rulemaking is to establish a regulation common to all government agencies which replaces the DFARS 1988 Interim Rule and the present FAR subpart 27 and addresses both government and industry concerns with the present DFARS coverage. Accordingly, this advanced notice of proposed rulemaking is being published in preliminary form to encourage public comments and suggestions. It is planned that, after the public hearings and receipt of comments, a proposed rule will be published for additional public comment.

Since 1984, the DoD FAR Supplement subpart 227.4, "Technical Data, Other Data, Computer Software, and Copyrights", has been extensively rewritten to implement three major statutory changes to rights in technical data.

In October 1984, the Fiscal Year 1985 DoD Authorization Act (Pub. L. 98-525, also entitled "The Defense Procurement Reform Act of 1985) was enacted and, in part, amended section 2320 of title 10. The purpose of this legislative change was to emphasize a balancing of both DoD's and the contractor's interests in rights in technical data, to prohibit DoD from requiring contractors to relinquish their proprietary interests in technical data in order to do business with the government, and, to create a due process procedure validating technical data. Public Law 99-500, the Fiscal Year 1987 DoD Authorization Act, was enacted in October 1986. This law, in part, further amended section 2320 of title 10 to require negotiations in mixed funding situations to apportion rights in technical data between the government and the contractor. This led to the creation of a third standard right, Government Purpose License Rights. Finally, in December 1987, Public Law 100-180 was enacted. Again, section 2320 of the title 10 was amended placing a stronger emphasis on the requirements to negotiate rights in a mixed funding situation, and among other changes, requiring DoD to develop definition for certain terms such as, "developed exclusively at private expense."

An interim DFARS rule was published in October 1988 and is currently in effect. This Interim Rule implements the statutory changes, enumerated above, on rights in technical data.

Public comments on the DFARS Interim Rule focused primarily in the following areas: (a) Data rights of industry and government in mixed funding situations; (b) definition of "developed"; (c) developed exclusively at private expense; (d) developed exclusively with government funds; (e) required for the performance of a government contract or subcontract; (f) introduction of government purpose license rights. Some comments asserted that the revisions were overly restrictive, would stifle private innovation, and would allow the government to obtain a contractor's design and manufacturing data for which the government has no requirement, and which are essential to a contractor's competitive position.

For civilian agencies, the FAR has been changed once to address and support the requirements of Public Law 98-577, Small Business and Federal Procurement Competition Enhancement Act of 1984.

Related legislation includes the Competition in Contracting Act (CICA) which encourages competitive reprocurement for government spare parts contracting to a greater extent than prior to 1984; and the Freedom of Information Act, which provides for release of government held documents in response to requests from the public, including from potential competitors.

The areas enumerated above have continued to be sources of difficulty between industry and government. This advanced notice of proposed rulemaking effort addresses the specific data rights issues as they relate to the acquisition of technical data.

II. Overview of the Advanced Notice

This advanced notice of proposed rulemaking consists of prescriptive material and clauses containing guidance on the protection and allocation of rights in data (including computer software), developed, delivered, or used in the performance of government contracts. In the interest of conciseness, not all provisions are discussed below; however comments are solicited on the entire rule.

A. Policy Summary

It is the government's policy to obtain only those rights in data that it needs; assure the protection of contractors' rights in proprietary interest in data; assure that a contractor does not have to relinquish legitimate rights it has in data as a condition for obtaining a government contract; and provide rights in data as incentives to contractors to commercialize the results of government funding.

B. Definitions

In this advanced notice of proposed rulemaking, some of the more controversial definitions have been revised. For example, the definitions of "Developed," "Developed Exclusively with Government Funds," and "Developed Exclusively at Private Expense," as they appear in the DFARS interim rule have been incorporated and revised to clarify how direct and indirect funding would be treated.

Some definitions have been changed, added, or combined to more appropriately reflect the application of rights in data, or to meet statutory requirements for DoD to define terms. Some of the definitions added are: "Data base," "Manuals and instructional materials," "Mixed funding," and "Restricted rights computer software." This advanced notice of proposed rulemaking provides for "Government purpose rights." A new definition of "Computer Software" has been drafted. It does not include data bases, manuals and instructional materials, or software documentation.

C. Allocation of Rights

This advanced notice of proposed rulemaking addresses four types of rights, Unlimited, Limited, Restricted, and Government Purpose. Unlimited, limited, and restricted rights are set forth in paragraph (b) of the clause at 52.227-14. (GPR) apply when the basic clause is used with Alternate II. All rights are discussed in 27.404 and are summarized below.

1. Unlimited Rights

The government acquires unlimited rights to data resulting directly from government funding unless the contrator is permitted to copyright, or acquire government purpose rights, for such data. In these latter instances, the contractor has exclusive commercial rights, subject to appropriate license rights to the government for government purposes. In addition, the government acquires with unlimited rights or a copyright license (where applicable) for government purposes in delivered data that is form, fit, and function data, certain manuals and instructional materials, corrections or changes to government furnished data, and other delivered data which the contractor has not protected, or is not protectable, as limited rights data or restricted rights computer software.

2. Limited Rights

The government acquires limited rights only to data pertaining to items, components, or processes developed exclusively at private expense and such data has been protected by the contractor. Under such rights, the government may not use the data for purposes of manufacture or reprocurement. The data may be used for other internal government purposes, and may be released outside the government for specified limited purposes provided the government makes it subject to prohibitions against further disclosure and use.

A contractor is required to place a prescribed notice on limited right data when delivered to the government. This advanced notice of proposed rulemaking sets forth the governments rights regarding the data and imposes obligations on the government to protect the data from unauthorized disclosure and use. The government may also elect by insertion of Alternate I, to allow the contractor to provide form, fit and function data in lieu of limited rights data.

3. Restricted Rights

The government acquires restricted rights only to computer software developed at private expense. Under such rights the computer software may be used and disclosed at restricted sites or locations (usually the CPU for which it was acquired unless otherwise agreed), with certain rights in the government to make copies for backup, safekeeping, and backup purposes. Such computer software will be subject to disclosure prohibitions if so protected by the contractor; otherwise the government acquires a copyright license for the stated purposes.

A contractor is required to place a prescribed notice on restricted rights data when delivered to the government. This advanced notice of proposed rulemaking sets forth the governments rights regarding the data and imposes obligation on the government to protect the data from unauthorized disclosure and use. The government may also elect, by insertion of Alternate I, to allow the contractor to provide form, fit, and function data in lieu of restricted rights data.

4. Government Purpose Rights

The contractor may acquire government purpose rights to technical data and computer software which otherwise would be subject to unlimited rights under certain circumstances if the contractor states an intention to commercialize the items, components, or processes to which the data pertains, or the computer software. Such rights will normally be applicable unless certain stated reasons (based on statutory requirements or programmatic needs) exist. Government purpose rights may also be negotiated in mixed funding situations.

Under government purpose rights, the contractor retains exclusive commercial rights, subject to a license to the government for all government purposes (including reprocurement), subject to appropriate disclosure prohibitions. Time limitations, after which the data reverts to unlimited rights data or copyrighted data normally apply to government purpose rights. Such rights are applicable by use of the basic clause with its Alternate II.

D. Copyright

The basic approach of current FAR 27.4 has been adopted regarding copyright of data first produced under contract by the contractor (see 27.404-5(c) of this advanced notice of proposed rulemaking.) This provides more commercial exclusivity to the contractor than under the existing DFARS Interim Rule.

Two procedural approaches are provided to enable a contractor to be permitted to copyright such data: (1) By specific request (either at the time of contract or during contract performance for identified data items); or (2) by automatic permission for all data except as otherwise stated in the contract. The former approach is provided in the basic clause in this advanced notice of proposed rulemaking, and the latter approach is available when the clause is used with its Alternative IV.

Permission is to be granted under the former approach unless certain specifically stated reasons (based on programmatic needs or statutory requirements) exist. Permission is automatically granted for scientific and technical articles based on data first produced in the performance of the contract and published in academic, technical, or professional journals, symposia proceedings, or similar works. Permission also should be granted in all computer software procurements under a GSA Delegation of Procurement Authority (DPA).

E. Computer Software

This advanced notice of proposed rulemaking includes coverage of rights to computer software, as well as rights to technical data. However, definitional changes have been made to make more clear the distinction between computer software and technical data for the purpose of allocating restricted rights to privately developed computer software. Essentially, a functional definition of computer software has been adopted that includes all hierarchical levels of a computer program regardless of whether machine readable or human readable. Thus source code listings, design details, algorithms, processes, flow charts, formula, and related material that would enable a computer program to be produced, created, or compiled receives the same treatment for rights purposes as executable code.

Concurrently, a definition of "data base" has been provided to enable data comprising a data base to be treated separately from computer software. Similarly, manuals and instructional material relating to a computer program are treated as data and not computer software.

The rights to privately developed computer software (i.e., restricted rights) are the same regardless of whether or not the software may be considered "commercial." However, for procedural convenience and simplicity, commercial computer software may be separately acquired under the clause at 52.227-19, Commercial Computer Software, for that purpose, rather than under the basic data rights clause (see paragraph 27.406(c) of this advanced notice proposed rulemaking.) This separate clause for commercial computer software is particularly directed to resolving any inconsistencies with a vendor's standard commercial license or lease agreement and the restricted right normally acquired by the government, as well as any pertinent Federal laws and regulations.

F. Notification and Negotiation of Data Rights

The provisions at 52.227-15 may be included in solicitations to require proposers to identify any data to be delivered with less than unlimited rights in data which qualifies as limited rights data or restricted rights computer software or data in which the proposer requests Government Purpose Rights. However, an offer may not be found unacceptable for purposes of award solely because the offeror refuses to sell or otherwise relinquish to the government rights in technical data to which the offeror is otherwise entitled under applicable law or regulation.

The advanced proposed rule at 27.405-2 provides guidance for those situations in which the parties cannot conclude negotiations of rights in data before contract award. Alternate III may be added to the clause at 52.227-14 to require the contractor to provide continuing notification of data to be delivered with other than unlimited rights after award and throughout the performance of the contract and gives the government the right to continue negotiation with regard to the rights to such data. The clause at 52.227-28 may also be used in these situations.

III. Issues Highlighted for Specific Consideration

A. Use of the Term "Required for Performance"

The definition, "required for performance of a government contract or subcontract", which is contained in the Defense FAR Supplement Interim Rule has been very controversial. Industry believes that this definition is harmful because it allows the government to acquire unlimited rights in independently initiated private development which occurred during performance of a government contract and where the product of the independent development is used in performance of the government contract. Industry wants the definition to be removed. The government believes that elimination of the definition is harmful because government would only be able to acquire unlimited rights when development is specified and fully funded. However, detailed specification of what an item, component, or process will finally be, is not always possible in the early development stages. DoD is also concerned that without the definition, contractors would be able to extract pieces of the development effort, privately develop it, and preclude government from acquiring unlimited rights.

This advanced notice of proposed rulemaking does not contain the definition of "required for performance" but does use the phrase "developed and necessary" for the performance of this contract in paragraph (b)(1)(i)(B) of the clause at 52.227-14, setting forth situations where the government acquires unlimited rights. We believe that the application of this concept has been narrowed in this advanced notice of proposed rulemaking. We recognize that further refinement may be possible.

We encourage comments and alternatives which would satisfy both industry and government's concerns. One such alternative may be to add language to 52.227-14 to state that during the performance of a contract to develop an item, the contractor may discover that it is necessary to develop some other item, component, or process in order to complete the contract, even though this other item, component, or process was not specified in the contract. In this event, the contractor will notify the government of this situation so that the parties can determine what rights the government should acquire. Another such alternative may be that when this type of situation arises the government acquire only Government Purpose Rights.

Comments on the manner in which the concept of "required for performance" is treated in the advanced proposed rule are encouraged.

B. Commercial Products

Rights in technical data for commercial products (other than commercial software) have not been addressed specifically in this advanced notice of proposed rulemaking. Issues include: Whether there should be separate coverage (recognizing that in certain circumstances for commercial products, other rights in data may exist); the definition of commercial products; and the allocation of rights to such products and their modifications (major and minor). It is possible that separate coverage may be more appropriate. Consideration may be given to such coverage in the final rule including consistency with the final rule of DFARS part 211 (Acquisition and Distribution of Commercial Products). The following is an outline of a suggested approach. Comments on the need for separate coverage and the following suggested approach are invited.

1. Definitions

"Commercial products" means items, including computer software, regularly used for other than government

purposes which, in the course of normal business operations:

(a) Have been sold or traded to the general public;

(b) Have been offered for sale to the general public at established prices but not yet sold;

(c) Although intended for sale or trade to the general public, have not yet been offered for sale but will be available for commercial delivery in a reasonable period of time;

(d) Are described in paragraphs (a), (b), or (c) above and would require only minor modification in order to meet the requirements of the procuring agency.

"Minor modification" means modification to a commercial product that does not alter the performance or physical characteristic of the product.

2. Minimum Government Needs

When the government procures commercial products or modified commercial products, the contractor should be required to provide to the government only that deliverable technical data as are normally delivered to its commercial customers, except for:

(i) Technical data required to properly maintain and repair the items when maintenance or repair is not otherwise the contractor's responsibility under the contract;

(ii) Technical data describing the proper operating or handling procedures for the items when such data are not customarily provided to the general public as part of an item's price;

(iii) Technical data required for training, installation, emergency repair, and overhaul;

(iv) Technical data describing the modifications made to the items in order to meet the requirements of the procuring agency.

3. Rights to Technical Data Pertaining to Commercial Products for Government Use

Items, components, or processes initially developed for and included in commercial products shall be considered items, components and processes developed at private expense. The government will acquire the same rights for data relating to these items, components or processes as are provided to commercial customers.

When the government requires technical data for a commercial product in a format different from, or supplemental to, that provided to commercial customers, the government will acquire the same rights as are provided to commercial customers, but may negotiate with the Contractor, or Subcontractor, to acquire additional government purpose rights, where appropriate.

4. Rights to Technical Data Pertaining to Modifications to Commercial Products for Government Use

When a commercial product is modified for Government use, the government will acquire government purpose rights to the technical data pertaining to the modification, except for

(i) Modifications which are fully funded by the Government and are segregable. The government may acquire unlimited rights to data pertaining to these modifications.

(ii) Modifications which are fully funded at private expense. The government will acquire the same rights as the commercial customer, or the same rights as the Government receives to the commercial product itself, to data pertinent to the modifications, but may negotiate with the Contractor, or Subcontractor, to acquire additional Government purpose rights, where appropriate.

(iii) Minor Modifications. Rights to data pertaining to a minor modification to a commercial product shall be the same as the rights to the data pertaining to the product modified.

Comments on the manner in which data rights for commercial products is treated in this advanced notice of proposed rulemaking are encouraged.

C. Concept of Segregability

Both 10 U.S.C. 2320 (for the DoD) and 41 U.S.C. 418a. (for the civilian agencies) require that the rights in technical data be determined on the basis of the funding of the development of the item, component, or process to which the technical data pertains. Industry has expressed concern that if the funding test is applied at a total product or system level, industry may lose its proprietary interests in data to lower level components which it developed at its own expense. This advanced notice of proposed rulemaking addresses this concern by specifying at 27.402(c) and 27.404(a)(4) that the principle of segregability will be used and that items, components, processes, and computer software will be identified at the lowest practical identifiable level, and the funding test will then be applied at this level.

Comments on the manner in which segregability is treated in the advanced notice of proposed rulemaking are encouraged.

D. Treatment of Government Purpose Rights

The treatment of government purpose rights would be expanded to make it clear that such rights are available either as an incentive to achieve commercial use of items, components, processes, or computer software developed in the performance of a government contract, or to provide a balancing of interests in mixed funding situations. Such rights would apply when the clause at 52.227–14 is used with its Alternate II. A discussion of such rights is at 27.404–4, and the procedures for acquiring them are at 27.405–2. Such rights would be available, for commercialization, when requested by the contractor along with a statement of an intent to commercialize the item, component, process or computer software that will be, or has been, developed under contract to which the data pertains. The request may be made either prior to contract or after contract award. The request for government purpose rights would be granted unless certain specified exceptions exist.

Also, government purpose rights may be requested, and made subject to negotiations, for technical data pertaining to any item, component, process, or computer software developed with mixed funding. This may occur either prior to contract, or during contract performance when the post award notification and negotiation procedures of 27.405–4 are used.

Comments on the manner in which government purpose rights are treated in this advanced notice of proposed rulemaking are encouraged.

List of Subjects in 48 CFR Parts 27 and 52

Government procurement.

Linda E. Greene,

Deputy Director, Defense Acquisition Regulatory System.

Therefore, it is proposed that 48 CFR parts 27 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 27 and 52 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).

PART 27—PATENTS, DATA, AND COPYRIGHTS

2. Subpart 27.4 is revised to read as follows:

Subpart 27.4—Rights in Data and Copyrights

Sec.

27.400 Scope of subpart.

This subpart prescribes policies, procedures, and contract clauses for executive agencies with respect to the rights (including copyright) in, and the acquisition of, data (including technical data and computer software) produced, furnished, or specifically used in the performance of a Government contract or subcontract.

27.401 Definitions.

Computer software, as used in this subpart, means—

(1) Computer programs which are data comprising a series of instructions, rules, routines or statements which allow or cause a computer to execute an operation or series of operations; and

(2) Data comprising source code listings, design details algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled.

Data, as used in this subpart, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, technical data and computer software and computer data bases. The term does not include data incidental to the administration of a contract, such as financial, administrative, cost and pricing, or management information.

Data base, as used in this subpart, means a collection of data recorded in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Detailed design, manufacturing, or process data, as used in this subpart, means technical data of sufficient detail to enable the essentially identical reproduction, or manufacture, of an item, component, or the performance of process, to which the data pertains.

Developed, as used in this subpart, means that the item, component, process, or computer software exists and is workable. To exist the item or component must have been constructed or the process or computer program practiced. To be workable the item, component, process, or computer program has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, process, or computer software, and the state of the art. To be considered "developed" the item, component, process, or computer software need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, process, or computer software be actually reduced to practice within the meaning of title 35 of the United States Code.

Developed exclusively with Government (Federal) funds, as used in this subpart, means, in connection with an item, component, process, or computer software, that the cost of development was paid for in whole by the Government. Independent research and development and bid and proposal costs, as defined in 31.205–18 (whether or not included in a formal independent research and development program), and costs allocated to overhead accounts in accordance with the Cost Accounting Standards (CAS) for those contracts covered by CAS, or in accordance with generally accepted accounting principles for those contracts not covered by CAS, are not considered to be costs of "development" with Federal funds for purposes of this definition.

Developed exclusively at private expense, as used in this subpart, means, in connection with an item, component, process, or computer software that no part of the cost of development was charged to the Government, with the express understanding that independent research and development and bid and proposal costs, as defined in 31.205–18 (whether or not included in a formal independent research and development program), and costs allocated to overhead accounts in accordance with the Cost Accounting Standards (CAS) for those contracts covered by CAS, or in accordance not covered by CAS, are not to be considered development costs charged to the Government for purposes of this definition.

Form, fit, and function data, as used in this supbpart, means data relating to items, components, or processes or computer programs that are sufficient to enable physical and functional interchangeability, as well as data identifying source(s), size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

Government purpose rights, as used in this subpart, means the rights of the Government to use, duplicate, and disclose detailed design, manufacturing, and process data and computer software by or on behalf of the Government, including disclosure outside the Government for any Government purpose. Data that may be subject to Government purpose rights will be specifically identified in the contract under which such rights are acquired, and the Governments's rights to use, duplicate, and disclose such data are as set forth in the Government Purpose Rights Notice of Alternate II, if included in the Data Rights clause of the contract as discussed in 27.404–4(a).

Limited rights data, as used in this subpart, means data pertaining to items, components, and processes developed exclusively at private expense, except as may be provided otherwise in 27.404–1, provided that such data has not been disclosed, furnished, or released to the Government or to others without restriction on further disclosure and use or is otherwise publicly available. The Government's rights to use, duplicate, and disclose limited rights data are as set forth in the Limited Rights Notice of the data rights clause of the contract, as discussed in 27.404–2(b).

Manuals and instructional materials, as used in this subpart, means data necessary for the installation, operation, maintenance and repair, or training with respect to any item, component, process, or computer software.

Mixed funding, as used in this subpart, means, with respect to Government Purpose rights, that both Government funds and private funds were used for the development of an

item, component, process, or computer software and the respective contributions of the Government and the contractor are not readily segregable. The items, components, processes, or computer software to which mixed funding applies must be by agreement of the parties and identified in the contract. Mixed funding cannot be created by application of normal or incidental contract overhead accounts, or by application of contractor funds arising from required contract performance, such as cost overruns, and claims for out of scope work.

Restricted rights computer software, as used in this subpart, means computer software developed exclusively at private expense, except as may be provided otherwise in 27.404–1, provided that such computer software has not been disclosed, furnished, or released to the Government or to others without restrictions on further disclosure and use, or is not publicly available. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of the data rights clause of the contract, as discussed in 27.404–3(b).

Technical data, as used in this subpart, means data which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this subpart, means the rights of the Government in data to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

27.402 Policy.

Data and the rights pertaining thereto acquired under contract by the Government require a balancing of diverse interests.

(a) *The Government's interest.* The Government has extensive needs for many kinds of data to carry out its many missions and programs. Agencies require data to obtain competition from suppliers, to fulfill responsibilities for dissemination and publication of the results of their activities, and to ensure appropriate utilization of the results of research, development, and demonstration activities, including the dissemination of information to foster technological innovation. Some agencies, such as the Department of Defense, have important additional needs for data since they must maintain an extensive logistical network capable of the repair and operation of its equipment and competitive replenishment of its inventories.

(b) *The contractor's interest.* Commercial and nonprofit organizations have many property rights in intellectual property such as rights in technical data and computer software. Improper disclosure of such information can result in loss of their property rights and their competitive advantages and can cause serious economic harm. Protection of computer software as restricted rights computer software and other data as limited rights data is necessary to encourage contractors to participate in Government programs and to develop and apply innovative concepts to such programs.

(c) *Balancing of the interests.* (1) The Government shall balance these interests by only obtaining the minimum rights in technical data and computer software consistent with its needs, and by assuring protection for a contractor's legitimate intellectual property rights. Efforts should be made to segregate items, components, processes, and computer software developed exclusively with Government funds from those developed exclusively at private expense at the lowest practical identifiable level to minimize the necessity of negotiating mixed funding situations.

(2) The contracting officer will consider the needs of the Government and the interest of the contractor. To this end, the contracting officer will consider whether the item, component, process, or computer software will be competitively acquired, whether repair and overhaul work will be needed, whether the repair or replacement parts will be commercial parts, whether the item may be procured by form, fit, and function data, performance specification or detailed design data, and similar considerations. The contracting officer should use the least intrusive procedure to fill the Government's needs in order to protect the contractor's legitimate economic interests. In no event shall a contractor be required to sell its rights to data to the Government as a condition for obtaining the award of a Government contract.

(3) Acquiring, maintaining, storing, retrieving, protecting, and distributing data are costly and burdensome to the Government. Therefore, it is necessary to carefully review data needs to avoid acquisition of unnecessary data.

27.403 Rights in Data—General.

(a) All contracts that require data to be produced, furnished, acquired, or specifically used in meeting contract requirements, must contain terms that delineate the respective rights of the Government and the contractor regarding the use, duplication, and disclosure of such data, except for certain categories of contracts, such as supply contracts resulting from sealed bidding, which in accordance with agency procedures, require only existing data, other than limited rights data and restricted rights computer software, to be delivered, and reproduction rights are not needed for such data. In general, the Rights in Data clause at 52.227–14, with appropriate Alternatives, is to be used for that purpose. This clause sets forth the conditions under which the Government acquires unlimited rights, limited rights, restricted rights, Government purpose rights, or a copyright license, as well as the scope of, and limitations and restrictions on the exercise of such rights, discussed in detail at 27.404. However, in certain contracts either the subject matter of the contract, or the intended use of the data, may require the use of another data rights clause, or may not require the use of any data rights clause, as described in 27.406.

(b) In selecting a data rights clause, it is important to note that any such clause does not specify the data (in terms of type, quantity, or quality) that is to be delivered, but only the respective rights of the Government and the contractor to use, disclose, or reproduce such data. Accordingly, the contract should also include appropriate schedule provisions to specify the data to be delivered (i.e., the acquisition of data). The basic policies and procedures for the acquisition of data are set forth in 27.408, and may be implemented in more detail in agency supplements or agency directives on data requirements consistent with such policies and procedures, as needed to meet specific agency needs.

27.404 Rights in data.

27.404–1 Unlimited rights data.

(a)(1) Under the basic rights in data clause at 52.227–14 the Government acquires unlimited rights in the following data, unless provided otherwise for copyrighted data, as discussed in 27.404–5, or unless such data are agreed to be subject to Government purpose rights, as discussed in 27.404–4—

(i) Data first produced in the performance of a Government contract, including but not limited to—

(A) Technical data pertaining to items, components, processes, or computer software developed exclusively at Government expense; and

(B) Technical data and computer software resulting directly from the performance of experimental, developmental, or research work specified as an element of performance under a Government contract; or data produced during and necessary for the performance of a Government contract.

(ii) Form, fit, and function data delivered or furnished for use in the performance of a Government contract;

(iii) Manuals and instructional materials furnished or required to be furnished for the installation, operation, maintenance and repair, or training with respect to any item, component, process, or for the installation, maintenance, operation, and training with respect to any computer software, that are required to be, or in fact, delivered or furnished for use in the performance of this contract;

(iv) All data which was in fact delivered or furnished for use in the performance of this contract which constitutes a correction or change to data furnished to the contractor by the Government; and

(v) All other data required to be or in fact delivered or furnished for use in the performance of this contract unless provided otherwise for limited rights data or restricted rights computer software.

(2) Data which has been released, furnished, or disclosed to the Government, or to others, without restrictions on further use or disclosure, or is otherwise publicly available, are unlimited rights data, unless published under copyright. If any of the foregoing data are published copyrighted data with the notice of 17 U.S.C. 401 and 402, the Government acquires such data under a copyright license rather than with unlimited rights. See 27.404–5.

(3) If any of the foregoing data have been identified in the contract as being subject to Government purpose rights, then the Government shall obtain a license for Government purposes only, for an agreed-to period, after which the data will become unlimited rights data or copyrighted data, as applicable. See 27.404–4.

(b) When the Government has unlimited rights in data, including computer software in the possession of the contractor, no payment will be made for rights of use of such data in performance of Government contracts or for the later delivery to the Government of such data. The contractor shall be entitled to compensation for converting computer software or other data into the prescribed form, if necessary, for reproduction and delivery to the Government.

(c) The application of the clause also results in the Government's obtaining unlimited rights to data bases consisting of the data described in paragraph (a) of this subsection; however, a data base may also contain data subject to limitations, as discussed in 27.404–2.

27.404–2 Limited rights data.

(a) The clause at 52.227–14 enables the contractor to protect data that qualifies as limited rights data (as that term is defined) and such data is not data to which the Government obtains unlimited rights by the terms of subparagraph (b)(1) of the basic clause at 52.227–14. This protection may be achieved by either marking such data with a prescribed Limited Rights Notice when delivered to the Government; or, if the clause is used with Alternate I, by withholding the qualifying data from delivery and furnishing form, fit, and function data (with unlimited rights) in lieu thereof. In order to determine whether limited rights data are to be acquired or are to be withheld by use of the clause with Alternate I, see the procedures at 27.405.

(b)(1) The limited rights acquired by the Government are set forth in the Limited Rights Notice of subparagraph (b)(2) of the clause at 52.227–14. Data subject to the Notice will not, without permission of the contractor, be used by the Government for purposes of manufacture and will not be disclosed outside the Government except for the specific purposes set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient.

(2) The specific purposes set forth in the Notice are—

(i) Emergency repair and overhaul; and

(ii) Release or disclosure of technical data (other than detailed design, manufacturing, or process data) to, or use of such data by, a foreign government or agency thereof, as the interests of the United States Government may require, for evaluation and informational purposes.

(3) Agencies may adapt and add the following additional specific purposes to the Limited Rights Notice:

(i) Use (except for manufacture) by a contractor under a service contract (of the type defined in 37.101).

(ii) Evaluation by non-Governmental evaluators.

(iii) Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is part, for information and use in connection with the work to be performed under each contract.

(4) Agencies subject to 10 U.S.C. 2302 must notify the contractor of the release of limited rights data outside of the Government.

(5) If pursuant to negotiations under 27.405, limited rights are to expire at a certain time, then the Notice must be modified to indicate the expiration date of the limited rights, and expressly state the rights that apply thereafter.

(c)(1) Rather than requiring the delivery of limited rights data with the Limited Rights Notice, the contracting officer may, by the use of Alternate I, permit the contractor to identify and withhold such data from delivery and require the delivery of only form, fit and function data (with unlimited rights) in lieu thereof. However, if the Government has a need to obtain specific items of limited rights data, the contracting officer may, notwithstanding the use of Alternate I, either specify the delivery of such data items in the contract, or by written request during contract performance, obtain the delivery of data that has been withheld or identified as withholdable. Any such data so delivered will be treated as limited rights data in accordance with paragraph (b) of this subsection. In addition, if agreed during negotiations, the contract may specifically identify limited rights data that are not to be delivered.

(2) Alternate I also provides that the contracting officer, or his representatives, at all reasonable times up to 3 years after delivery of the data, or final payment under this contract, whichever is later, may inspect at the contractor's facility or other appropriate site, any data (and records relating to such data) withheld as limited rights data or restricted rights computer software pursuant to subparagraph (c)(1) of this subsection for purposes of evaluating performance under this contract or verifying that such data was properly withheld.

(d) Data stored in a data base and data resulting from the manipulation thereof are not computer software, as defined in 27.401, but are technical data or other data and must be treated accordingly. If such data qualifies as limited rights data, it must be marked, and must be protected from disclosure. A data base could also contain Government purpose rights data, and copyrighted data. If a data base is not marked with appropriate legends or copyright notices, it will be assumed to be data subject to unlimited rights.

27.404–3 Restricted rights computer software.

(a) The clause at 52.227–14 enables the contractor to protect qualifying restricted rights computer software provided that such software is not data to which the Government obtains unlimited rights by the terms of subparagraph (b)(1) of the Rights in Data clause at 52.227–14. This protection may be achieved by either marking such computer software with a prescribed Restricted Rights Notice when delivered to the Government; or, if the clause is used with Alternate I, by withholding the qualifying computer software from delivery and furnishing form, fit and function data (with unlimited rights) in lieu thereof. In order to determine whether restricted computer software is to be acquired by the use of Alternate I, or are to be made subject to specific agreement in the contract, see the procedures of 27.405.

(b)(1) The restricted rights normally acquired by the Government are set forth in the Restricted Rights Notice of subparagraph (b)(3) of the clause at 52.227–14, and are to be the standard restricted rights unless modified pursuant to subparagraph (b)(2) of this subsection. Under the standard rights, restricted rights computer software will not be used or reproduced by the Government, nor disclosed outside the Government, except for—

(i) Use, or copying for use, in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(ii) Use, or copy for use, in or with a backup or replacement computer if any computer for which it was acquired becomes inoperative;

(iii) Reproduction for safekeeping (archives) or backup purposes;

(iv) Modification, adaptation, or combination with other computer software, provided that only the portions of the derivative software consisting of the restricted rights computer software are to be made subject to the same restricted rights; and

(v) Disclosure to and reproduction for use by contractors under a service contract (of the type defined in 37.101) subject to the same restrictions under which the Government acquired the restricted rights computer software.

(2) If pursuant to negotiations under 27.405–3, the restricted rights are to expire after a time certain, then the Notice must be modified to indicate the expiration date of the restricted rights and expressly state the rights that apply thereafter.

(3) Alternate I also provides that the contracting officer, or his representative, at all reasonable times up to 3 years after delivery of the data, or final payment under this contract, whichever is later, may inspect at the contractor's facility or other appropriate site, any data (and records relating to such data) withheld as limited rights data or restricted rights computer software pursuant to subparagraph (a) of this subsection for purposes of evaluating performance under this contract or verifying that such data was properly withheld.

(4) When the Government has unlimited rights in data, including computer software in the possession of the contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software. The contractor shall be entitled to compensation for converting the software into the prescribed form, if necessary, for reproduction and delivery to the Government. Agencies may prescribe a clause, or use the provision at 52.227–15, which requires the contractor to represent that the computer software has not previously been delivered to the Government with unlimited rights.

(5) The restricted rights notice set forth in the clause at 52.227–14 are the minimum rights the Government normally obtains with restricted computer software, and will automatically apply. Greater rights and variations may be negotiated, see 27.405, consistent with the purposes of the contract. For example, consideration should be given to networking, remote accessing, and multiple use needs. Any variation or modification to the rights in the restricted rights notice must be stated in the contract as a schedule or attachment or the restricted rights notice appropriately modified.

(6) If restricted rights computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government with rights of the same scope of subparagraph (b)(1) of this subsection but without disclosure prohibitions unless the contractor includes the following statement with such copyright notice: "Unpublished—rights reserved under the copyright laws of the United States."

(c) Additional marking instructions. (1) Where it is impractical to include the full Restricted Rights Notice on restricted rights computer software, the following short form notice may be used in lieu thereof:

Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of

Contract No. _____ with (contractor name) (and subcontractor and subcontractor No., if appropriate.)

(End of notice)

(2) If the software is embedded, or it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (of the contract) in brackets or a box, as [R–8/90] may be used. This shall be read to mean that the restricted rights computer software is subject to the rights of the Government in the Long Form Notice, in effect at the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event the contract contains any variation or modification to the rights of the Government set forth in the Long Form Notice, then the contract number must also be cited.

(3)(i) If non-standard rights are negotiated, then the Long Form Legend must be modified accordingly, and the heading "Notice of Non-Standard Rights" is to be included immediately below the main heading of "Restricted Rights Notice—Long Form".

(ii) If it is impractical to include the Long Form Notice, then the "Restricted Rights Notice—Short Form" may be used, modified to include the heading "Notice of Non-Standard Rights" immediately below the main heading of the notice.

(d) Existing commercial computer software. Existing commercial computer software (i.e., privately developed computer software normally vended commercially under a license or lease agreement restricting use, disclosure, or reproduction) may be acquired under the procedures set forth in 27.406(c). This includes furnishing such software as part of a system, separately priced, under a contract containing the clause at 52.227–14. In this case, the clause at 52.227–19, Commercial Computer Software, may also be included in the contract (see 27.406(c)(8)).

27.404–4 Government purpose rights.

(a) Government purpose rights enable a contractor to retain limited exclusive commercial rights to certain technical data pertaining to items, components, or processes, or to computer software, the development of which is funded in whole or in part by the Government. The Government obtains a license of sufficient scope to allow the technical data, or computer software, to be used, duplicated, and disclosed (including disclosure outside the Government) by

or on behalf of the Government for Governmental purposes. Any disclosure of such data outside the Government will be made subject to prohibitions against any further use, duplication, or disclosure by the recipient so as to preserve the contractor's limited exclusive commercial rights in the technical data or computer software.

(b) Government purpose rights, which require the use of Alternate II to the clause at 52.227–14 to be applicable, may be used to either—

(1) Provide an incentive for the contractor to achieve commercial use of items, components, processes, or computer software developed in the performance of the contract;

(2) Provide a balancing of interests for any item, component, process, or computer software developed as the result of mixed funded research or developmental efforts, such that the respective contributions of the Government and the contractor are not readily segregable; or

(3) Where the Government and contractor otherwise may mutually agree upon such rights.

(c) The request for Government purpose rights should be made in the contractor's proposal, to the extent practicable. Where it is not possible to anticipate the data involved at contract award, such request should be made as soon as possible after award, but no later than the date for delivery of the data. Procedures for notification and negotiation of Government purpose rights are at 27.405–2.

(d) Efforts should be made to segregate items, components, processes, and computer software at the lowest practical identifiable level so that Government purpose rights will not be applied unnecessarily to data pertaining to items, components, processes or computer software developed exclusively at private expense or exclusively at Government expense.

(e) Government purpose rights are to be made subject to time limitations pursuant to negotiations with the contractor. After expiration of the agreed time period the data will be subject to unlimited rights or copyright, as discussed at 27.405–2(a).

(f) Any data delivered under the contract that is subject to Government purpose rights shall not be disclosed outside the Government, or disclosed beyond the approved uses permitted by the Notice, unless the data is made subject to prohibitions against further use, duplication, or disclosure for other than Government purposes. To this end, subparagraph (d)(2) of the Rights in Data clause at 52.227–14, obligates contractors receiving restrictively marked data from the Government to abide by such prohibitions. Thus, data subject to Government purpose rights may be released to any contractor with a contract containing such a clause for use for Government purposes without a separate nondisclosure agreement. Any other release, including a release for reprocurement, requires a nondisclosure statement. For agencies with numerous contractors on their bidding lists, a blanket nondisclosure statement may be signed by contractors on the bidding list, obviating the need for individual agreements for each procurement. If a contractor has signed a previous nondisclosure agreement, the earlier agreement may be provided. Agencies may develop their own nondisclosure agreements, or may use the nondisclosure agreement at 52.227–26, which they may modify to suit the circumstances of the procurement.

(g) Contractors who intend to commercialize the items, components, or processes, or computer software, may elect to copyright the data pertaining thereto. In this case, if the contracting officer consents to copyright, then copyright should be used in lieu of Government purpose rights as the vehicle for commercialization for published material, and the Government will obtain a copyright license as detailed in 27.404–5.

27.404–5 Copyrighted data.

(a) In general, copyright law gives the copyright owner exclusive rights to—

(1) Reproduce the copyrighted work;

(2) Prepare derivative works;

(3) Distribute copies to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) The recipient of a work with notice of copyright, even if published, available for sale, or otherwise distributed, is precluded from carrying out the acts set forth in paragraph (a) of this subsection without a license or authorization from the copyright owner. This applies to all data delivered to the Government with copyright notice, and to any further distribution the Government may make of the data, whether such data was first produced in the performance of the contract or not. The Government's policies in permitting a contractor to establish claim to copyright subsisting in data first produced under the contract, the notice requirements for all data delivered to the Government, and the scope of the license rights acquired by the Government for all delivered data, are set forth in paragraph (c) of this subsection.

(c) Data first produced in the performance of contract. (1) The basic Rights in Data clause at 52.227–14, provides that the contractor may establish claim to copyright, without prior approval from the contracting officer, any scientific and technical articles based on or containing data first produced in the performance of a contract, and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior express written permission of the contracting officer is required to establish claim to copyright for all other data first produced in the performance of the contract. In general, permission to establish claim to copyright, if given, may enhance appropriate transfer or dissemination of such data and the commercialization of items, components, processes or computer software to which it pertains. Permission to copyright should be granted in all software procurement under a GSA Delegation of Procurement Authority (DPA). The request should be in writing and may be made either prior to award, or during contract performance. It should identify the data involved or furnish copies of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media, or other purpose for which copyright is requested. The request will normally be granted unless—

(i) The data consist of a report (and its supporting information) that represents the official views of the agency, or the agency is required by statute or regulation to prepare such a report;

(ii) The data are intended primarily for internal use by the Government;

(iii) The data are of the type that the agency distributes to the public under an agency program to disseminate such information;

(iv) The contracting officer determines that limitations on distribution of the data are in the national interest;

(v) The contracting officer determines that the data should be disseminated without restriction, or

(vi) The data falls into the categories of a special situation or existing work, in which case consult 27.405–1.

(2) Agencies may also grant blanket permission for contractors to establish claim to copyright subsisting in all data first produced in the performance of the contract without further request being made by the contractor by use of the clause at 52.227–14 with Alternate IV. Normally, Alternate IV should be used in contracts for basic or applied research to be performed solely by colleges or universities, unless the

purpose of the contract is to develop data, such as computer software, intended for distribution to the public, or use in solicitations, by the Government. It may also be used in other contracts on a case by case basis or for certain categories as provided in agency supplements. In any contract where Alternate IV is used, the contract may exclude any data or categories of data from the blanket permission to copyright, in accordance with agency procedures, either by express provisions in the contract or the addition of an appropriate subparagraph to Alternate IV, as below:

(c)(3) Notwithstanding the permission to copyright in this paragraph (c) the Contractor may not establish claim to copyright subsisting in the following data or categories of data first produced in the performance of this contract:

(i) _____ and (ii) _____ [The agency shall insert appropriate data or categories of data].

(3) Whenever a Contractor establishes claim to copyright subsisting in data first produced under a contract, the Government obtains the following licenses for Government use. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, or worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by and on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up nonexclusive, irrevocable worldwide license in all such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by and on behalf of the Government. This license for computer software does not include the right to distribute copies to the public.

(4) When claim to copyright is made, and the Contractor has published or intends to publish under copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office.

(5) Agencies may, on a case by case basis, or by a class basis, obtain a license of different scope than set forth in subparagraph (c)(3) of this subsection, if the agency determines that such different license will enhance the transfer or dissemination of any data first produced under the contract, and will not interfere with the Government's proposed use of the data, or any international agreements. If a different license is obtained, the scope of the license must be stated in a conspicuous place on the medium on which the data is recorded, and the license must be included in the contract. Lessor rights in copyright may not be negotiated except in accordance with agency procedures.

(d) Data not first produced in the performance of this contract. The contractor shall not, without prior written permission of the contracting officer, incorporate into data delivered under this contract, any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of the clause at 52.227–14, provided, however, that if such data are restricted rights computer software the Government shall acquire a copyright license of the scope set forth in the Long Form Restricted Rights Notice, in the clause at 52.227–14, if the clause is included in the contract, or as may otherwise be agreed in a collateral agreement incorporated into the contract.

(e) Removal of copyright notices. (1) The Government agrees not to remove any copyright notices placed on data pursuant to paragraph (c) of the clause at 52.227–14, and to include such notices on all reproductions by the Government of the data.

(2) If the contracting officer believes data is improperly marked with a copyright notice, the contracting officer may request, in writing, a copy of the permission to establish a claim to copyright, or if such permission was automatic, under Alternate IV, the contracting officer may request justification that the data did not fall within an exception to automatic copyright. The contractor should be provided 60 days to furnish such evidence; if the copyright cannot be justified then the copyright notice may be removed, provided that the data has not been publicly distributed or sold, in which case, the contractor should be required to assign the copyright to the United States.

27.404–6 Release, publications, and use of data.

(a) In paragraph (d) of the clause at 52.227–14, Rights in Data, subparagraph (d)(1) recognizes the fact that normally the contractor has the right to use, release to others, reproduce, distribute, or publish data first produced in the performance of a contract, except to the extent such data may be subject to export control or national security laws and regulations. In addition, to the extent the contractor receives or is given access to data that is necessary for the performance of the contract from or by the Government or others acting on behalf of the Government, and the data are limited rights data, restricted rights computer software or Government purpose rights data, or contains other restrictive markings applied by or approved by the Government, subparagraph (d)(2) of the clause at 52.227–14 provides an agreement with the contractor to treat the data in accordance with the markings, unless otherwise specifically authorized by the contracting officer. Such agreement is deemed to satisfy the requirements regarding use, disclosure, or reproduction prohibitions of the Limited Rights, Restricted Rights, or Government Purpose Rights Notices of the clause at 52.227–14.

(b) Agencies may (except as provided in subparagraph (a)(4) of this subsection), on a contract-by-contract basis if approved by the head of the contracting activity or if specifically authorized in their FAR Supplement, place limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute, or publish any data first produced in the performance of the contract, including a requirement to assign copyright to the Government or another party, either by adding a subparagraph (d)(3) to the Rights in Data clause at 52.227–14, or by express limitations or restrictions in the contract, for any of the following purposes:

(1) The furtherance of established programs or statutory requirements of the agency such that the release to others, distribution, publication, or exercise of copyright by the contractor would be inconsistent with such established programs or statutory requirements;

(2) Avoidance of release to others, distribution, publication, or exercise of copyright by the contractor, that would be contrary to statutory or regulatory (other than under this subpart) requirements regarding the data; or

(3) Prevention of the unauthorized or inadvertent release or dissemination of the data contrary to agency statutory requirements or national policy regarding the disclosure of technical information, even if unclassified.

(c) If the purpose of subdivision (a)(2)(iii) of this subsection exists, and the data in question is of the type that the agency would otherwise afford the contractor Government purpose rights, agencies should consider affording such rights limited to disclosure and use within the United States (see 27.405-2(b)) rather than prohibiting release to others, distribution or publication by the contractor. Such limitations may also be coupled with a direction to the contractor to distribute the data to other designated persons or entities for use in the United States, subject to prohibition against further disclosure and use. However, any such limitations are to be applied to the disclosure and use of specifically identified data, not on the basis of the nationality, place of incorporation, or place of business of the contractor. In addition, any such limitations to be imposed on any disclosure and use of the data for Governmental purposes must not restrict competition for the acquisition of goods and services by or on behalf of the Government.

(d) No restrictions pursuant to subparagraph (a)(2) of this subsection are to be placed on the release, distribution, or publication of the results of basic or applied research under contracts with universities and colleges. (For the purpose of this prohibition, restriction on the release, distribution, or publication of computer software that has been, readily can be, or is intended to be, developed to the point of practical application are not considered restrictions on the release, distribution, or publication of the results of basic or applied research). In addition, no restrictions pursuant to subparagraph (a)(2) of this subsection are to be imposed on the right of any contractor to use the data itself, internal to the organizational element of the contractor developing the data, for the contractor's own purposes.

27.404-7 Contractor licensing.

(a) To the extent that the Government obtains rights to use the data, no payment will be made to either the developer or the third party for use of the data within the rights already granted the Government.

(b) A contractor or subcontractor may not be prohibited from receiving from a third party a fee or royalty for the use of technical data pertaining to an item, component, or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

27.405 Notification and negotiation procedures.

27.405-1 Notification.

(a) Notification requirements. Offerors are required by the provision at 52.227-15 to notify the Government of any asserted restrictions on the Government's right to use or disclose technical data or computer software. This notification advises the contracting officer of the contractor's or any subcontractor's intended use of items, components, processes, to which the data pertains or any computer software that—

(1) Have been developed exclusively at private expense and the contractor asserts either limited rights or restricted rights;

(2) Have been developed in part at private expense and further development will be with Government funds under the contract; or

(3) Will be developed exclusively with Government funds for which the contractor or subcontractor requests Government purpose rights for commercialization.

(b) Items, components, processes, or computer software do not need to be identified if no data is required to be delivered, or if the required data will be delivered with unlimited rights.

(c) The notification must be signed by an authorized official of the offeror that represents that the listing is complete, accurate, and current.

(d) Notification contents. To be complete the notification must:

(1) Specifically identify the items, components, processes, or computer software to which the data pertains.

(2) Identify the limitations on the Government's right to use the data (limited rights, restricted rights or Government purpose license rights) including identification of the earliest expiration date for each limitation.

(e)(1) The contracting officer should rely on the representation provided with the contractor's notification. Detailed supporting information normally should not be requested unless circumstances exist to question the validity of the assertion. While the contractor or subcontractor is obligated to justify the assertions, the contracting officer should only obtain enough information to determine if the assertion is reasonable and to evaluate its likely impact on the Government.

(2) However, after receipt of the offerors' proposals, the Government may verify that the offerors submitted the information required by the provision at 52.227-15, and request additional supporting information to satisfy the contracting officer that the offeror has a reasonable basis for asserting or requesting other than unlimited rights in data pertaining to the items, components, processes, or computer software in question. Failure to submit the notification with the offer should be treated as a correctable minor irregularity (see 15.607). However, if an offeror refuses to submit the notification, refuses to furnish reasonable supporting information, or refuses to sign a representation that it is accurate, complete, and current, then the offer may be deemed to be unacceptable.

(3) The information provided by the offeror may also be used in the source selection process (e.g., life cycle cost analyses). However, in no event may an offer be found unacceptable for purposes of contract award solely because the offeror refuses to sell or otherwise relinquish to the Government rights in technical data to which the offeror is otherwise entitled under applicable law or regulation.

(f)(1) Based on the review of the information provided by the offeror, and any additional information developed, the contracting officer may determine:

(i) To use the clause at 52.227-14 with Alternate I, which permits the contractor to withhold qualifying limited rights and restricted rights data from delivery, subject to a subsequent request for delivery (see 27.404-2 and 27.404-3) with a Limited Rights Notice or a Restricted Rights Notice, respectively. Such Notice may also be challenged in accordance with the procedures at 27.407. Data withheld is subject to inspection as provided in Alternate I.

(ii) To use the clause at 52.227-14, without Alternate I, in which case the data that qualifies as limited rights and restricted rights data will be delivered with the Limited Rights Notice or the Restricted Rights Computer Software Notice. Such notices are subject to challenge in accordance with the procedures at 27.407.

(2) After the contracting officer has made the determination in subparagraph (f)(1) of this subsection, the contracting officer may develop appropriate provisions to be included in the contract to identify the data asserted to be limited rights data or restricted rights computer software or, if impractical to do so, may require continuing notification during contract performance of the data to be delivered with other than unlimited rights, by use of the clause with Alternate III (see 27.405-4). However, such identification or notification is not dispositive of any rights to the data.

27.405–2 Negotiation of Government purpose rights.

(a) If, in response to the notification requirements, or subsequent clarifications, the offeror identifies items, components, processes, or computer software, that have been or will be developed in part at private expense and in part with Government funds, and requests Government purpose rights, or identifies items, components, processes, or software, that will be developed exclusively at Government expense, and requests Government purpose rights with respect thereto for purposes of commercialization, then the procedures set forth in subparagraphs (a)(1) and (a)(2) of this subsection shall be followed—

(1) Efforts should be made to separate items, components, processes, or software to the lowest practical identifiable level, so that Government purpose rights will not be applied unnecessarily to data pertaining to items, components, processes, or computer software, developed exclusively at private expense, or exclusively at Government expense.

(2) Government purpose rights are effected by agreement of the contracting officer and by the inclusion of Alternate II in the clause at 52.227–14 and specifically identifying in the contract the items, components, processes, or computer software to which the data to be made subject to such rights pertains. The contractor must request Government purpose rights and present supporting documentation, as follows:

(i) In the event of a claim of mixed funding, the contractor must include with the request some evidence of either a significant prior investment, or some documentation regarding a cost sharing effort with the Government for the development of an item, component, process or computer software.

(ii) In the event of an intent to commercialize any item, component, process, or computer software, that will be or has been developed with Government funds in the performance of a contract, the contractor must request Government purpose rights, and support the request by making a positive statement of intent to commercialize the item, component prices, or computer software.

(3) If the contractor requests Government purpose rights and has presented documentation as required by subparagraph (a)(2) of this subsection, the request should be granted, except when—

(i) The contracting officer determines that there is a need to competitively seek reprocurement of any or all of the items, components, processes, or computer software involving a large number of potential competitors, as for items such as spare and repair parts or it would otherwise unduly impede any future related procurement, or

(ii) The data should be made available for dissemination, as to disclose the results of research and development efforts or studies, especially if the agency has established programs pursuant to statute, regulation, or policy to disseminate the data or promote commercialization of any or all of the items, components, processes, or computer software, and determines Government purpose rights to be inconsistent with such programs; or

(iii) It is otherwise inconsistent with law or agency regulation.

(4) In the event the contractor requests Government purpose rights after award, the contracting officer may include Alternate II to the clause at 52.227–14 and identify in the contract the items, components, processes, or computer software to which the data to be made subject to such rights pertains.

(5)(i) Where the item, component, process, or computer software will be, or has been, developed exclusively with Government funds, the period for Government purpose rights shall run for a date certain from the time the data have been reduced to tangible form, but in any event, not later than from when the data are released to third parties, or are delivered to the Government, whichever comes first. After the expiration of the period, the data will become subject to unlimited rights or to the appropriate copyright license. The period normally should not be less than 3 nor more than 5 years, unless a longer period is approved in accordance with agency procedures.

(ii) Where the item, component, process, or computer software will be or has been developed partially with Government funds and partially with private funds, the period for Government purpose rights shall be negotiated, with 5 years as a guideline for negotiations. Negotiation factors are discussed at 27.405–5. The agreed date shall then be included in all Government Purpose Rights Notices.

(6) Time limitations may be extended if other interested parties have not requested access to the data, there is no requirement to disclose to meet a specified Government need, and the contractor provides consideration for remarking the data with new legends.

(b)(1) In the event an agency desires to afford Government purpose rights for the purpose of commercializing data but concomitantly wishes to prevent unauthorized or inadvertent transfer of such data contrary to the agency's statutory requirements or policies, the contractor's rights under Government purpose rights may be limited to disclosure and use within the United States by suitable modifications to subparagraph (b)(4) of Alternate II of the clause at 52.227–14. (See also 27.404–6(a)(3)).

(2) In addition, if the data is of the type that an agency desires to disseminate within the United States or has established policies or programs for that purpose, the contractor may be directed to distribute the data to other entities designated by the agency for use in the United States, subject to prohibition against further disclosure and use.

27.405–3 Additional negotiations.

(a) If the offeror or the contractor asserts rights in data, either as part of the Notification process, or subsequently, the contracting officer shall normally proceed as indicated in 27.405–1 and 27.405–2. Under certain circumstances, however, it may be necessary to conduct additional negotiations. For example, it may be difficult to ascertain the respective funding for the development of the item, component, process, or computer software to which the data pertains; the Government may require greater rights to satisfy its requirements; negotiations may not be completed by contract award; or the contractor may offer contractual consideration for the Government to take Government Purpose rights instead of unlimited rights. This will require the procedures in this subsection to be followed.

(b)(1) If the Government needs greater than limited or restricted rights in data, such as to develop alternate sources, then the contracting officer may negotiate with the contractor, or the subcontractor asserting such rights, to acquire additional rights and technical assistance, where appropriate. Before acquiring additional rights, the contracting officer should consider alternatives, such as—

(i) Developing alternative items, components, processes, or computer software; or

(ii) Obtaining a commitment by the contractor or subcontractor to qualify additional sources. Greater rights may be obtained by negotiation of a lump sum fee, royalty, Government purpose rights, or other arrangement. Any greater rights shall be identified as a contract line item, and the standard Notice language should be modified accordingly if appropriate. The

contracting officer shall not acquire greater rights unless—

(A) There is a need for disclosure of the data outside the Government; and

(B) The specific rights are required for competitive procurement, and the anticipated savings from competition are likely to exceed the acquisition cost of the additional rights in data.

(2) To the extent such additional rights are acquired, the rights and the item, component, process, or computer software to which they pertain will be identified in the contract.

(3) In the event that the offeror is unable to identify all data subject to other than unlimited rights, or if the offeror and contracting officer are unable to conclude agreement on the identification of such data in the contract before award, then award may be made subject to Alternate III being added to the basic rights in Data clause at 52.227–14. This Alternate adds paragraph (j) to the clause which permits continued notification and negotiation after award.

(4) In this event, the assertions of the contractor must be identified in the contract as a schedule or attachment, in order to facilitate the review of contractors' assertions of data rights to provide a basis for acquisition planning, and subsequent negotiation. Since the contracting officer cannot undertake a complete review of all data to be delivered with other than unlimited rights, the contracting officer need only have a reasonable basis to add such data to the schedule or attachment. Any listing of such data should not be construed as an agreement by the Government of ultimate data rights. The Government reserves its rights to a complete validation, if it appears the data is mismarked.

(5) Whenever greater or lesser rights have been negotiated, the contract must reflect the results of the bargain. Therefore, contracting officers must develop appropriate language for contract inclusion, or may use the clause at 52.227–28 to identify the results of this agreement.

27.405–4 Postaward notification and negotiation.

(a) Notification of data to be delivered with other than unlimited rights and negotiations will be conducted to the maximum practicable extent prior to contract award. However, if there are numerous offerors or there are urgent circumstances, the contracting officer may determine that preaward negotiations are impracticable. This determination must be approved at a level higher than the contracting officer, or such other level as may be prescribed by agency procedures. The contracting officer will notify the contractor that preaward negotiations are impractical, and that the contractor may provide notification to the contracting officer after award of those items, components, processes, or computer software for which other than unlimited rights in the data pertaining thereto are to be asserted. The contracting officer shall add Alternate III to the clause at 52.227–14 to provide for such continuing notification and provide agreement to add the results of such identification in the contract of the data to be delivered with other than unlimited rights.

(b) In accordance with agency procedures, the contract shall include a time schedule for negotiation of data rights if agreement cannot be achieved.

(c) Once Alternate III is added, then the schedule or attachment may be updated through the life of the contract, but not later than the date of the delivery of the data, to address additional assertions by the contractor or subcontractors under the notification process, to incorporate the results of Government reviews and challenges, and to specifically identify or describe all data to be delivered with other than unlimited rights. Such changes are to be made by bilateral modifications to the contract.

27.405–5 Negotiation factors.

The contracting officer shall consider, as appropriate, the following factors when negotiating rights in data:

(a) The acquisition strategy for the item or system, including logistics support.

(b) Whether the item or system, or related logistics support, will be competed.

(c) Timing of such competitions.

(d) The economic life of the technology and whether it can be commercialized.

(e) Funding contributions of the respective parties.

(f) Development of alternative sources for industrial mobilization or other purposes.

(g) Other factors, such as unique contractor qualifications or expertise contributing to the configuration management or development of the item, component, process or computer software.

27.406 Other data rights provisions.

(a) Special data situations. (1) The clause at 52.227–17, Rights in Data—Special Situations, is to be used in contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited rights data or restricted rights computer software) for the Government's own use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples are contracts for—

(i) The production of audiovisual works, including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translation, adaptation, and the like;

(ii) Histories of the respective agencies, departments, services, or units;

(iii) Surveys of Government establishments;

(iv) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties or works pertaining to recruiting, morale, training, or consular guidance;

(v) The compilation of reports, books, studies, surveys, or similar documents, that do not involve research, development, or experimental work;

(vi) The collection of data containing personally identifiable information such that disclosure would violate the right of privacy or publicity of an individual to whom the information relates;

(vii) Investigatory reports; and

(viii) The development, accumulation, or compilation of data, other than that resulting from research, development, or experimental work performed by a contractor, the early release of which could prejudice competitive acquisition activities, or agency enforcement or regulatory activities.

(2) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc., may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(3) Subdivision (c)(1)(ii) of the clause at 52.227.17, Rights in Data, Special Situations, enables the Government to obtain assignments of copyright in any data first produced in the performance of the contract. It may be deleted if the contracting officer determines that such assignment is not needed to further the objectives of the contract.

(4) Paragraph (e) of the clause at 52.227–14, which requires the contractor to indemnify the Government against

any liability incurred as the result of any violation of trade secrets, copyrights, right of privacy or publicity, or any libelous or other unlawful matter arising out of or contained in any production or compilation of data that are subject to the clause. It may be deleted or limited in scope where the contracting officer determines that, because of the nature of the particular data involved, such liability will not arise.

(b) Acquisition of existing audiovisual and similar works. (1) The clause at 52.227-18, Rights in Data-Existing Works, is for use in contracts exclusively for the acquisition (without modification) of existing motion pictures; television recordings; dramatic and literary works, pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with purposes for which the works covered by the contract are being acquired. Examples of these limitations are—

(i) Means of exhibition or transmission;

(ii) Time;

(iii) Type of audience; and

(iv) Geographic location.

(2) If the contract requires that works of the type indicated in subparagraph (b)(1) of this subsection are to be modified through editing, translation, or addition of subject matter, etc., rather than purchasing in existing form, the clause at 52.227-17, Data Rights—Special Situations, is to be used in lieu of the clause at 52.227-18. (See 27.406(a).)

(c) Acquisition of existing commercial computer software. (1) When contracting from other than GSA's multiple award schedule for the acquisition of existing commercial computer software (i.e., privately developed software normally vended commercially under a license or lease agreement restricting use, disclosure, and reproduction), the contract or purchase order must specifically address the Government's rights to use, disclose or reproduce the software. These rights must be sufficient for the Government to fulfill the need for which the software is being acquired. This includes commercial software that is furnished as part of a system and is separately priced. The contracting officer may presume that the software is commercial if the software is used regularly for other than Government purposes and is sold, licensed or leased in significant quantities to the general public at established market or catalog prices.

(2) The requirements of subparagraph (c)(1) of this section may be accomplished by using the clause at 52.227-19 or such rights may be negotiated and set forth in the contract using the guidance for restricted rights set forth in 27.404-3.

(3) The purpose of the clause at 52.227-19 is to supersede any portions of the vendor's standard commercial license, lease, or purchase agreement that are inconsistent with the restricted rights acquired by the Government and any pertinent Federal laws, the Federal Acquisition Regulation, and agency supplements. The vendor should be made aware of the clause's purpose and effect, and, when used, it must be incorporated into and made a part of the purchase order or contract under which the commercial computer software is being acquired.

(4) The guidance concerning the rights set forth in 27.404-3, as well as those in paragraph (d) of the clause at 52.227-19, normally are the minimum rights the Government should accept. Any variation must be negotiated and set forth in the contract or purchase order. Examples of additional rights that may be acquired are those necessary for site licenses, networking purposes, or for use of software from remote terminals communicating with a host computer where the software is located, and similar interface needs. If the computer software is to be acquired with unlimited rights, the contract should so state.

(5) If the acquisition is by lease or license, the disposition of the software (by returning or destruction, for example) at the end of the lease or license period must be addressed. Paragraph (f) of the clause at 52.227-19 deals with this issue.

(6) If the clause at 52.227-19 is not used, caution must be exercised in accepting a vendor's terms and conditions, since they may be directed to commercial sales and may not be appropriate for a Government situation. The contract terms shall take precedence over the vendor's license, lease, or purchase agreement. If the clause at 52.227-19 is used, inconsistencies in the vendor's standard commercial agreement regarding the Government's right to use, disclose, or reproduce the computer software are reconciled by that clause.

(7) The clause at 52.227-19 also applies to manuals and instructional materials the vendor normally supplies with the commercial computer software. Such material is to be acquired with unlimited rights unless bearing a copyright license to use and reproduce such materials for Government purposes. If other data, such as noncommercial software, or technical data, is to be acquired, then the clause at 52.227-19 is not applicable to such additional data and the clause at 52.227-14 must be used.

(8) Where the contract also contains the clause at 52.227-14, the contract should either identify the computer software to which the clause at 52.227-19 is to apply or require the contracting officer's approval prior to acquisition of such software.

(9) If a prime contractor under a contract containing the clause at 52.227-14 acquires existing commercial computer software from a subcontractor (at any tier) for delivery to or for use on behalf of the Government, the contracting officer may either authorize the use of the clause at 52.227-19 for that purpose, or approve any variations to or limitations on the restricted rights set forth in the clause at 52.227-14 in a collateral agreement incorporated in and made part of the contract.

(d) Other existing data and works. (1) Except for existing audiovisual and similar works as discussed in paragraph (b) of this subsection, and existing computer software as discussed in paragraph (c) of this subsection, no clause contained in this subpart is required to be included in—

(i) Contracts solely for the acquisition of books, periodicals, and other printed items in the exact form in which such items are to be obtained unless reproduction rights are to be acquired, or

(ii) Other contracts (as contracts that result from sealed bidding) that require only existing data (other than limited rights data) to be delivered and such data are available without disclosure prohibitions, unless reproduction rights are to be obtained. If the reproduction rights are to be obtained in any contract of the type described in 27.406 (b) or (d), such rights must be specifically set forth in the contract. No clause in this subpart is required to be included in contracts substantially for on line data base services which are available to the general public without restriction.

(e) Contracts awarded under the Small Business Innovative Research Program are to use the clause at 52.227-20, Rights in Data-SBIR Program. The clause is to be used in all Phase I and Phase II contract awards. It is the only data rights clause to be used in Small Business Innovative Research Program contracts, and its use is limited to such contracts. For additional guidance, consult the Small Business Policy Directive 65-01-2, and agency implementation.

27.407 Omitted, nonconforming and unauthorized markings.

27.407-1 Omitted and nonconforming markings.

(a) Data delivered under a contract containing the clause at 52.227-14, Rights in Data, without appropriate legends, or without a copyright notice, will be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed, the contractor may within 6 months (or longer period in accordance with agency procedures), request permission of the contracting officer to have omitted notices placed on qualifying data, at the contractor's expense. The contracting officer may agree to so permit if the contractor—

(1) Identifies the data for which notice is to be added;

(2) Demonstrates that the omission was inadvertent;

(3) Establishes that the use of the notice is authorized; and

(4) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(b) If the data appears to be data that the contractor is authorized to mark, but the marking is nonconforming, then the Government shall use the data as if the marking were proper, and the contractor shall be required to correct the markings to conform to the contract. Nonconforming means markings which appear to assert rights in data, but do not conform to the prescribed notices authorized by the clause at 52.227-14, Rights in Data. If the contractor fails to correct the markings within 60 days after notice, the Government may correct the markings at the contractor's expense. Since interpretation of nonconforming markings is judgmental by the Government, the contractor should not assume that such markings are adequate to protect rights. If the notices appear to address only internal contractor distribution, or are unclear, and the contractor does not adequately clarify the issue, the contracting officer may decide that the nonconforming notices are not notices of data restrictions and may strike them or ignore them. The contracting officer may also, if the notice or legend is nonconforming, correct the notice unilaterally.

27.407-2 Unauthorized markings and validation.

(a) General. A contractor or subcontractor may be required to validate restrictive markings on data if the contracting officer has a reasonable basis to believe that the data does not qualify as limited rights data or restricted rights computer software (see 27.404-2 and 27.404-3). There are two types of requirements and procedures for the validation of (i.e., challenge to) restrictive markings on data. The statutory requirements of 10 U.S.C. 2321 and 41 U.S.C. 253d are implemented by the clause at 52.227-24, Validation of Technical Data Markings (Statutory). This clause establishes the procedures for technical data (but not computer software) for all contracts by agencies subject to title 10 of the United States Code as well as for technical data (but not computer software) for major systems contracts or for the support of major systems (as defined in 41 U.S.C. 203) by agencies subject to title III of the Federal Property and Administrative Services Act of 1949. The clause at 52.227-25, Validation of Computer Software and Data Markings (Nonstatutory), establishes the procedures for validation of computer software in all contracts for all agencies, as well as for all other data except for technical data in the aforementioned contracts.

(b) Request for information prior to validation. (1) The contracting officer may request the contractor or subcontractor to furnish a written explanation for any restriction asserted on the right of the Government or others acting on its behalf to use, duplicate, or disclose the data. The period provided for the contractor's response is to be a reasonable time (not to exceed 90 days) established by the contracting officer, taking into account the availability and volume of the information needed for a complete response. The request shall state it does not constitute a formal challenge.

(2) Paragraph (b) of the clauses at 52.227-24 and 52.227-25 requires the contractor or subcontractor to have procedures to ensure proper marking of data, and maintain records to justify such markings.

(c) If the contracting officer determines a formal challenge to the asserted restrictive markings is warranted, then the procedures therefor set in either the clause at 52.227-24 or 52.227-25, as applicable, are to be followed.

(d) In order to comply with the statutory requirements of 10 U.S.C. 2321, the following also applies to any challenges made pursuant to the clause at 52.227-24:

(1) The contracting officer, after consulting with the activity having an interest in the validity of the markings, must determine, after reviewing all available information, that there are reasonable grounds to question the validity of a restrictive marking, and that continued adherence to the restriction would make subsequent competition impracticable or the contractor or subcontractor fails to adequately respond to the prechallenge request within a reasonable period of time. The contracting officer must document this determination for the file.

(2) Data must be challenged no later than 3 years after delivery to the Government, or 3 years after final payment under the contract, whichever is later. The contracting officer may challenge a restriction at any time if the data—

(i) Are publicly available without disclosure restrictions;

(ii) Have been furnished to the Government without restriction; or

(iii) Have otherwise been made available without restriction.

(e) Even though there are no statutory limits on challenges under the clause at 52.227-25, efforts should be made to raise and resolve questions the contracting officer may have regarding asserted restrictions within a reasonable period of time after delivery of the data involved.

27.408 Acquisition of data—general procedures.

(a) *General.* (1) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements may be subject to revision during contract negotiations. Since the cost of preparation, reformatting, maintenance and updating, cataloging, and storage of data represent an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum, consistent with the purposes of the contract.

(2) To the extent feasible, all known data requirements, including time and place for delivery and any limitations and restrictions to be imposed on the contractor in the handling of data, shall be specified in the contract. Whenever practicable, data requirements shall be set out as separate contract line items. In establishing the contract data requirements and in specifying data items to be delivered by a contractor, agencies may develop their own procedures for listing, specifying,

identifying source, assuring delivery, and handling any data required to be delivered, first produced, or specifically used in the performance of the contract.

(3) Data delivery requirements should not require that a contractor provide the Government, as a condition of the procurement, unlimited rights in data that qualify as limited rights data or restricted computer software. Rather, form, fit, and function data may be furnished, if the contracting officer elects to use the clause at 52.227–14, Rights in Data, with Alternate I, or qualifying data may be furnished with limited rights notices or restricted rights notices, as discussed in 27.404–2 and 27.404–3, and as provided for in subparagraphs (b)(2) and (b)(3) of the clause at 52.227–14. If additional rights are needed, as data for a reprocurement data package, then this need should be clearly set forth in the solicitation and the contractor fairly compensated for such greater rights.

(b) *Additional data ordering.* (1) Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be feasible to ascertain all the data requirements at the time of contracting, the clause 52.227–16, Additional Data Ordering, may be used to enable the subsequent ordering by the contracting officer of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. The clause shall normally be used in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed under a contract solely by a university or college when the contract amount will be $500,000 or less) unless all the requirements for data are believed to be known at the time and specified in the contract. It may be used in other contracts, such as for production or supply, but the contractor must be informed of the categories of data to which it may apply. If the contract is for basic or applied research to be performed by a university or college, and the contracting officer believes the contract effort will in the future exceed $500,000, even though the initial award does not, the contracting officer may include the clause in the initial award.

(2) Data may be ordered under the clause at 52.227–16, Additional Data Ordering, at any time during contract performance or within 3 years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contractor may be relieved of retention requirements for specified data items by the contracting officer at any time during the retention period required by the clause. The contracting officer may permit the contractor to identify and specify in the contract data not to be ordered for delivery under the Additional Data Ordering clause if such data are not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the Additional Data Ordering clause by deleting the term "or specifically used" in paragraph (a) thereof if delivery of such data are not necessary to meet the Government's requirements for data. Any data that are ordered under this clause will be subject to the clause at 52.227–14, Rights in Data, and data authorized to be withheld under such clause will not be required to be delivered under the Additional Data Ordering clause, except by written order of the contracting officer.

(c) *Acceptance of data.* Acceptability of technical data delivered under a contract shall be in accordance with the appropriate contract clause as required by subpart 46.3 and the clause at 52.227–21, Technical Data Certification, Revision, and Withholding of Payment, when it is included in the contract.

(d) *Technical data certification, revision, and withholding of payment.* (1) In order to assure the technical data needed are delivered in a timely manner and are complete, accurate, and satisfy the requirements of the contract, the clause at 52.227–21, Technical Data Certification, Revision, and Withholding of Payment, is to be included in all contracts as prescribed by agency supplements. The clause requires the contractor, upon delivery of technical data to certify, that to the best of its knowledge and belief, such data are complete, accurate, and comply with contract requirements. It also provides for corrections of any deficiencies in the data. The contracting officer may request revisions of the data to reflect engineering design changes made during performance of the contract and affecting form, fit, and function of the items the data depict. Further included is the authority for the contracting officer to withhold payment under the contract to assure timely delivery of the technical data and/or assure correction of the technical data are not complete, accurate, and in compliance with contract requirements.

(2) The contracting officer should consider all remedies when data do not comply with the contract. Remedies may include reduction of progress payments, withholding final payment, contract termination and a reduction in contract price or fee. The clause permits withholding up to 10 percent of the contract price unless a lesser amount is specified in the contract or the Alternate paragraph (c) is specified by agency procedures. The contracting officer shall determine the amount to be withheld after considering the estimated value of the data to the Government. Payment shall not be withheld when nondelivery results from causes beyond the control and without the fault or negligence of the contractor.

(3) When the clause at 52.227–21 is used, the section of the contract specifying data delivery requirements shall expressly identify those line items of technical data to which the clause applies. Upon delivery of such technical data, the contracting officer or designee shall review the technical data in the contractor's relating certification to assure that the data are complete, accurate, and comply with contract requirements. If not, the contractor is to be requested to correct the deficiencies, and payment may be withheld until such is done. Final payment should not be made under the contract until it has been determined that the delivery requirements of those line items of data to which the clause applies have been satisfactorily met.

27.409 Rights to technical data in successful proposals.

(a) Contracting officers may, in consideration of contract award, desire to acquire unlimited rights in technical data (but not commercial or financial information) contained in a successful proposal upon which a contract award is based. However, before such unlimited rights are acquired, the prospective contractor must be afforded the opportunity either—

(1) To advise the contracting officer that the technical data, or portions thereof (to be identified by the prospective contractor) are covered by any restrictive notice regarding the disclosure and use of proposal information authorized by subpart 15.4 or 15.5 (or any agency supplement thereto), and request that such protection be maintained by excluding the data from the Government's rights; or

(2) To establish to the contracting officer's satisfaction that identified portions of the technical data do not relate directly to or will not be utilized in the work to be performed under the contract, and request that such portions

be excluded from the Government's rights.

(b) If unlimited rights to technical data in successful proposals, as set forth in paragraph (a) of this section, are to be acquired, it shall be by use of the clause at 52.227–23, Rights to Proposal Data. Any excluded technical data will be identified by inserting appropriate proposal page numbers in the clause. This clause enables identification of data to be excluded from the Government's rights, as discussed in paragraph (a) of this section. Such exclusion is not dispositive of the protective status of the data, but any excluded technical data, as well as any commercial and financial information contained in the proposal, will remain subject to the policies in subpart 15.4 or 15.5 (and agency supplements thereto) relating to proposal information (i.e., will be used for evaluation purposes only). If the clause at 52.227–23, Rights to Proposal Data, is included in a contract, the prospective contractor must be specifically afforded the opportunity to exclude technical data as set forth in paragraph (a) of this section, and the contract file must reflect that fact. If there is a need to have access to any of the excluded technical data during contract performance, consideration must be given to their acquisition as limited rights data, if they so qualify, in accordance with 27.404–2.

27.410 Solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.227–14, Rights in Data, including its Alternates, as authorized, or other appropriate clauses, as prescribed in this section in solicitations and contracts if data will be developed, produced, furnished, or acquired under the contract, unless the contract is—

(i) For special situations, set forth in 27.406(a), but the clause at 52.227–14 shall be included in the contract and made applicable to data other than that produced or compiled for the special situations set forth in 27.406(a);

(ii) For the acquisition of existing works as set forth in 27.406(b);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case agencies may prescribe an alternate clause.

(iv) For architect service or construction work, in which case agencies may utilize the clause at 52.227–17, Rights in Data-Special Situations, or may prescribe different clauses;

(v) For contracts under the Small Business Innovation Research Program, see paragraph (l) of this section.

(vi) For the management, operation, design, or construction of a Government facility to perform research, development, or production work, in which cases agencies may prescribe different clauses see paragraph (p) of this section; or

(vii) Exclusively for existing commercial computer software as set forth in 27.406(c).

(2) In all contracts and solicitations containing the clause at 52.227–14, the contracting officer shall in accordance with 27.407–2—

(i) Insert the clause at 52.227–24, Validation of Technical Data Markings (Statutory), if the solicitation and contract are by an agency subject to title 10 of the United States Code or by an agency subject to title III of the Federal Property and Administrative Services Act of 1949 for major systems or the support thereof, unless in either instance only computer software is to be furnished for use by or on behalf of the Government; and

(ii) Insert the clause at 52.227–25, Validation of Computer Software and Data Markings (Nonstatutory)—

(A) Whenever computer software is to be delivered or furnished for use by or on behalf of the Government; or

(B) If the clause at 52.227–24 is not inserted whether or not computer software is to be delivered or furnished.

(b) In accordance with 27.405–1(f), if a contracting officer determines it is unnecessary to obtain the delivery of limited rights data, or restricted rights data, the clause shall be used with its Alternate I. (See also 27.404–2(a) and 27.404–3(a).)

(c) The clause at 52.227–14 is to be used with its Alternate II if in accordance with the procedures at 27.405–2, the contracting officer has determined Government purpose rights are appropriate. If a nondisclosure agreement is required, agencies may use the clause at 52.227–26 or prescribe their own.

(d) The clause at 52.227–14 is to be used with its Alternate III if negotiations are necessary in accordance with 27.405–4. Also, the clause at 52.227–28 may be used in situations in which post award negotiation of data rights may be necessary with regard to specific data deliverables.

(e) The clause at 52.227–14 shall be used with its Alternate IV in contracts for basic or applied research (other than those for the management or operation of Government facilities or where international agreements require otherwise), to be performed solely by universities and colleges.

(f) The clause at 52.227–14 may be used with its Alternate IV in other contracts if in accordance with 27.404–5(c)(2) an agency determines to grant blanket permission for the contractor to establish claim to copyright subsisting in all data first produced without further request being made by the contractor.

(g) The contracting officer shall insert the provision at 52.227–15, Notification of Data Deliverables With Other Than Unlimited Rights, in all solicitations containing the clause at 52.227–14, the offeror's response will aid the contracting officer in determining which, if any, of the Alternates are appropriate in accordance with 27.405.

(h) The contracting officer shall normally insert the clause at 52.227–16, Additional Data Ordering, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. This clause may also be used in other contracts, such as supply or production when considered appropriate in accordance with 27.408(b).

(i) In accordance with 27.406(a), the contracting officers shall insert the clause at 52.227–17, Rights in Data—Special Situations, in solicitations and contracts primarily for the production or compilation of data (other than limited rights data or restricted rights computer software) for the Government's internal use, or when there is specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples of such contracts are set forth in 27.406(a). The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced by the contractor for other than contract performance. Contracts for the production of audiovisual works, sound recordings, etc., may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is required.

(j) The contracting officer shall insert the clause at 52.227–18, Rights in Data—Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in 27.406(b). The contract may set forth limitations consistent with the purposes for which work is being acquired. The clause at 52.227–17, Rights in Data—Special Situations, shall be

used if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(k)(1) In accordance with 27.406(c), when contracting (other than from CSA's Multiple Award Schedule contracts) for the acquisition of existing computer software, the clause at 52.227–19, Commercial Computer Software, may be used in the solicitation and contract. This clause may also be used in contracts containing the clause at 52.227–14, Rights in Data. In any event, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 27.404–3(b)(1).

(2) The contracting officer may, in any solicitation and contract containing the clause at 52.227–19, insert the clause at 52.227–25, Validation of Computer Software and Data Markings (Nonstatutory), where the contracting officer desires the rights to challenge the restrictive markings on delivered computer software that is subject to the clause at 52.227–19.

(l) The clause at 52.227–20, Rights in Data—SBIR Program, shall be used in all Phase I and Phase II contracts awarded established pursuant to Public Law 97–219 (The Small Business Innovation Development Act of 1982).

(m) While no specific clause of this subpart is required to be included in contracts solely for the acquisition, without disclosure prohibitions, of books, publications, and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See. 27.406(d).)

(n) [Reserved]

(o) Agencies may prescribe in their procedures the clause at 52.227–17, Rights in Data—Special Situations, or prescribe, as appropriate, clauses for architect-engineer services and construction work.

(p) Agencies may prescribe clauses in contracts for management, operation, design, or construction of Government-owned research, development, or production facilities, and in contracts and subcontracts in support of programs being conducted at such facilities.

(q) The contracting officer shall insert the clause at 52.227–21, Technical Data Certification, Revision, and Withholding of Payment, in all contracts, with the suitable alternative selected in contracts for major systems acquisitions or for support of major systems acquisitions.

(r) [Reserved]

(s) In accordance with 27.409, if a contracting officer desires to acquire unlimited rights in technical data contained in a successful proposal upon which a contract award is based, the contracting officer shall insert the clause at 52.227–23, Rights to Proposal Data. Rights to technical data in a proposal are not acquired by mere incorporation by reference of the proposal in the contract, and if a proposal is incorporated by reference, 27.409 must be followed to assure that such rights are appropriately addressed.

3. Subpart 27.7 is added to read as follows:

Subpart 27.7—Infringement of Patents and Copyrights

Sec.
27.700 Scope.
27.701 Policy.
27.702 Requirements of an administrative claim.
27.703 Processing administrative claims.

Subpart 27.7—Infringement of Patents and Copyrights

27.700 Scope.

This subpart prescribes policy and procedures for the processing of administrative claims asserted against an agency for infringement of patents and copyrights.

27.701 Policy.

A Government agency should take all necessary steps to settle administratively, to deny, or otherwise to dispose of claims of infringement of privately owned rights in patented inventions or copyrighted works prior to suit against the Government; and should prescribe policy, procedures, and instructions with respect to the processing of such claims.

27.702 Requirements of an administrative claim.

Under applicable statutes, including those tolling statutes of limitation (35 U.S.C. 286 for patents and 28 U.S.C. 1498(b) for copyright), a patent or copyright infringement claim for compensation must be actually communicated to and received by the Government agency. A claim must be in writing and include the following:

(a) An allegation of infringement.

(b) A request for compensation, either expressed or implied.

(c) A citation of the patents or copyrighted works alleged to be infringed.

(d) In the case of a patent infringement claim, a sufficient designation of the alleged infringing items or processes to permit identification, or, in the case of a copyright infringement claim, a sufficient designation of the alleged infringing works and/or practices to permit identification and investigation.

(e) A designation of at least one claim of each patent and copyright alleged to be infringed.

(f) As an alternative to paragraphs (d) and (e) of this section, a certification that the claimant has made a bona fide attempt to determine the items or processes which are alleged to infringe the patents, or the works or practices alleged to infringe the copyrights, but was unable to do so, giving reasons, and stating a reasonable basis for the claimant's belief that the patents or copyrighted works are being infringed.

27.703 Processing administrative claims.

(a) Correspondence received by an agency from an owner of a patent or copyright alleging infringement of such patent or copyright by the agency shall be promptly forwarded to the agency's designee for processing of claims alleging infringement of patents or copyrights.

(b) The contractors are required by the clause at 52.227–2, Notice and Assistance Regarding Patent and Copyright Infringement—

(1) To notify the contracting officer of all claims of infringement that come to the contractor's attention in connection with performing a Government contract; and

(2) When requested, to assist the Government with any evidence and information in its possession in connection with any claims against the Government made before suit has been instituted on account of any alleged patent or copyright arising out of or resulting from the contract performance (see 27.202–1).

(c) The contracting officer shall notify the Government agency's designee for processing infringement claims of all claims of infringement that come to the contracting officer's attention.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.227–14 is revised to read as follows:

52.227–14 Rights in Data.

The contracting officer shall use this clause and Alternates in accordance with 27.410–1(a) through (f):

Rights in Data (XXX 1990)

(a) Definitions.

Computer software, as used in this clause, means—

(1) Computer programs which are data comprising a series of instructions, rules,

routines, or statements which allow or cause a computer to execute an operation or series of operations; and

(2) Data compromising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled.

Data, as used in this clause, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, technical data and computer software, and computer data bases. The term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

Data base, as used in this clause, means a collection of data recorded in a form capable of, and for the purpose of, being stored in, processed and operated on by a computer. The term does not include computer software.

Detailed design, manufacturing, or process data, as used in this clause, means technical data of sufficient detail to enable the essentially identical reproduction or manufacture of an item, component, or the performance of a process, to which the data pertains.

Developed, as used in this clause, means that the item, component, process, or computer software exists and is workable. To exist, the item or component must have been constructed or the process or computer program practiced. To be workable, the item, component, process, or computer program has been analyzed or tested sufficiently to demonstrate to reasonable people, skilled in the applicable art, that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, process, or computer software, and the state of the art. To be considered "developed," the item, component, process, or computer software need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, process, or computer software be actually reduced to practice within the meaning of Title 35 of the United States Code.

Developed exclusively with Government (Federal) funds, as used in this clause, means, in connection with an item, component, process, or computer software, that the cost of development was paid for in whole by the Government. Independent research and development and bid and proposal costs, as defined in 31.205-18, (whether or not included in a formal independent research and development program), and costs allocated to overhead accounts in accordance with the Cost Accounting Standards (CAS) for those contracts covered by CAS, or in accordance with generally accepted accounting principles for those contracts not covered by CAS, are not considered to be costs of "development" with Federal funds for purposes of this definition.

Developed exclusively at private expense, as used in this clause, means, in connection with an item, component, process, or computer software, that no part of the cost of development was charged to the Government, with the express understanding that independent research and development and bid and proposal costs, as defined in 31.205-18 (whether or not included in a formal independent research and development program), and costs allocated to overhead accounts in accordance with the Cost Accounting Standards (CAS) for those contractors covered by CAS, or in accordance with generally accepted accounting principles for those contracts not covered by CAS, are not to be considered development costs charged to the Government for purposes of this definition.

Form, fit, and function data, as used in this clause, means data relating to items, components, processes, or computer programs that are sufficient to enable physical and functional interchangeability as well as data identifying source(s), size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

Government purpose rights, as used in this clause, means the rights of the Government to use, duplicate, and disclose detailed design, manufacturing, and process data and computer software, by or on behalf of the Government, including disclosure outside the Government for any Government purpose. Data that may be subject to Government purpose rights will be specifically identified in this contract, and the Government's rights to use, duplicate, and disclose such data are as set forth in the Government Purpose Rights Notice of alternate II, if included in this clause.

Limited rights data, as used in this clause, means data pertaining to items, components, and processes developed exclusively at private expense, except as may be provided otherwise in subparagraph (b)(1) of this clause, provided that such data have not been disclosed, furnished, or released to the Government or to others without restriction on further disclosure and use or are otherwise publicly available. The Government's rights to use, duplicate, and disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (b)(2) of this clause.

Manuals and instructional materials, as used in this clause, means data necessary for the installation, operation, maintenance and repair, or training with respect to any item, component, process, or computer software.

Mixed funding, as used in this clause, means with respect to Government purpose rights that both Government funds and private funds were used for the development of an item, component, process, or computer software and the respective contributions of the Government and the contractor are not readily segregable. The items, components, processes, or computer software to which mixed funding applies must be by agreement of the parties and identified in the contract. It cannot be created by application of normal or incidental contract overhead accounts, or by application of contractor funds arising from required contract performance, such as cost overruns, and claims for out of scope work.

Restricted rights computer software, as used in this clause, means computer software developed exclusively at private expense, except as may be provided otherwise in subparagraph (b)(1) of this clause, provided that such computer software has not been disclosed, furnished, or released to the Government or to others without restrictions on further disclosure and use, or is not publicly available. The Government's rights to use, duplicate, or disclose restricted rights computer software are as set forth in the Restricted Rights Notice of subparagraph (b)(3) of this clause.

Technical data, as used in this clause, means data which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the rights of the Government in data to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Rights acquired by the Government.

(1) *Unlimited rights*. Unless otherwise provided in paragraph (c) of this clause regarding copyright, or as provided in subparagraph (b)(4) of this clause for Government purpose rights if included in this clause, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract, including but no limited to—

(A) Technical data pertaining to items, components, processes, or computer software developed exclusively at Government expense; or

(B) Technical data and computer software resulting directly from the performance of experimental, developmental, or research work specified as an element of performance under this contract; or that has been developed during and were necessary for the performance of this contract.

(ii) Form, fit, and function data delivered or furnished for use in the performance of this contract;

(iii) Manuals and instructional materials furnished or required to be furnished for the installation, operation, maintenance and repair, or training with respect to any item, component, process or for the installation, maintenance, operation, and training with respect to any computer program required to be, or in fact, delivered or furnished for use in the performance of this contract;

(iv) All data which was in fact delivered or furnished for use in the performance of this contract which constitutes a correction or change to data furnished to the contractor by the Government; and

(v) All other data required to be or in fact delivered or furnished for use in the performance of this contract unless provided otherwise for limited rights data or restricted rights computer software in accordance with subparagraphs (b) (2) and (3) of this clause.

(2) *Limited rights*. The Government shall have limited rights as set forth in the Notice below in any data required to be or in fact delivered or furnished for use in the performance of this contract, and such data

are limited rights data, *provided* the following "Limited Rights Notice" is affixed to the data:

Limited Rights Notice

(a) Contract (and subcontract, if applicable) No. Contractor (and subcontractor, if applicable):

(b) These data are subject to the following limited rights. These data may be reproduced and used by the Government with the limitation that these data will not, without the written permission of the Contractor or as expressly permitted in this contract, be used for purposes of manufacture or disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, provided the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Emergency repair and overhaul.

(2) Release or disclosure of technical data (other than detailed design, manufacturing, or process data) to, or use of such data by, a foreign government or agency thereof as the interests of the United States may require for evaluational or informational purposes.

(c) This notice shall be marked on any reproduction of these data, in whole or in part."

(End of notice)

(3) *Restricted rights.* (i) The Government shall have restricted rights as set forth in the Notice below, in any computer software required to be or in fact delivered or furnished for use in the performance of this contract, and such computer software is restricted rights computer software, *provided* the following "Restricted Rights Notice" is affixed to the computer software:

Restricted Rights Notice—Long Form

(a) This computer software is submitted with restricted rights under Government Contract No. _____ with _____ (and Subcontract No. _____ with _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice.

(b) This computer software may be—

(1) Used, or copied for use, in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, or copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted rights computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by Contractors under a service contract (of the type defined in 37.101) in accordance with subparagraphs (b)(1) through (b)(4) of this Notice provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part."

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice—Long Form on restricted rights computer software, the following short form Notice may be used in lieu thereof.

Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Contract No. _____ with _____ (and Subcontract No. _____ with _____, if appropriate).

(End of notice)

(iii) If the software is embedded, or it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, as [R–8/90], may be used. This will be read to mean restricted rights software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event the contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(iv) If restricted rights computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Contractor includes the following statement with such copyright notice: "Unpublished—rights reserved under the Copyright Laws of the United States."

(c) *Copyright*—(1) *Data first produced in the performance of the contract.* Unless provided otherwise in this contract, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written consent of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, and the Contractor has published or intends to publish under copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, or worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by and on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, or worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by and on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate into data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; *provided,* however, that if such data are restricted rights computer software the Government shall acquire a copyright license of the scope set forth in the "Restricted Rights Notice" of subparagraph (b)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government agrees not to remove any authorized copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all Government reproductions of the data. Should data first produced under this contract be improperly copyrighted, the Government may remove such notices or, at its discretion, demand that the copyright be assigned to the United States. Upon such demand, the Contractor agrees to so assign the copyright.

(d) *Release, publication and use of data.* (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph (d) or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to any data necessary for the performance of this contract which are subject to a Limited Rights, Restricted Rights, or Government Purpose Rights Notice, or contain other restrictive markings, the Contractor shall treat the data in accordance with such Notices or markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) *Omitted or incorrect markings.* (1) Data delivered to the Government without an authorized legend as required by paragraph (b) of this clause, or an authorized copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the

disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restrictions outside the Government, the Contractor may request, within 6 months after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also—

(i) Permit correction at the Contractor's expense of nonconforming notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(ii) Correct any nonconforming notices.

(f) *Unauthorized marking of data.* Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (b) of this clause that are not justified by this clause or by any other terms of this contract, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or challenge the alleged restrictions in accordance with the procedures set forth in the Validation clause of this contract.

(g) *Subcontracting.* (1) The Contractor has the responsibility to obtain from its subcontractors all data and rights necessary to fulfill the Contractor's obligations under this contract. To this end, the Contractor shall use this same clause, suitably altered to identify the parties, in all subcontracts. No other clause or agreement shall be used without express written consent of the Contracting Officer, obtained in accordance with agency procedures.

(2) Data other than unlimited rights data may be submitted by a subcontractor directly to the Government, rather than through any higher tier Contractor.

(3) The Contractor shall ensure that subcontractor rights are protected by including any subcontractor allegations of rights on appropriate notification procedures.

(4) In no event shall the Contractor offer its obligations to recognize and protect subcontractor rights in technical data as a defense for failing to satisfy its contractual obligations to the Government. The Contractor shall not obligate itself to provide rights in data to the Government unless such rights have previously been obtained from the subcontractors. The Contractor must satisfy its contractual obligations to the Government while ensuring that the rights afforded subcontractors under 10 U.S.C. 2320 and 2321 are protected.

(h) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(i) *Limitation on charges.* The Contractor recognizes that the Government is not obligated to pay or allow to be paid, any charges for data that the Government has a right to use and disclose to others without restriction, including payments by subcontractors and payments by foreign governments under either the Foreign Military Sale Program or the Military Assistance Program. The Contractor agrees to refund any such payments.

(End of clause)

Alternate I (XXX 1990). As prescribed by 27.410(b), the Contracting Officer may use *Alternate I* if it is determined that it is unnecessary to obtain delivery of limited rights or restricted rights data. Note: if Alternate II is not chosen, paragraph (b)(4) of the clause should be designated "Reserved."

(b)(5) When data other than that listed in subparagraph (b)(1) of this clause are specified to be delivered in the performance of this contract and such data are limited rights data, or restricted rights computer software, the Contractor shall, unless specifically directed otherwise in writing by the Contracting Officer, withhold such data and not furnish them to the Government. However, as a condition to withholding the data, the Contractor must identify the data and furnish form, fit, and function data in lieu thereof. Notwithstanding this provision, the Contracting Officer may, at any time by written request, identify and specify the delivery of such withheld data. If delivery of such data is required, the Contractor may protect his rights by use of the Notices in paragraph (b)(2) or (b)(3), as applicable, of this clause, or (b)(4), if this clause contains a subparagraph (b)(4). The Contracting Officer, or his representative, at all reasonable times up to 3 years after delivery of the data, or final payment under this contract, whichever is later, may inspect at the Contractor's facility or other appropriate site, any data (and records relating to such data) withheld as limited rights data or restricted rights data pursuant to the above paragraph for purposes of evaluating performance under this contract or verifying that such data was properly withheld.

Alternate II (XXX 1990). As prescribed by 27.410(c), the Contracting Officer may use *Alternate II* with the clause at 52.227–14 if Government purpose rights are to be granted.

(b)(4) *Government purpose rights.* (i) The Government shall have Government purpose rights, as set forth in the Notice below in detailed design manufacturing and process data pertaining to items, components, processes and computer software for which the parties have agreed to such rights and specifically identified in this contract, *provided* the following "Government Purpose Rights Notice" is affixed to such data or computer software—

Government Purpose Rights Notice

(a) Contract (and subcontract No., if applicable) No. _____ Contractor (and subcontractor, if applicable): _____

(b) These technical data and computer software are subject to Government purpose rights. These technical data and computer software may be used, duplicated, and disclosed by or on behalf of the Government for any Government purpose, including disclosure outside the Government for such purposes.

(c) The disclosure prohibitions under these Government purposes rights shall be effective until _____ (*insert date certain*), after which date the Government shall have unlimited rights in these technical data and computer software.

(d) This notice shall be marked on any reproduction of these data, in whole or in part.

Alternate III (XXX 1990). As prescribed by 27.410(d), *Alternate III* is to be used with the clause at 52.227–14 if postaward negotiations are necessary in accordance with 27.405–4.

(j) *Notice of Limitations on Government Rights and subsequent negotiation.* (1) The Offeror or Contractor shall notify and continue to notify the Contracting Officer of its or its potential subcontractor's use during performance of the contract, or any subcontract, of items, components, processes, and associated data, and computer software, which—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; and

(iii) Embody technology that has been developed exclusively with Government funds which the offeror, Contractor, or subcontractor desires exclusive rights to commercialize.

(2) Such notification shall be added to any listing developed under the Notification provision (52.227–15), if any, and the listing shall subsequently be incorporated into this contract, and may be modified by mutual consent throughout the life of this contract, but no later than delivery of the data in question. The Contracting Officer may negotiate and continue to negotiate with the Contractor using the procedures of 27.405–2 regarding the listing. The listing is intended to facilitate review and acceptance of data by the Government and does not waive or modify the rights of the Government to challenge the data under the clause at 52.227–25.

(3) Notification is not required with respect to items, components, processes and computer software if no data are to be delivered with other than unlimited rights, or if the data are delivered with unlimited rights.

(4) Upon request, the Contractor or subcontractor will provide sufficient information to enable the Contracting Officer to identify and evaluate the Contractor's assertions.

(k) *Identification of restrictions on Government rights.* Data shall not be tendered to the Government with other than unlimited rights unless the data has been identified under the provision at 52.227–15, prior to award, or identified under the notification procedure of *Alternate III*, if after award.

(l) *Disputes.* In the case of an item, component, or process that is developed in part at private expense, if, after exhausting

all reasonable efforts, the parties fail to agree to apportionment of the rights in technical data furnished under this contract by the date established in the contract for agreement, or within any extension established by the Contracting Officer, then the Contracting Officer may establish the respective rights of the parties subject to Contractor appeal as provided in the disputes clause of this contract. In any event, the Contractor shall proceed with completion of the contract.
(End of clause)

Alternate I. (XXX 1990). As prescribed by 27.410 (e) and (f), substitute the following subparagraph (c)(1) in the clause if automatic copyright is desired.

(c) *Copyright.* (1) Data first produced in the performance of the contract. Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, or worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by and on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up nonexclusive, irrevocable, or worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by and on behalf of the Government.

5. Section 52.227–15 is revised to read as follows:

52.227.15 Notification of Data Deliverables With Other Than Unlimited Rights.

As prescribed in 27.410(g), the contracting officer shall insert this provision in all solicitations containing the clause at 52.227–14:

Notification of Data Deliverables With Other Than Unlimited Rights (XXX 1990)

(a) This solicitation sets forth the work to be performed, if a contract award results, and the Government's known requirements for data (as defined in 27.401.) Any resulting contract may also provide the Government with the option to order additional data under the Additional Data Ordering Clause at 52.227–16, if included in the contract. Rights in data delivered under any resultant contract will be subject to the Rights in Data Clause at 52.227–14 that is to be included in this contract.

(b) The offeror's proposal, or response, to this solicitation shall, to the extent feasible, complete the representation of this clause to either state that no data with other than unlimited rights data will be delivered, or identify all data to be delivered with other than unlimited rights. Any such identification is to be used for purposes of establishing a baseline for negotiation with the Contracting Officer, and not as an agreement by either party of the ultimate status of the rights.

(c) Representation concerning data rights. The Offeror has reviewed the data requirements of this solicitation and states—
(check the appropriate box)

(1) All of the data proposed for fulfilling the data requirements specified in *this* solicitation shall be delivered with umlimited rights.

(2) All of the data proposed for fulfilling the data requirements specified in *tis* solicitation, except as noted below, shall be delivered with unlimited rights.

(i) The following data pertaining to items, components, processes have been developed exclusively at private expense, and the offeror intends to deliver such data with limited rights:

(List data deliverable and lowest segregable item, component, or process to which it pertains.)

(ii) The following computer software has been developed at private expense, and the offeror intends to deliver such data with restricted rights:

(List data deliverable and computer software to which it pertains.)

(iii) The following data pertaining to items, components, processes, or computer software have been or are to be developed with mixed funding, and the Offeror requests that such data be made subject to Government purpose rights:

(List data deliverable and lowest segregable item, component, process, or computer software to which it pertains.)

(iv) The following data pertaining to items, components, processes, or computer software have been developed exclusively at Government expense, and the offeror requests that such data be made subject to Government purpose rights:

(List data deliverable and lowest segregable item, component, process, or computer software to which it pertains.)

(3) The offeror has not previously delivered or is not obligated to deliver under a Government contact the same or substantially the same data (as defined in 52.227–14) which may be required to be delivered under this contract except as indicated below.
(End of provision)

6. Section 52.227–16 is revised to read as follows:

52.227–17 Additional Data Ordering.

As prescribed in 27.410(h), the contracting officer shall insert the following clause:

Additional Data Ordering (XXX 1990)

(a) In addition to the data (as defined in the clause at 52.227–14, Rights in Data, or other equivalent clause included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract or the termination of this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data clause, or other equivalent clause included in this contract, is applicable to all data ordered under this Additional Data Ordering clause. Nothing contained in this clause shall require the Contractor to deliver any data, the withholding of which is authorized by the Rights in Data clause or other equivalent clause of this contract, or, data which are specifically identified in this contract as not subject to this clause.

(c) The obligation to deliver the data of a subcontractor, pertaining to an item obtained from the subcontractor, shall expire 3 years after the date the prime Contractor accepts the last delivery of that item from that subcontractor under this contract.

(d) When data are or are to be delivered under this clause, the Contractor will be paid the actual costs, if any, incurred in converting the data into the prescribed form, for reproduction and delivery.
(End of clause)

7. Section 52.227–17 is revised to read as follows:

52.227–17 Rights in Data—Special Situations.

As prescribed in 27.410(i), the contracting officer shall insert the following clause:

Rights in Data—Special Situations (XXX 1990)

(a) *Definitions.*

Data, as used in this clause, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, technical data and computer software. Data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information are not subject to this clause.

Unlimited rights, as used in this clause, means the rights of the Government in data to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.*

(1) The government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, unless otherwise provided in paragraph (c) of this clause regarding copyrights.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data in accordance with subparagraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with

subparagraph (c)(1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(c) *Copyright.* (1) *Data first produced in the performance of this contract.* (i) The Contractor agrees not to assert, establish, or authorize others to assert or establish any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When claim to copyright is made and the Contractor has published or intends to publish under copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when each data are delivered to the Government, as well as when the data are published or deposited for registration of a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, or worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in subdivision (c)(1)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee, and the Contractor agrees to assign as directed.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on the Government's behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without prior written permission of the Contracting Officer.

(e) *Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees, acting for the Government, against any liability, including costs and expenses, incurred as a result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor, as soon as practicable, of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

8. Section 52.227–18 is revised to read as follows:

52.227–18 Rights in Data—Existing Works.

The contracting officer shall use this clause in accordance with the instructions at 27.410(j):

Rights in Data—Existing Works (XXX 1990)

(a) The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, or worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees, acting for the Government, against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract, or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor, as soon as practicable, of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

9. Section 52.227–19 is revised to read as follows:

52.227–19 Commercial Computer Software.

The contracting officer shall use this clause in accordance with the instructions as 27.410(k).

Commercial Computer Software (XXX 1990)

(a) Commercial computer software, as used in this clause, is privately developed and existing software normally vended in the commercial market under a license or lease agreement. Contracting Officers may presume that software which is regularly used for other than Governmental purposes and is sold in significant quantities to the general public at established catalog or market prices is commercial.

(b) Any commercial computer software delivered under this purchase order or contract that has been developed at private expense and claimed as restricted rights computer software shall be subject to the restricted rights in paragraph (d) of this clause. Where the Contractor proposes its commercial software license and without regard to when submitted—

(1) Only those portions consistent with Federal laws, the Federal Acquisition Regulation, and this clause, including paragraph (d) of this clause, are incorporated into and made a part of this contract;

(2) The signing of any agreement, license, or registration form or card, and its return to the Contractor by the Contracting Officer or user, is only for the purposes of receiving updates, correction notices, and similar activities, and shall not create any obligation or alter any of the terms and conditions of this contract; and

(3) If that license provides rights to licensees greater than those stated in subparagraph (d)(2) of this clause, then the Government shall receive those greater rights.

(c) By shipment or delivery to the Government of the specified computer software, the Contractor unconditionally accepts the terms and conditions of this clause and agrees that the clause, including the incorporated license, constitutes the entire agreement between the parties concerning rights in the computer software.

(d) The following restricted rights shall apply:

(1) The computer software may not be used, reproduced, or disclosed by the Government except as provided below or otherwise expressly stated in the purchase order or contract.

(2) The computer software may be—

(i) Used, copied for use, in or with any computer owned or leased by, or on behalf of, the Government; provided the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorported under paragraph (b) of this clause;

(ii) Reproduced for safekeeping (archives) or backup purposes;

(iii) Modified, adapted, or combined with other computer software, provided that only the modified, adapted, or combined portions of the derivative software consisting of restricted software shall be subject to the same restricted rights; or

(iv) Disclosed and reproduced for use by the Government's Contractors or their subcontractors in accordance with the restricted rights in subdivisions (d)(1) (i), (ii), and (iii) of this clause, provided they have the Government's permission to use the computer software and agree to prevent unauthourized use and disclosure.

(3) Notwithstanding the foregoing, if the computer software has been published under copyright, it is license to the Government, without disclosure prohibitions, with the

rights in subparagraphs (b) and (c) of this clause.

(4) The computer software may be marked with any appropriate notice consistent with the rights in subparagraphs (b) through (d) of this clause.

(e) The Government and others acting on its behalf shall have the right to use, disclose, and reproduce, for any purpose whatsoever, any manuals and instructional material provided under this purchase order or contract, unless such manuals and instructional materials bear a copyright notice. In that case the Government and others acting on its behalf shall have a license under copyright to use and reproduce such manuals and instructional materials for Government purposes only, without disclosure prohibitions.

(f) Whenever operational use of any commercial computer software delivered under this purchase order or contract is no longer needed, or has been discontinued permanently by the Government or a Government Contractor, the Government or the Contractor shall, unless required to return the software to the vendor or Contractor under this purchase order or contract, have the right to dispose of the computer software by any destructive means sufficient to render its usability impractical by subsequent users. At the time of such destruction or disposal, the restrictive rights set forth in paragraph (d) of this clause and any incorporated license provisions in the vendor or Contractor's commercial software agreement shall terminate automatically.

(g) Disputes as to validation of data rights under this clause shall be subject to the procedures stated in the clause at 52.227-25, if included in this contract. All other disputes shall be subject to the Disputes clause of this contract.

(End of clause)

10. Section 52.227-20 is revised to read as follows:

52.227-20 Rights in data—SBIR program.

As prescribed by 27.410(1), the contracting officer shall insert this clause.

Rights in Data—SBIR Program

(a) *Definitions.*

Computer software, as used in this clause, means computer programs which are data comprising a series of instructions, rules, routines, or statements which allow or cause a computer to execute an operation or series of operations, and data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the program to be produced, created or compiled.

Data, as used in this clause, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes but is not limited to, technical data and computer software, and computer data bases. The term does not include data incidental to the administration of this contract, such as financial, administrative, cost or pricing, or management information.

Data base, as used in this clause, means a collection of data recorded in a form capable of, and for the purpose of, being stored in, and processed and operated on by a computer. The term does not include computer software.

Detailed design, manufacturing or process data, as used in this clause, means technical data of sufficient detail to enable the essentially identical reproduction or manufacture, of an item, component, or the performance of a process, to which the data pertains.

Form, fit, and function data, as used in this clause, means data relating to items, components, processes, or computer software that are sufficient to enable physical and functional interchangeability as well as data identifying source(s), size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

Limited rights data, as used in this clause, means data pertaining to items, components, and processes developed exclusively at private expense, except as may be provided otherwise in subparagraph (b)(1) of this clause, provided that such data have not been disclosed, furnished, or released to the Government or to others without restriction on further disclosure and use or are otherwise publicly available. The Government's rights to use, duplicate, and disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (d) of this clause.

Manuals and instructional materials, as used in this clause, means data necessary for the installation, operation, maintenance and repair, or training with respect to any item, component, process, or computer software.

Restricted rights computer software, as used in this clause, means computer software developed exclusively at private expense, except as may be provided otherwise in subparagraph (b)(1) of this clause, provided that such computer software has not been disclosed, furnished, or released to the Government or to others without restriction on further disclosure and use, or is not publicly available. The Government's rights to use, duplicate or disclose restricted rights computer software are as set forth in the Restricted Rights Notice of paragraph (e) of this clause.

SBIR data, as used in this clause, means data first produced by the Contractor in performance of this small business innovation research contract issued under the authority of 15 U.S.C. 638 (Pub. L. 97-219, Small Business Innovation Development Act of 1982) which data are not generally known, and which data have not been made available to others without obligation as to its confidentiality by the Contractor, or are not otherwise available to the Government.

SBIR rights, as used in this clause, means the rights in SBIR data set forth in the SBIR Rights Notice of paragraph (c) of this clause.

Technical data, as used in this clause, means that data which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose and to have or permit others to do so.

(b) *Allocation of rights.* (1) The Government shall have unlimited rights in—

(i) Data specifically identified in this contract as data to be delivered without restriction;

(ii) Form, fit, and function data delivered or furnished for use in the performance of this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals and instructional and training materials furnished with respect to any item, component, process, or computer program required to be or, in fact, delivered or furnished for use in the performance of this contract;

(iv) All data which was in fact delivered or furnished which constitute a correction or change to data furnished by the United States; and

(v) All other data required to be or, in fact, delivered in the performance of this contract unless provided otherwise for SBIR data in accordance with paragraph (c) of this clause or for limited rights data or restricted rights computer software in accordance with paragraphs (d) and (e), respectively, of this clause.

(2) The Contractor shall have the right to—

(i) Protect SBIR rights in SBIR data delivered under this contract in the manner and to the extent provided in paragraph (c) of this clause;

(ii) Subject to paragraph (h) of this clause, withhold from delivery those data which are limited rights data or restricted rights computer software to the extent provided in paragraphs (d) and (e) of this clause, respectively;

(iii) Substantiate use of, add, or correct SBIR rights or copyrights notices and to take other appropriate action, in accordance with paragraph (g) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (f)(1) of this clause.

(c) *Rights to SBIR data.* (1) The Contractor is authorized to affix the following 'SBIR rights Notice' to SBIR data delivered under this contract and the Government will thereafter treat the data, in accordance with such Notice:

SBIR Rights Notice (XXX 1990)

These SBIR data are furnished with SBIR rights under Contract No. _____ with_____ (and subcontract_____ with subcontractor_____, if appropriate.) For a period of 2 years after acceptance of all items to be delivered under this contract, the Government agrees to use these data for Government purposes only, and they shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor, except that, subject to the foregoing use and disclosure prohibitions, such data may be disclosed for use by support Contractors. After the

aforesaid 2-year period, the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This Notice shall be affixed to any reproductions of these data, in whole or in part.

(End of notice)

(2) The Government's sole obligation with respect to any SBIR data shall be as set forth in this paragraph (c).

(d) *Limited rights.* The Government shall have limited rights in any data required to be or in fact delivered or furnished for use in the performance of this contract provided such data are limited rights data and the following 'Limited Rights Notice' is affixed to the data:

Limited Rights Notice

(a) Contract No. _____ and Contractor _____ (Subcontract No. _____ and Subcontractor _____, if applicable.)

(b) These data are subject to limited rights. These data may be reproduced and used by the Government with the limitation that these data will not, without the written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government except that the Government may disclose these data outside the Government for the following purposes, provided the Government makes such disclosure subject to prohibition against further use and disclosure and notifies the Contractor:

(1) Emergency repairs and overhaul.

(2) Release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interests of the United States and is required for evaluation purposes.

(c) This Notice shall be marked on any complete or partial reproduction of these data.

(End of notice)

(e) *Restricted rights computer software.* The Government shall have only the restricted rights set forth in the Notice below in any computer software required to be or in fact delivered or furnished for use in the performance of this contract, provided such computer software is restricted rights computer software and the following "Restricted Rights Notice" is affixed to the computer software:

Restricted Rights Notice

(a) This computer software is submitted with restricted rights under Government Contract No. _____ with _____ (and Subcontract No. _____ with _____, if appropriate.) It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including the use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archival) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted rights computer software are made subject to the same restricted rights; or

(5) Disclosed to and reproduced for use by support service Contractors in accordance with subparagraphs (b) (1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in this restricted rights notice.

(d) This Notice shall be marked on any complete or partial reproduction of this computer software.

(End of notice)

(f) *Copyright.* (1) *Data first produced in the performance of this contract.* Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. If claim to copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, or worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government for all such data. For computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, or worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract, any data that are not first produced in the performance of this contract and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (f)(1) of this clause.

(3) *Removal of copyright notices.* The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (f), and to include such notices on all reproductions of the data.

(g) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (d) of this clause, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after discovery of such data, permission to have notices placed on qualifying data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishment that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also—

(i) Permit correction, at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(h) *Protection of limited rights data.* When data other than that listed in subparagraph (b)(1) of this clause are specified to be delivered under this contract, and such data qualify as either limited rights data or restricted rights computer software, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. However, the Contracting Office may, at any time by written request, identify and specify the delivery of such withheld data. If delivery of such data is required, the Contractor may protect his rights by use of the Notices in paragraphs (d) and (e) of this clause.

(i) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligation to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(j) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

11. Section 52.227–21 is revised to read as follows:

52.227-21 Technical data certification, revision, and withholding of payment.

As prescribed in 27.410(q), the contracting officer shall insert the following clause.

Technical Data Certification, Revision, and Withholding of payment (XXX 1990)

(a) This clause shall apply to all technical data that have been specified in this contract as being subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during contract performance or within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth herein. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) Certification of technical data conformity.

(1) All data that are subject to this clause shall be accompanied by the following certification upon delivery:

Certification of data conformity

The Contractor, _____, hereby certifies that the data delivered under Government contract number _____ (and subcontract number _____, if appropriate,) are complete, accurate, and comply with all the requirements of the contract concerning such technical data. Date of Certification: _____ Name and Title of Certifying Official: _____.

(End of certification)

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor by the certification.

(2) Data delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Data are also subject to review(s) by the Government subsequent to acceptance. Such review(s) may be conducted ancillary to other reviews, such as in-process reviews of configuration audit reviews.

(3) The Government shall rely on the certification set out in subparagraph (b)(1) of this clause in accepting delivery of the data, and, in consideration thereof, may request correction of any deficiencies at any time during the period covered by this clause. These corrections shall be made at the expense of the Contractor. Unauthorized markings on data shall not be considered a data deficiency, but will be treated in accordance with 27.407-1, Unauthorized Markings and Validation.

(4) *Data revision.* At the Contracting Officer's request, the Contractor agrees to revise data subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any deliverable item (other than technical data.) The Contractor may submit a request for an equitable adjustment to the terms of the contract for any revisions to data made pursuant to this paragraph.

(c) *Withholding of payment.* (1) If data specified to be delivered under this contract are not delivered within the time specified by this contract or are deficient upon delivery (including have restrictive markings not identified in the notification list described in the provision at 52.227-15 and in the contract,) the Contracting Officer may, until such data are accepted by the Government, withhold payment to the Contractor of 10 percent of the total contract price unless a lesser withholding amount is specified in the contract, OR, if in accordance with agency procedures this paragraph is superseded by paragraph (d) of this clause. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arose out of causes beyond the control and without the fault of negligence of the Contractor.

(2) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

Alternate I (XXX 1990). (c) *Withholding of payment.* At any time before final payment under this contract, the Contracting Officer may withhold payment until a reserve not exceeding $100,000 or 5 percent of the contract value, whichever is less, if the Contractor fails to—

(1) Make timely delivery of technical data required by this contract;

(2) Provide the certification required by subparagraph (b)(1) of this clause;

(3) Make the corrections required under subparagraph (b)(3) of this clause; or

(4) Make revisions requested under subparagraph (b)(4) of this clause.

(i) Such reserve or balance shall be withheld until the Contracting Officer has determined the Contractor has delivered the data and/or has made the required corrections or revisions. Withholdings shall not be made if the failure to make timely delivery, and/or the deficiencies relating to delivered data, arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

(ii) The Contracting Officer may decrease or increase the sums withheld up to the sums authorized in subparagraph (d) of this clause. The withholding of any amount under this subparagraph, or the subsequent payment, shall not be construed as a waiver of any Government rights.

(End of Clause)

12. Section 52.227-23 is revised to read as follows:

52.227-23 Rights to proposal data.

As prescribed in 27.410(s), insert the following clause:

Rights to Proposal Data (XXX 1990)

Except for data contained on pages ____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon the Government shall have unlimited rights (as defined in the Rights in Data—General clause contained in this contract) in and to the technical data contained in the proposal dated _____, upon which this contract is based.

(End of clause)

13. Section 52.227-24 is added to read as follows:

52.227-24 Validation of technical data markings (statutory).

As prescribed in 27.410(a)(2)(i) this clause is to be used for all challenges of technical data based on 10 U.S.C. 2321 or 41 U.S.C. 253d:

Validation of Technical Data Markings (Statutory) (XXX 1990)

(a) The terms used in this clause are defined in the clause at 52.227-14, Rights in Data.

(b) The Contractor and subcontractor at any tier shall maintain records sufficient to reasonably justify the validity of any markings that impose restrictions on the Government or others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract, and shall furnish to the Contracting Officer written justification for any such markings in response to a challenge under paragraph (d) of this clause.

(c) *Prechallenge request for information.* The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use, duplicate, or disclose technical data. The Contractor or subcontractor shall submit such data within the time period stated by the Contracting Officer, which period shall not exceed 90 days. If, upon review of the explanation submitted, and any other information available, the Contracting Officer may acquiesce in the restriction, or may challenge the restriction in accordance with the procedures for formal challenge.

(d) *Formal challenge.* Notwithstanding any provision in this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive markings is warranted, the Contracting Officer shall send a written challenge to the Contractor or subcontractor asserting such restriction, and such challenge shall—

(1) State the specific grounds for challenging the asserted restriction;

(2) Require a response within 60 days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(3) Request to be notified if the data has been validated within the past 3 years, or if another Contractor is challenging the data, or challenges the data during the process of this challenge; and

(4) State that failure to respond to the challenge notice may result in a final decision of the Contracting Officer. The Contracting Officer may extend the challenge period if the Contractor submits a written request for additional time for a period not to exceed 90 days.

(5) State that the Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act (41 U.S.C. 601, et. seq)

and must be certified as prescribed in 33.207 regardless of dollar amount.

(e) *Final decision when the Contractor or subcontractor fails to respond.* Upon failure to respond within the time period of the challenge notice, the Contracting Officer will issue a final decision in accordance with the Disputes clause of this contract pertaining to the validity of the restriction. The Contracting Officer will proceed with section (g) before release or disclosure of the data outside the Government.

(f) *Final decision when the Contractor or subcontractor responds.* If the Contracting Officer determines that the response has justified the validity of the restrictive marking, the Contracting Officer will issue a final decision to that effect. If the Contracting Officer determines that the validity of the restrictive marking is not justifed, the Contracting Officer shall issue a decision to that effect. Final decisions shall be made within 60 days of the Contractor's response, unless the Contracting Officer determines that additional time is required, in which case the Contracting Officer shall notify the Contractor or subcontractor of such an additional time period within 60 days of the receipt of the response to the challenge notice.

(g) After the issuance of a final decision under either paragraph (e) or (f) of this clause, the Government will continue to be bound by the asserted restriction for a period of 90 days from the date of the Contracting Officer's final decision in order to permit the Contractor to avail itself of administrative or judicial review. If the decision is not appealed to a Board of Contract Appeals, or if notice of intent to appeal to the Claims Court is not provided to the Contracting Officer within the 90 days, the Government may cancel or ignore the markings and the failure of the Contractor or subcontractor to pursue appropriate remedies shall constitute consent to that action.

(h) If the decision of the Contracting Officer is properly appealed, the Government will continue to be bound by the asserted restriction until the appeal or suit is decided. Notwithstanding the foregoing, if the Head of the Agency determines, on a nondelegable basis, following notice to the Contractor, that urgent and compelling circumstances exist that will not permit awaiting a decision of the Board or Claims Court, the Head of the Agency may authorize release, and the Contractor's remedy will be to pursue damages against the United States in the appropriate forum.

(End of clause)

14. Section 52.227–25 is added to read as follows:

52.227–25 Validation of computer software and data markings (nonstatutory).

As prescribed by 27.410(2)(ii), the Contracting Officer shall insert the following clause.

Validation of Computer Software and Data Markings (Nonstatutory) (XXX 1990)

(a) Terms used in this clause are defined in the clause at 52.227–14, Rights in Data. This clause applies to all computer software and data delivered under this contract or subcontract except technical data subject to the clause at 52.227–24 pursuant to the requirements of 10 U.S.C. 2321 and 41 U.S.C. 253d.

(b) The Contractor or subcontractor at any tier is responsible for maintaining records adequate to justify the validity of any markings that impose restrictions on the Government or others to use, disclose, or duplicate data (including computer software and technical data). The Contractor or subcontractor shall provide such justification when requested by the Contracting Officer. No restrictive markings shall be placed upon data except in accordance with the terms and conditions of this contract or any subcontract issued hereunder.

(c) *Request for information.* The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the Government or others acting on its behalf to use, duplicate, or disclose data delivered under this contract or any subcontract hereunder. The Contractor or subcontractor shall submit such explanation within the time period stated by the Contracting Officer, which period shall not exceed 90 days. Upon review of the explanation submitted, and any other information available, the Contracting Officer may acquiesce in the restriction, or may challenge the restriction in accordance with the procedures below.

(d) *Challenge.* Notwithstanding any provision in this contract or any subcontract hereunder concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive markings is warranted, the Contracting Officer shall send a written challenge to the Contractor or subcontractor asserting such restriction, and such challenge shall—

(1) Identify the data for which the challenge is being made;

(2) State the specific grounds for challenging the asserted restriction;

(3) Require a response within 60 days justifying and providing sufficient evidence as to the current validity of the asserted restriction; and

(4) State that failure to respond to the challenge notice may result in a final decision of the Contracting Officer. The Contracting Officer may extend the challenge period if the Contractor or subcontractor submits a written request for additional time for a period not to exceed 90 days.

(e) *Final decision when the Contractor or subcontractor fails to respond.* Upon failure to respond within the time period of the challenge notice, the Contracting Officer will issue a final decision based on that fact and so notify the Contractor or subcontractor, and the Contractor or subcontractor agree that subject to an abeyance period of 15 days after such notification, the Government shall thereafter have the right to cancel or ignore the markings and the data will no longer be made subject to any disclousre prohibitions.

(f) Final decision when the Contractor or subcontractor responds—

(1) A final decision shall be made within 90 days of the Contractor's or subcontractor's response unless the Contracting Officer determines that additional time is required, in which case the Contracting Officer shall notify the Contractor or subcontractor of such an additional time period within 90 days of the receipt of the response to the challenge notice.

(2) If the Contracting Officer determines that the response has justified the validity of the restrictive marking, or the Contracting Officer has determined not to pursue the challenge further, the Contracting Officer shall notify the Contractor or subcontractor.

(3) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a decision to that effect, which decision shall become the final agency decision and the Contractor or subcontractor will be so notified.

(4) In the event the Contracting Officer determines that the validity of the restrictive markings is not justified, the Government agrees to continue to abide by the restrictive markings for an abeyance period of 15 days from the date the Contractor or subcontractor receives notice of the Contracting Officer's final decision in order to permit the Contractor or subcontractor to avail itself of administrative or judicial review, and the Contractor or subcontractor agree that the Government shall thereafter have the right to cancel or ignore the markings and the data will no longer be subject to disclosure prohibitions if no action for administrative or judicial review is filed.

(g) Except to the extent the Government's action occurs as the result of the final disposition pursuant to administrative or judicial review, and any appeals thereof, nothing in this clause shall preclude a Contractor or subcontractor from bringing a claim for damages under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, that may arise as the result of the Government's cancelling or ignoring restrictive markings on data, to the extent permitted by law.

(h) *Subcontracting.* This clause shall be included in all subcontracts of any tier that require the use of the clause at 52.227–14, or 52.227–19, as appropriate, unless all data to be delivered to the Government or a higher tier subcontractor is only technical data subject to the clause at 52.227–24.

(End of clause)

15. Section 52.227–26 is added to read as follows:

52.227–26 Standard non-disclosure agreement.

As prescribed in 27.410(c), the contracting officer shall insert the following clause:

Standard Non-Disclosure Agreement (XXX 1990)

The undersigned, (name), as the authorized representative of (company), (hereinafter, "the licensee") requests technical data subject to Government purpose rights for the purpose of Government procurement, i.e., to compete for, perform, or to prepare to

compete for, or perform, Government contracts. In consideration therefore—

1. Licensee agrees that the Government purpose rights data identified in this agreement shall be used only for Government purposes.

2. Licensee agrees to provide written notice and a copy of the nondisclosure agreement to the Contractor whose name appears in the Government purpose rights legend (hereinafter referred to as the "Contractor") whenever it receives Government purpose rights data. The notification shall identify the Government purpose rights data, the date and place of its receipt, and the source from which the data was received.

3. Licensee shall not, without prior written permission of the Contractor, provide or disclose any Government purpose rights data to any other company, person, or entity, except its subcontractors. The licensee agrees that disclosing Government purpose rights data to any subcontractors shall be accomplished only for the purpose of performing subcontracts under the Government contract and shall not occur until the subcontractor has executed the Standard Non-Disclosure Agreement.

4. Licensee agrees not to use Government purpose rights data for commercial purposes.

5. Licensee agrees to adopt operating procedures and physical security measures designed to protect the Government purpose rights data from inadvertent disclosure or release to unauthorized third parties.

6. Licensee agrees that any Government purpose rights data are provided "as is" without any representation as to suitability or warranty whatsoever, and without any obligation on the part of the Government to make any additions or alterations to Government purpose rights data. Any additions or alterations to the Government purpose rights data must be obtained directly from the Contractor whose name appears in the Government purpose rights legend or from other lawful sources.

7. Licensee agrees to indemnify the United States Government, its agents, and employees from every liability arising out of, or in any way related to, the misuse or unauthorized disclosure by the licensee, its employees, or agents of any Government purpose rights data it received. Licensee will hold the United States, its agent, and employees harmless against every such claim or liability, including attorney fees, costs, and expenses, arising out of the misuse of unauthorized disclosure of any Government purpose rights data supplied to the licensee hereunder.

8. Execution of this nondisclosure agreement by the licensee or any of its authorized subcontractors is for the benefit of the Contractor identified in the Government purpose rights legend on any data received. Any such Contractor is a third party beneficiary of the nondisclosure agreement who may have the rights of direct action against the licensee to enforce such agreement or to seek damages which may result from any breach of the agreement.

9. Licensee agrees that the Government may also seek any remedy available to enforce this agreement including, but not limited to, application for a court order prohibiting misuse or unauthorized disclosure of information in breach of the agreement. Licensee agrees to pay court costs and reasonable attorneys fees incurred by the Government in any such a suit in which the Government substantially prevails.

10. Nothing in this agreement prohibits the Contractor from entering into an agreement directly with the Contractor with respect to the use of the data. Such agreements may involve commercial uses of the data, the purchase of any additional data or alterations to the data, technical assistance reasonably needed to use the data, or other subjects as deemed appropriate by the licensee and the Contractor.

11. This agreement shall be effective only for so long as the data remains subject to Government purpose rights which period is until _____ or such longer period as that date may be extended.

Date

Signature

Title

(End of clause)

16. Section 52.227–28 is added to read as follows:

52.227–28 Listing and procedures for subsequent negotiation of rights in data.

As prescribed in 27.410(d), the contracting officer may insert this clause in contracts in which negotiation of rights in data will continue after contract award.

Listing and Procedures for Subsequent Negotiation of Rights in Data (XXX 1990)

1. Pursuant to the Notification provision of this contract, 52.227–15, the Contractor has identified those items that are intended to be delivered with other than unlimited rights.

2. At the time of award of this contract, and as a result of negotiations pursuant to 27.405, the parties have agreed on either lesser or greater rights in the following:

Data deliverable	Item, component, process, or computer program	Consideration	Rights	Time period

3. If the Contracting Officer has determined that preaward negotiation is impractical, then the Contractor and Contracting Officer agree to enter into negotiations pursuant to the following schedule: provided: however, that such agreement must be reached no later than the delivery of the data in question.

4. If the parties take no action, then it is agreed that the parties have decided not to undertake negotiation of the assertion, and that the asserted rights will be marked on the delivered data; subject however to the right of the Government to undertake formal validation in accordance with 27.407. Since the listing is to facilitate identification and review, it is expressly not a predetermination of rights in data.

(End of clause)

[FR Doc. 90–24200 Filed 10–12–90; 8:45 am]

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federal register

Monday
October 15, 1990

Part III

The President

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Vol. 55, No. 199
Monday, October 15, 1990

Presidential Documents

Title 3—

The President

Proclamation 6201 of October 11, 1990

Fire Prevention Week, 1990

By the President of the United States of America

A Proclamation

Each year, thousands of Americans are killed by fire. Tens of thousands more suffer from fire-related injuries. Tragically, the overwhelming majority of these fire deaths and injuries occur in places where people tend to feel most secure: their homes.

Although no one is immune to the threat of fire, our most vulnerable citizens—older Americans and children—are at greatest risk. Protecting the lives of these individuals and reducing the total number of deaths and injuries from fires in the United States require the sustained involvement and concern of all Americans and continued cooperation between the public and private sectors.

Throughout the year, numerous agencies and associations sponsor programs aimed at preventing fires that may cause death and injury. These local and national programs have conveyed the concerns of our Nation's fire service organizations to the public. They have helped people to recognize the destructive power of fire, and they have demonstrated what we can do, both individually and collectively, to protect ourselves from becoming victims of fire. All of these programs carry a vital message: each of us has the ability—and, indeed, a responsibility—to protect our families, our property, and our environment.

The National Fire Protection Association, which initiated Fire Prevention Week, has announced the theme of this year's observance: "Make Your Place Firesafe: Hunt for Home Hazards." This theme underscores the importance of recognizing dangers and taking measures to eliminate them. For example, every homeowner should install and maintain household smoke detectors; keep exits clear; avoid careless smoking; and store matches and lighters out of the reach of children. Homeowners should ensure that heating equipment is in good working order, and they should keep heating appliances at least 3 feet away from anything that can burn. Combustible or flammable liquids should be stored in proper containers, away from heat or flame, and electrical cords should be checked for cracks and frays. These and other simple steps can save lives.

Sharing the concerns of the National Fire Protection Association, the United States Fire Administration is coordinating public education campaigns designed to promote private-public partnerships for fire prevention.

Our Nation owes a debt of gratitude to these organizations and to all those individuals who are committed to preventing deaths and injuries from fire, including the members of the National Fire Academy; the International Association of Fire Chiefs; the International Association of Fire Fighters; the International Association of Black Professional Fire Fighters; the Fire Service Caucus Institute; the National Volunteer Fire Council; the International Society of Fire Service Instructors; the Fire Marshals Association of North America; the State Fire Marshals Association; and all other allied organizations.

Each year, the National Fallen Fire Fighters Memorial Service, held at the National Fire Academy in Emmitsburg, Maryland, honors those men and women who have answered their last alarm as volunteer or career fire fighters. On October 14, 1990, relatives and friends of fire fighters killed in the line of duty and representatives from the Nation's fire service organizations will gather to remember and pray for these heroic individuals. This week, as we make a special effort to identify and eliminate potential fire hazards in our homes and places of business, let us gratefully remember those fire fighters who have given their lives in the line of duty.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning October 7, 1990, as Fire Prevention Week. I call upon the people of the United States to plan and participate in fire prevention activities not only this week, but throughout the year. I also ask all Americans to join me in honoring the memory of those fire fighters who have made the ultimate sacrifice to protect the lives and property of their neighbors.

IN WITNESS WHEREOF, I have hereunto set my hand this Eleventh day of October, 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

[FR Doc. 90-24409
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Editorial note: For the President's remarks of Oct. 11, 1990, on signing Proclamation 6201, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 41).

Presidential Documents

Proclamation 6202 of October 11, 1990

National Breast Cancer Awareness Month, 1990

By the President of the United States of America

A Proclamation

During 1990 alone, an estimated 150,000 American women will get breast cancer; some 44,000 of them are expected to die from it. Such dire projections, however, need not become a reality in the future. Today we know that deaths from breast cancer can be significantly reduced if the cancer is found in its early, more treatable stages of development. The United States Department of Health and Human Services reports that as much as a 30 percent drop in the breast cancer death rate is possible if women follow early detection guidelines.

Thirteen major public and private health organizations, including the National Cancer Institute and the American Cancer Society, have agreed upon the following screening guidelines for breast cancer: A woman between the ages of 40 and 49 should have a mammogram every 1 to 2 years, as well as an annual breast examination by her physician; after age 50, both the mammogram and the breast exam should be done annually. The National Cancer Institute and the American Cancer Society also recommend monthly breast self-exams.

Research has led to important advances in treatment for victims of breast cancer. Women whose breast cancer is detected in its early stages can be treated with much less extensive surgery than in the past. At early stages, lumpectomy plus radiation, rather than mastectomy or full removal of the breast, is an option, but lumpectomy is viable only for those women whose cancer has been detected early.

Health care professionals throughout the United States are working hard to encourage women to follow the breast cancer screening guidelines developed by the National Cancer Institute and other organizations. Many private voluntary associations and concerned individuals are also spreading the word about the importance of early detection and urging women who are age 40 and older to obtain regular screenings. Some businesses are offering screening to their employees. This month we reaffirm our determination to carry on such efforts and encourage other health care providers, employers, charitable organizations, and community groups to follow suit.

Today we have the knowledge and technology necessary to find and to treat breast cancer in its earliest stages. Let us put these resources to work to save the lives of American women.

To enhance public awareness of the importance of regular screenings for breast cancer, the Congress, by Senate Joint Resolution 301, has designated the month of October 1990 as "National Breast Cancer Awareness Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of October 1990 as National Breast Cancer Awareness Month. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, as well as the appropriate officials of all other areas under the flag of the United States, to issue similar proclamations. I also ask all Americans—in particular, health care providers, insurance companies, employers, and members of charitable associations and community groups—to join in this special effort to promote awareness of breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, 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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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 469/Pub. L. 101-413

To designate October 6, 1990, as "German-American Day". (Oct. 11, 1990; 104 Stat. 898; 1 page) Price: $1.00

H.J. Res. 603/Pub. L. 101-414

To designate the month of October 1990 as "Country Music Month". (Oct. 11, 1990; 104 Stat. 899; 1 page) Price: $1.00

S.J. Res. 301/Pub. L. 101-415

Designating October 1990 as "National Breast Cancer Awareness Month". (Oct. 11, 1990; 104 Stat. 900; 2 pages) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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4	16.00	Jan. 1, 1990
5 Parts:		
1-699	15.00	Jan. 1, 1990
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1200-End, 6 (6 Reserved)	17.00	Jan. 1, 1990
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52	24.00	Jan. 1, 1990
53-209	19.00	Jan. 1, 1990
210-299	25.00	Jan. 1, 1990
300-399	12.00	Jan. 1, 1990
400-699	20.00	Jan. 1, 1990
700-899	22.00	Jan. 1, 1990
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1000-1059	16.00	Jan. 1, 1990
1060-1119	13.00	Jan. 1, 1990
1120-1199	10.00	Jan. 1, 1990
1200-1499	18.00	Jan. 1, 1990
1500-1899	11.00	Jan. 1, 1990
1900-1939	11.00	Jan. 1, 1990
1940-1949	21.00	Jan. 1, 1990
1950-1999	24.00	Jan. 1, 1990
2000-End	9.50	Jan. 1, 1990
8	14.00	Jan. 1, 1990
9 Parts:		
1-199	20.00	Jan. 1, 1990
200-End	18.00	Jan. 1, 1990
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200-399	13.00	[2] Jan. 1, 1987
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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumns issued as of July 1, 1984 containing those chapters.

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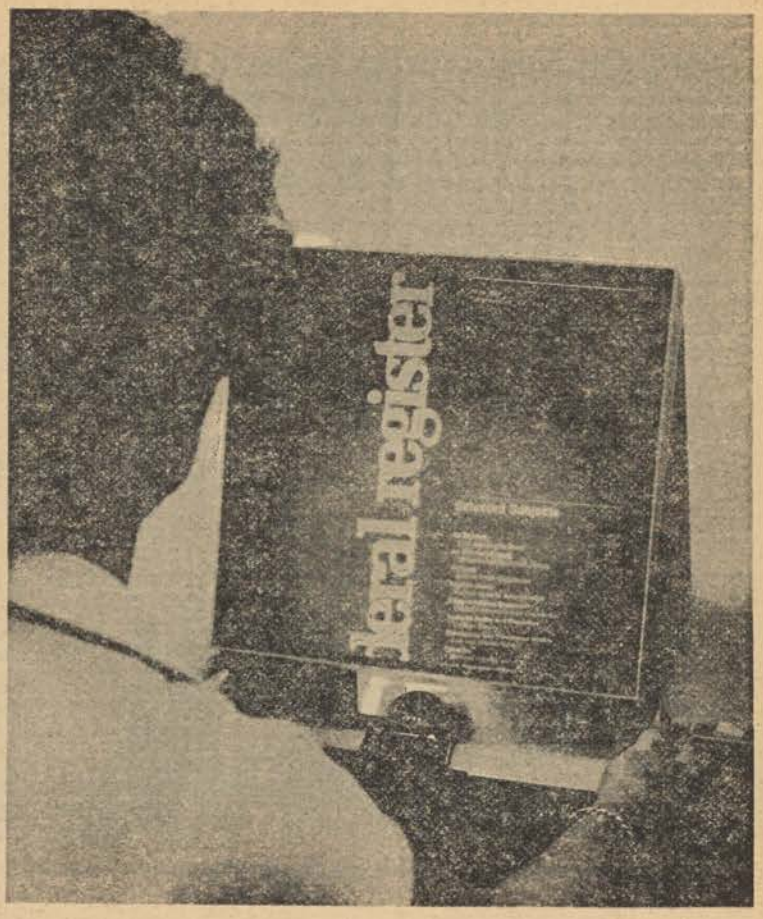

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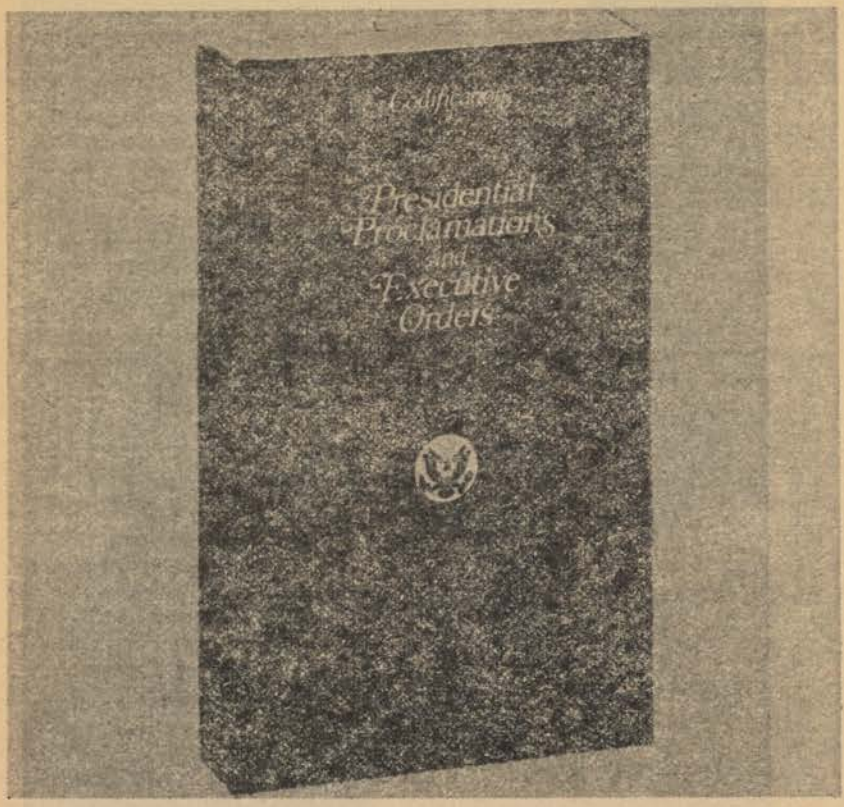

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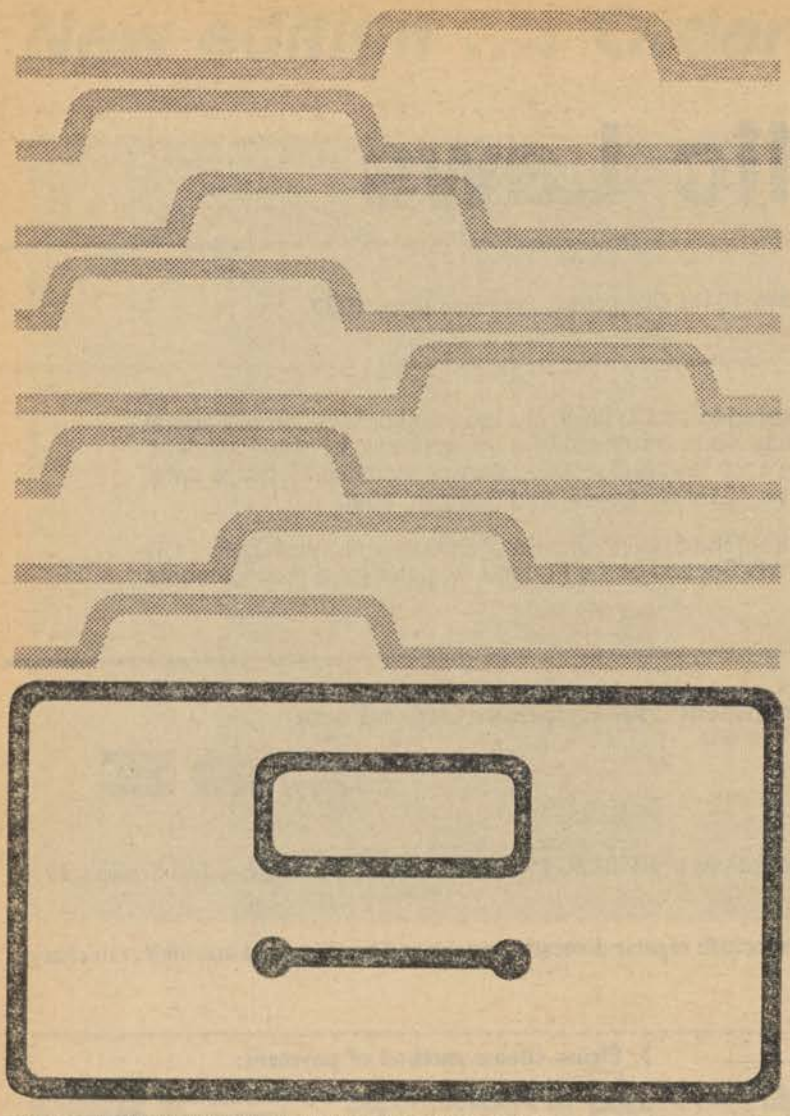

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